

No. _____

8752

Supreme Court of Illinois

John Thomas Roach

vs.

Lewis L. Perry

71641  7

Randolph County Circuit Court.

Lewis L. Perry Exr of James E. Roche, dec'd

vs
John Roche & Thomas Roche } In Chancery on
account &c
now on the 13th day of Sept 1850. Comes Lewis L. Perry
Exr of James E. Roche dec'd, & files his bill in Chancery
on account which is in the words & figures following to wit as
also his account which is in the words & figures following
to wit -

State of Illinois. County of Randolph - Circuit
Court of Randolph County - Chancery side thereof Sept Term
AD 1850. - To the Hon William H. Underwood, presiding Judge
of the 2^d. Judicial Circuit of the State of Illinois, of which Randolph
County forms apart sitting in Chancery. Humbly Complaining
Sheweth unto your Honor, your orator Lewis L. Perry, a citizen
of the County of Randolph and State of Illinois, and Executor of the
last will and Testament of James E. Roche dec'd late of said County
and State, that in or about the year Eighteen hundred and forty
two the said James E. Roche your orator's testator aforesaid. Entered
of the United States, the following described tract of Land to wit
the South East qr of the North West ^{or} section ten. T. 6. R. 7 west
& the said Jas E. Roche in his lifetime together with said John. Thomas
& Joseph Roche, on or about said time purchased from Breoster the following
described Land to wit. The NW qr of the E & S of Sec 10. T. 6. R. 7 west
40 acres. The E & S of Sec 10. T. 6. R. 7 W. & the N & S NW qr Sec,
15. T. 6. R. 7 west. and that subsequent to the purchase of said
Land by the said James E. Roche as aforesaid the said Roche conveyed
to Thomas Roche and John Roche brothers of said James both of whom
are also residents of said County and State a portion of said tract or parcel
of Land, to wit one third of said tract of Land to each of them, for the
purpose and to the end that they the said Thomas Roche and John Roche both
of whom your orator makes defendants to this bill of Complaint, should
hold the same in partnership with the said James E. Roche your orator's
testator as aforesaid. your orator further represents unto your honor
that soon after the purchase so made as aforesaid by the said
Thomas Roche and John Roche from the said James E. Roche

of an undivided interest in the said Land as aforesaid. to wit in or
 about the year of our Lord, one thousand eight hundred and forty two
 the said James E. Roche your orator's testator as aforesaid and the said defendants
 Thomas and John Roche settled upon said tract of Land and engaged in the farming
 and Cultivation thereof as partners—your orator further represents unto your
 honor that when the said James E. Roche and the said defendants went upon
 the said Land to live thereon and to farm the same in partnership, it became
 necessary in order to carry on their farming pursuits with any degree of
 fecility or success to purchase for the use of said farm, horses, Oxen,
 Cows, harness, ploughs, and in short farming utensils of all kinds requi-
 red by persons engaged in extensive and successful agricultural
 pursuits and that the said John Roche and Thomas Roche, being
 poor and without the means necessary to purchase the said necessary
 a large sum of money being required in the purchase thereof, they
 the said John & Thomas, called upon the said James who was a monied
 man, and proposed a large amount of funds, and requested
 him to advance the required amount of money to procure the
 said articles of personal property, promising at the same time
 that they would account to him the said James for their share
 of the said money to be so laid out on their part as partnership
 account, and that in a reasonable time they would pay over
 to him the same, your orator further represents unto your
 honor that in accordance with the request of the said John Roche and
 Thomas Roche, and relying upon their promises to indemnify him
 for the same the said James E. Roche your orator's testator as aforesaid
 did purchase for the use of the said farm many articles of personal
 property to wit, horses, Cows, Oxen, heifers, Steers &c, which he the
 said James E. Roche bought on the joint or partnership account of
 him the said James and the said Thomas and John and paid for them
 in his own money, the said articles of personal property being
 sold upon the said farm and held as partnership property of the
 said James, Thomas and John, your orator further sheweth unto
 your honor that the said James Roche, Thomas Roche, and John
 Roche continued to live on the said farm, the said James deceased
 and the said Thomas and John continually from the year
 eighteen hundred and forty two until the year eighteen
 hundred and forty nine

when the said James departed this life, nominating and appointing
your orator his Executor—your Orator would further represent
unto your honor that during the said interval, that is to say between
the year 1842 and the year 1849, the said James E. Roche was employed
a considerable portion of the time in keeping a grocery store, and in
carrying on his trade (he being a Sadler) in the town of Westchester
and that the said Thomas and John were the principal and active partners
in carrying on said partnership ^{business} on the said farm—your
Orator further represents that during the continuance of said partne-
-ship it became necessary at different times to purchase stock
to be used on the said farm, and to expend large sums of money in
payment of expenses incurred in carrying on said partnership affairs
and which were used by the said James, John and Thomas in carrying
on said farming pursuits—your orator further sheweth unto
your honor that during the whole of said time during which the
said partnership continued, the said James E. Roche, furnished money
to purchase said articles and in defraying such expenses as were
incurred on the said partnership account, an account of which said
articles furnished and expenses paid by the said James E. Roche on the
said partnership account, and for the mutual benefit of the
said James, Thomas and John your orator herewith files marked
exhibit (A) for their share of which the said John and Thomas
promised the said James that they would satisfy him by repaying him
in a reasonable time their share of said money so advanced by
him the said James in the construction of said house upon said farm
held in partnership as aforesaid by the said James, Thomas and John and
for their share of which said outlay of money of the said James, they the
said John and Thomas were bound in equity and good faith to account
for and pay over to the said James. your orator further represents
unto your honor that from the time of the commencement
of the said partnership in the year 1842, down to the period of
its termination by the death of the said James in 1849—they the
said John and Thomas continued to use and cultivate the said farm
and to appropriate to their own use all the produce
arising from the cultivation thereof without accounting
to the said James for any part thereof.

in this matter (A)

your orator further represents that in the year eight-
-teen hundred and forty three the said James E. Roche
Thomas Roche and John Roche built a house upon the
said farm, and that in the construction of the same the
said James E. Roche advanced a large amount of
money in the payment of ^{mechanical} materials and labors in fur-
-nishing materials ^{and} for which money so advanced, an account
of which your orator files with the bill of Complaint and
prays that it may be considered as a part thereof marked
Exhibit

and that the share of the said James to which he was justly entitled for the rent of the said farm was worth thirty Dollars annually - amounting to the sum of two hundred and two Dollars for the seven years during which the said James, John and Thomas was in partnership, and during the whole of which said period of seven years the said ~~James~~ John and Thomas so appropriated the products of said farm without giving the said James any part thereof, and without paying to him the said James any rent for the use of his share thereof, - your orator further represent unto your honor that during the continuance of the said partnership the stocks put upon the said farm by the said James, and sold and consumed as aforesaid by the said John and Thomas amounted in value to the sum of fifteen hundred Dollars, and that the income of the said stocks sold and consumed by the said John and Thomas as aforesaid to the sum of five hundred Dollars and that the said John and Thomas failed to account to the said James for any part of the said stocks so put upon the said farm by the said James as aforesaid or the increase thereof so consumed and sold as aforesaid by the said John and Thomas, they the said John and Thomas consuming the same for their own use and recovering the money for that sold and appropriating the same to their own use without accounting to the said James for any part thereof, or paying over to him the said James any portion of the money so received by them - your orator further shows that the rent of the said House so constructed as aforesaid by the said James, John and Thomas upon the said farm and paid for principally by the said James, and to which the said James was entitled on account of his share, an interest in said house, they the said John & Thomas occupying the same continuously during the continuance of said partnership, the said James being absent a great part of the time, amounting in value annually to the sum of twenty Dollars, making the sum of about one hundred Dollars which they the said John and Thomas were bound in good faith to pay over to the said James and which they refused to do - your orator begs leave to refer your honor to the said account herewith filed marked exhibit (A.) as aforesaid, and prays that the said account the items of which are numerous and amount to the sum of nearly three thousand Dollars, and prays that the said account may be taken as a part of this your orator's bill of Complaint - your orator begs leave further to represent unto your honor that frequently during the continuance of the said partnership and in the life time

of the said James. he the said James called upon the said John and Thomas
to account to him for and to pay over what was justly due him the said James
for money ^{paid} and advanced by him the said James on the said partnership account
in building the said house in purchasing said stock, farming utensils
&c. for what was due him the said James for stock consumed and sold
by the said John and Thomas for the increase of said stock also sold and
consumed by the said John and Thomas for the share of the said James for the rent
of the said house and farm, and for his share of the profits arising from the
farming and cultivation of said farm, and to render an account of all
that was due him the said James by the said John and Thomas in respect
to all the dealings and transactions arising between him the said James
and the said John and Thomas during the existence of the said partnership
and that they the said John and Thomas neglected and refused to
account to the said James in respect to the said partnership dealings or
to pay over to him the said James any part of which was justly due him on
said partnership account. Your orator also shows that since the death of
the said James your orator as the Executor and legal representative of
him the said James has called upon the said John and Thomas and urged
them to make a settlement with your orator of said partnership transac-
-tions and to pay over to your ^{orator} what he was entitled to demand as
the Executor of the said James as aforesaid. of and from the said John and
Thomas in respect to said partnership dealings, and that they the said John and
Thomas, have presumptively refused so to do - in consideration of the premises,
and in as much as the partnership dealings between the said James, John
and Thomas remain wholly unsettled, and in consideration of the fact
that the said John and Thomas refuse to pay over a large amount of money
which your orator as the executor of the said James is entitled to demand
of them the said John and Thomas which they the said John and Thomas
ought and are bound in equity and good faith to pay over to your
orator as Executor of the said James as aforesaid and for the recovery of
which your orator has no remedy or relief in a Court of Law
Your orator prays this honorable Court whose peculiar province
it is while sitting as a Court of equity to compel the settlement and
adjustment of partnership accounts to compel the said John
Roche and Thomas Roche to render an account unto your orator
of all that is due him as the executor of the said James C. Roche,

in respect to or connected with all the said partnership dealings and trans-
 -actions arising and taking place between the said James Thomas and
 John during the existence and continuance of the said partnership
 between them, and that upon a ~~future~~ final account of
 the said partnership transactions, your honor will compel the
 said John and Thomas to pay over unto your orator such sums of
 money as your orator is justly entitled to as the personal representative
 of the said James E. Roche, and further that your honor will
 grant unto your ~~honor~~ orator such other and additional
 relief as unto your honor shall seem meet and agreeable to
 equity in the premises - your orator prays your honor
 to grant unto him the process writ of Subpoena directed to the
 said John Roche, and Thomas Roche and ordering them and each
 of them at a time to be therein named, and under a penalty
 therein to be limited personally to be and appear before this
 honorable Court, and then and there full, true direct
 and perfect answers make (but not under oath, your
 orator herein waiving the oath of said defendants to
 all and singular the matters and things herein contained
 and further to stand to abide and perform such further
 order directions and decrees therein as to your honor
 shall seem meet, and your orator shall ever
 pray &c

Lewis C. Perry Executor
 of James E. Roche. Dec'd
 Consult. by
 Breese & Morrison
 his Solicitors

Exhibits Marked (A.)

Thomas & John Roche. To the Estate of James E. Roche dec'd

Date	Description	Amount
1842		
Nov 23	To mare name by Antoine Fortune	\$ 26 00
" "	" recording Deed	1 19
Feb 4 1843	" One yoke of Oxen (John Short)	35 00
" "	" 4 Small Steers from Robt Morrison	16 00
" "	" one Yoke Team, of work Oxen (Peter Desoupe)	40 00
" "	" One horse, Team, from Joseph Louvall	10 00
" "	" two Cows from Samuel Bradford	15 00
" "	" two Cows from M D Smith	16 00
" "	" two Cows from M D Smith	4 00
" "	" One Wagon from Seaman & Co	45 00
" "	" Black Smith work by John Mann	39 00
" "	" One heifer from Beal Hatcher	3 00
" "	" One Cow from Joseph Slater	8 00
" "	" One yoke of work Oxen from W. Simon	40 00
" "	" One grey mare from Owen Kullen	45 00
" "	" One two horse Wagon from Robert Morrison	50 50
" "	" One wheat fan, bundles for the Dr.	20 00
" "	" Amount of Corn furnished for	40 00
" "	" Lods from James Harmon	4 50
" "	" Balance of note on Seaman & Co drawn by	}
" "	" you from Realy	
" "	" To Saddles, bridles, martingales, harness Chains, backbands and collars	}
" "	" To Steel Iron and wheel boxes (Naulin	
		16 87
		\$ 5 26 04
April 7 1843	To Iron from A. M. Naulin St Louis	5 41
May 7 "	" Six bushels of Red Oats. E. Seymour	1 50
" "	" Six bushels of wheat from R. Cant	6 00
" "	" Clap boards - - - - -	5 00
" "	" two hundred bundles of Oats, Bolinger	4 00
" "	" two years ferriage for 4344-	8 89
" "	" Service of one mare for Palmers horse	10 00
" "	" One work Ox from Luke Kelley	20 00

May 7-1843

To 4,500 feet of pine lumber from Dailey	65	25
" 11,000 shingles from E. Seymour	24	75
" Scantling, joist, rafters, Sheeting &c"		
" from Brewster. Strain & Sulcer -	35	32
To lumber from Bridge Co. J. M. Wheeler	9	00
" Hardware stocks &c"	6	20
" Alexis Beauvais making bricks	31	00
" Toulouse " "	17	00
" James Lassource " "	14	00
" Antoine Jannis " "	14	00
" Louis Lassource " "	12	50
" Charles Labelle, quarrying	26	00
" John Paschall making Cellar wall, done by Labelle & E. Bonner	38	06
" Carpenters work done by Bursley	100	00
" Michael Kelly bricks laying	34	20
" Nixon & Bursley having sleepers, sills & plates	9	50
" Boarding Nixon & Bursley 15 months at \$6	90	00
" Glap's Putty, Paint & Oil	9	50
1843 To Nails	10	00
" Time at various times & places	10	00
" James Cooper 6 months work at \$7	42	00
" Felix Polander 1 month at \$9	9	00
" Boarding Felix & Cooper 2 months at \$6	42	00
" Blacksmiths work by M. Lapouse	8	00
" Michael Buatt bringing plank from St Geneve	3	00
" Four years rent due me from Farm	100	00
" Seven months labor on farm from Nov 48 to June 49		
" at \$6 per month	42	00
" Seven months service by wife at \$2	14	00
" Cash, Wager for Nails & box		25
" For plank in Chester		20
" Amount of farming utensils bought in St Louis		
" & Kaskaskia & still on the farm	67	25
" Amount of furniture bought in St Louis & Kaskas		
" kin & still on the farm	100	75

To Amount of Groceries, Groceries, furniture remaining on hand	458 00
" Cash & County orders taken from my safe	500 00
" Money paid for Taxes from 1842 to 1848	20 00
"	2539 59
To rent of land from 1842 to 1849 \$30 per annum	210 00
" Stock used	600 00
" Stock Consumed	500 00
" Stock Sold	500 00

Whereupon summons issued of which the following is a copy— State of Illinois Randolph County
 The people of the State of Illinois to the Sheriff of Randolph County
 Greeting. We command you to summons John Roche & Thomas Roche of to be found in your county, to appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court house in the Town of Chester on the fourth Monday in the month of September Inst to answer Lewis S. Perry executor of the James E. Roche, dead in a bill in Chancery on an account of Partnership dealings as he says and hereof make due return to our said Court as the law directs. Witness James M. Ball's Clerk of our said Court and the judicial Seal thereof at Chester this 13th day of September A.D. 1850



J. M. Ball's Clerk
 whereupon the Court made the following order viz—

Monday September 23rd 1850
 Lewis S. Perry executor of James E. Roche dead
 vs
 John Roche & Thomas Roche
 In Chancery
 on account

And now on this day comes the said plff by Morrison his atty, and the defs by Roemer & Hamilton their attys and on motion it is ordered that said defendants file their answer to plff's said bill by the first day of February next, and this cause is continued until the next term of this Court &c

whereupon the said John & Thomas Roche files their answer
to said plaintiffs bill of Complaint which is in the letters and
figures following to wit—

State of Illinois.

In The Randolph Circuit

Randolph County } Court April Term 1851.

The joint and several answers of John Roche and Thomas
Roche to the bill of Complaint of Ceciel C. Perry, Executor
of the last will and Testament of James E. Roche, deceased
in the Randolph Circuit Court. These defendants now and
at all times hereafter saving and reserving to themselves all
manner of benefit and advantage of exceptions to the many
errors and insufficiencies in said bill contained for answer there-
unto or unto so much or such parts thereof as these defendants are ad-
vised in material for them to make answer unto, they answer and say
That true it is the said James E. Roche entered the S^W₄ N^W₄ Sec 10
Town 6 South Range 1 West and that he sold & conveyed $\frac{2}{3}$ of the same
to these defendants. They admit that said James E. Roche in his
life time, and these defendants and Joseph Koch purchased
from the said Brewster the lands set forth in Complainants
said bill. They admit that soon after said purchase they the
said defendants settled upon said tract of land and engaged
in the farming and cultivation thereof, but they deny that said
James E. Roche was connected with them in the said farming
business or that they the said defendants were in or had agreed to
enter into Partnership with said James in said farming & cultivating
business. They admit that when they the said Defendants went upon said
land it was necessary in order to carry on said farming &c to purchase
Horses, oxen, harness, Cows, ploughs, &c and that said James purchased
for the use of these defendants on said farm many articles of personal
property such as horses cows &c but they deny that said James purchased
them as partnership property for him and these defendants or that he
paid for them out of his own money and funds or that they were

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poor, and the said James a married man, but they stated that the money and funds were furnished the said James to make said purchases for these defendants and that he the said James was paid and fully satisfied for his trouble in making said purchases. They admit that they continued to live on said farm from the year & es. and that said James boarded with these defendants occasionally, but they deny that said James lived on said farm as a partner in the cultivation thereof. They admit that said James departed this life in the year & es. and nominated & appointed the said complainant his executor. They admit that said James was employed in keeping a grocery & in carrying on the saddleby business, but they deny that said James had any interest as a partner in carrying on said farm. They admit that said James purchased some articles on exhibit marked A. for these defendants, but they deny that he purchased them with his own money or funds, or that said James had any interest in them as a partner but they state that the said James was paid and fully satisfied for all his trouble and expense in purchasing said property and that all the money & means to purchase the same was furnished him by these defendants. They admit that they and the said James built a house, but they deny that said James furnished any money or means for the building thereof more than what he was bound to furnish he being part owner of said house. They also deny that they promised to pay him any thing. They deny that they did not account to the said James for his interest in the rents of said farm, or that they were in partnership in the farming business and they state that they paid the said James & fully accounted for all the rents that was coming to him for his share in said land in the life time of him the said James. They deny that they sold or converted to their own use any property belonging to said James without accounting to him for the same. They deny that they did not ~~not~~ account to said James for his portion of the rents arising from the use of said house. They deny that they did not account to said James for all the articles & items on said exhibit marked A. of said bill which said James purchased, and they deny that he the said James purchased all or any part

of said articles or items on said Exhibit for them and paid for them out of his own funds. They deny that they neglected & refused account to said James in his life time for any thing that he had squandered them. And they state that they paid the said James in his life time in full for all and every thing he had done & performed for them. They further state that the said James at his decease was justly indebted to them for money & work & labor done by them for the said James at his instance & request in a large amount "to wit," Dollars as will more fully appear by reference to exhibit marked B, herewith filed & made up of this answer and that the same was not paid to them by the said James in his life time nor by the said complainant since the death of said James. All which matters and things these defendants are ready to aver and prove as this Court shall direct, and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained &c

Robert Pipell & Hamilton
 Solrs for Defts for P. P. &c

Copy of Exhibit marked (B)

James E. Roche dead, To John & Thomas Roche, Jr.		
Novr 1848 to	To seven months board for self & wife at \$12. per month	\$ 84 00
June 1849		
Oct 1841-	James E. Roche, Dead, to Thomas Roche, Jr. To Cash	2 10 00
Interest at 10 per cent		
1841 to 1843	To 20 months Clerkship at \$20. per month	4 00 00
June 1845	To a Razor & Case	2 00
1845	To a fourth of 4 \$ 44 Cents	1 11
1846	To a fourth of 5 \$ 8 do	1 27
1847	do do 4 \$ 32 Cents	1 08
"	To Taxes on 2 1/4 No 1/4 Sec 10	86
1848	To a fourth of \$ 5 & 40 Cents	1 35

1848- To Taxes on 20 1/4 NW 1/4 Recs 10- 86
 1848- To Cash - 7.50
 Oct-1841- James E. Roche acc'd to John Roche Dr
 To Cash 105.00
 July 4-1842- do 96.00
 " To Interest of 10 per Cent
 1842 to 1849- Labour on farm 1260.00
~~1843 to 1849 Labour on farm 315.00~~
 1843 to 1849 Labour on farm at 15 dollars per month 1080.00
 270.00

Whereupon the said plaintiff files his replication which is in the words and figures following to wit-

State of Illinois, County of Randolph, In the Randolph County-Circuit Court, Chancery side thereof, April Term 1851- The replication of Lewis L Perry, Executor of James Roche Complainant to the answer of John Roche and Thomas Roche defendants, the replicant saving and reserving unto himself all and all manner of advantages of exception to the manifold insufficiencies of the said answer for replication thereunto saith that he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this replicant, without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto unto, Confessed and avoided, traversed or denied is true, all which matters and things this replicant is and will be ready to aver and prove as this honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

Dwight Morrison
 for Complainant

Whereupon at the April Term of said Court 1851
the Court made the following order to wit $\frac{1}{2}$ of which
the following is a copy

Lewis C. Perry Executor &c } In Chancery on
vs } account of
John & Thomas Roche } Partnership

And now on this day comes the said plaintiff
by Breese & Morrison his attorneys and said defendants by Rowan
& Hamilton their attorneys, and said plaintiff enters his motion to
strike the answer of said defendants, & Complainants said bill,
from the files in this cause, and the Court being fully satisfied
of and concerning said motion, It is considered that said motion
be allowed and said answer and said answer is ordered
to be stricken from the files, therefore said defendants by their
attorneys do leave to refile their answer & Complainants
said bill, and thereupon leave is hereby given to said defend-
ants to refile their said answer &c

Whereupon afterwards to wit at the same Term
of the Circuit Court, the Court made the
following order to wit $\frac{1}{2}$ of which the following is a copy
Lewis C. Perry Executor &c
vs John & Thomas Roche } for account of Partnership -

And now on this day comes the parties by their attorneys
and the said defendants having filed their answer to the Complainants
bill of complaint, It is therefore ordered by the Court that this
cause be and it is hereby set for hearing, upon bill and answer
and replication at the next Term of this Court, and by consent of
parties, it is further ordered that R. B. Servant be and he is
hereby appointed Special Commissioner to take and hear
evidence in this cause and report to next Term of this
Court, and this cause is continued &c

Whereupon at the October Term of said Court 1854
the Court made the following order to wit -

Lewis C. Perry Exor of James E. Roche
vs } In Chancery on account
John & Thomas Roche }

And now on this day comes the said parties by
their attorneys, and on motion this suit is continued till
the next Term of this Court to take evidence &c "

Ed. R. B. Servant files evidence in this case by
him taken of which the following is a copy

The deposition of Frederick Coker a witness produced sworn and examined
before R. B. Servant Esqr. a Justice of the peace within & for the County of Randolph
and State of Illinois on the 26th day of September in the year of Our Lord one
thousand eight hundred and fifty one, at the office of the said R. B. Servant in
the Town of Chester County of Randolph aforesaid in a suit now pending and
mattered in the Circuit Court of said County wherein Lewis S.
Perry executor of the last will and ^{testament} of James C. Roach
deceased is plaintiff, against John Roach and Thomas Roach
are defendants on the part of the plaintiff. The said Frederick Coker
being first duly sworn according to law deposes and saith in
answer to the following interrogation, Question, Do you know
the parties plaintiff and defendant in this suit, or either of them
or which of them and how long have you known them respectively
Answer, I have known Lewis S. Perry ten years or more I know
James C. Roach ten or twelve years, and I have known John
Roach and Thomas Roach about eight years.
I recollect of finding a memorandum in my own hand
writing in relation to the payment of a farming mill and
the name of James C. Roach recollecting but do not re-
collect how it was paid

Frederick Coker

Lavanan B. Whain being produced, sworn and examined
deposes and saith, Question, Have you examined the ac-
count of Thomas Roach and John Roach Ds. to the estate
of James C. Roach deceased and if so state what you know
of that account, Ans. I have examined the acct. furnished in
this cause and find that James C. Roach paid me forty
seven dollars and twelve cents interest of thirty four dollars and
thirty two cents, stated in the ^{account} amount, and both James C. Roach
and one of the others John or Thomas said it was for the

House on the farm near Raskashia

O. St. Vrain

Rauligh Tubers being produced sworn and examined de-
posit and said in answer to the foregoing question propounded
to Mr. St. Vrain, as follows James E. Roach employed me to fur-
nish logs for building a house on said farm. I hauled them to
Mr. St. Vrain's mill. Mr. St. Vrain sawed them according to the
bill of James E. Roach and Mr. James E. Roach hauled them
to his brick house for the said house and paid me for the same in
and, sixteen dollars I also furnished the said James E. Roach for
the use of them four bushels of oats and one grain cradle for which
he paid me three dollars and twenty five cents, and one dollar
for hauling a fanning mill from Raskashia to the said farm
I know that James E. Roach purchased a fanning mill from
Mr. Chandler for twenty dollars. I also plowed two days on said
farm for which the said James E. Roach paid me one dollar.

Rauligh Tubers

Nirien C. Conner being produced sworn and examined de-
posit and said in and to the questions aforesaid. That I have
examined said account. I worked on the foundation of a brick
house on the farm before named in the employment of John Parcell
I dont recollect how long but part of two three or four ~~months~~ weeks
I understood that James E. Roach was to pay for the work

N. C. Conner.

Robert Sant being produced sworn and examined, deposite
and said in and to the questions aforesaid. I sold James E.
Roach some wheat I dont recollect how many bushels but seems to
me ten bushels for the use of the farm. and I delivered him a keg of
lard at his grocery in Raskashia

Robert Sant

James M. Whelan, being produced sworn and examined
deposite and said in ans. to the questions aforesaid. I have exam-
ined the account before named, and I know that James E. Roach
purchased a wagon from Jacob Heaman & Co for which he paid
about fifty dollars, but I presume his account on file is correct
I know that the company of Jacob Heaman & Co bought come from

the said James E. Roach but I dont recollect how much

James M. Mullan

Owen Culler, being produced sworn and examined de-
poseth and saith in ans. to the questions aforesaid that he had examined
the aforesaid account, that he sold a mare to the said James E. Roach
for the sum of forty five dollars, the said mare was of gray colour and
for the use of the farm, I sold the said James E. Roach for said, some six
or seven bushels but I dont recollect exactly how many I think the price
was twenty five cents per bushel

Owen Culler

Peter Devoise being produced sworn and examined deposite
and saith in ans. to the interrogatories aforesaid, I have examined the
account before named and I know that the said James E. Roach
purchased from me a yoke of oxen for the said farm for which he paid
me to the best of my knowledge and belief forty five dollars.

Peter Devoise

Michael C. Buatt, being produced sworn and examined
deposite and saith in ans. to the questions aforesaid says
that he has examined the account before named and that
the said James E. Roach paid him three dollars for hauling
plank use of the farm, and that he paid me I believe seventy
five cents for driving cattle to the said farm.

M. C. Buatt
mark

Frances Orval, being produced sworn and examined
deposite and saith in answer to the question aforesaid
that he had examined said account, When James E. Roach
moved to his farm from Raskashiw he took what remained
of his grocery to the farm, to the amount of four hundred
dollars, I think I was in the grocery every day and to the
best of my judgment it was that amount, I dont know what
they done with the groceries after they left Raskashiw James E.
Roach John Roach and Thomas Roach boarded with me at
Raskashiw about two months and James E. Roach paid
me for the board of all them at seven ^{dollars} per month to the
best of my recollection James E. Roach also purchased

from Mr Robert Morrison a kind of two horse wagon for which
he paid fifty dollars and took it on the said farm

Francis O'Neil
Joseph Slater, being produced sworn and examined deposes
and saith in answer to the questions aforesaid that he had ex-
amined the account before named and says that, I bought a
Saddle from the said James E. Roach and paid him with a cow
which I took to the said farm, I heard the said James E. Roach buy-
ain with John Short for a horse, for which the said John Short
paid him a yoke of Oxen, or the price of thirty four Dollars
and delivered said Oxen on said farm, but he bought the harness
at thirty Dollars and was to pay the difference, the price of the Cow
aforesaid was eleven Dollars, I went to the said James
E. Roach, a Saddle Shop at East Rock and Mr Thomas
Roach was in and I wanted to purchase a bridle and Mr
Thomas Roach told me that he had nothing to do with the
shop - Samuel Crawford sold two Cows to the said James
E. Roach for fifteen Dollars for the two, and they were delivered
on the farm -
Joseph A. Slater -

Francis O'Neil, examined says that the Saddle Shop and
Stocks and the Grocery before named was the exclusive property
of James E. Roach -
Francis O'Neil -

Luke Kelly being produced sworn and examined
deposes and saith in answer to the question aforesaid says
that he has examined the account before named, and
and that he sold one Ox to the said James E. Roach for
the farm for which he paid me twenty Dollars -
Luke Kelly

James W. Nixon being produced, sworn and examined
deposes and saith in answer to the question before
stated that he knows nothing of the business of James Roach
Thomas Roach and John Roach,
J. W. Nixon

John Mann being produced, sworn and examined, deposes and saith in answer to the before stated that he has examined the account before named: I did blacksmith the work ~~for~~ for James E. Roche for the farm and let him have two or three quarters of beef in all amounting to thirty nine Dollars, which amount of thirty nine dollars James E. Roche paid me,

John Mann

Michael Kelly being produced, sworn and examined, deposes and saith in answer to the question before propounded, that I built a brick house for Mr James E. Roche on said farm, for which house he furnished all materials for which he paid me for laying the bricks in said house the sum thirty four Dollars and twenty Cents and James E. Roche also purchased from me a yoke of Oxen which I delivered on the said farm for which he the said James E. Roche paid me forty Dollars.

Michael Kelly

Owen Kullen: Reexamined says that since the death of James E. Roche, there has been to the best of his knowledge and no improvement made on the said farm, nor was there any a short time before the death of the said James E. Roche; that as he lives very near, he thinks that if any improvement had been made he would have none it.

Owen Kullen

There not being time to complete the testimony taking of these depositions I adjourn the further taking of the same, until 10 o'clock tomorrow morning I

R. B. Servant.

Justice of the Peace

Office of R. B. Servant Esqr in the Town of Chester, County of Randolph, State of Illinois, September 3rd 1851.

Antoine Leguin, produced, sworn and examined, deposes and saith in answer to the question propounded to Savinien St Vrain and others on yesterday, that he has examined the account named in the depositions of yesterday, I sold the grey mare, Nance, to James E. Roche for the sum of twenty six Dollars, and that she went on the farm before named

Antoine Leguin
mark

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The witness on the part of the plaintiff not being present and having been duly subpoenaed and by consent of parties I adjourn the further taking of the depositions until Monday morning the 29th inst at 9 O'clock:-

R. B. Servant,

Justice of the peace,

September 27th, 1851 - 3 O'clock P.M., by consent of parties the taking of the depositions was resumed and Maurice J. Smith, being produced, sworn and examined, deposes and saith in answer to the interrogatory before named that I sold James E. Roach two cows for which he paid me. I think eight Dollars each; and that James E. Roach, John Roach and Thomas Roach drove the ^{them} cows the Kasaska River and James E. Roach told him that he was going to take them to his farm.

M. J. Smith

There being no other witnesses present by consent of parties the taking of depositions is adjourned to Monday morning the 29th inst at 9 O'clock -

R. B. Servant

Justice of the peace

Monday half past twelve O'clock P.M., September 29th, 1851. Daniel Reily being produced sworn and examined deposes and saith that he has examined the account named in the foregoing depositions; and that he has no recollection of paying any money to Jacob Shannon & Co. on account of James E. Roach, senior, or John and Thomas Roach.

Daniel Reily.

Francis O'Neil, being produced, sworn and examined, deposes and saith in answer to the interrogatory before propounded & I, H. Vrain and others, that that he has no knowledge of the item in said account to Reily that will be of any importance to either party.

Francis O'Neil

Robert Morrison being produced. Pardon and examined
deponent and testify that an action now commenced in the Randolph
County Circuit Court on the Common Law side of said Court. by Lewis
S. Perry Executor of James E. Roach, dec'd., vs John Roach and
Thomas Roach, and that on the trial of that action evidence was
introduced by the defendants for the purpose of showing that a
partnership existed between the said James E. Roach and the
said defendants; and that the said defendants proved the declara-
tion of James E. Roach, that he and the defendants were in partnership
and that in consequence of the introduction of such evidence by the deponents
the plaintiff dismissed the action or took a nonsuit. My recollection
is that John Roach and Thomas Roach were at the trial of said action
Cross examined by defendant Counsel, what time ^{did} that trial take
place. — Answer. To the best of my recollection that it
was at the fall or Spring term of said Court 1850. —
Question. Was the fact of the partnership proven by the plaintiffs
witness — Answer. To the best of my recollection it was proven
by one of the plaintiffs witness on the cross examination — Question
Was there any witness examined on the part of the defendants — Answer
If there were any I do not recollect it. — Question Do
you recollect the names of any of the witnesses that proved the
partnership? — Answer I think Mulholland was the witness
that testified to the declaration of James E. Roach, that a partnership
existed — Question were there any pleas but the general
issue — Answer I do not remember. — Question Was there
no evidence on the part of the plaintiff to show that there was no
partnership existing between the said parties? — Answer. In regard to
the plaintiffs evidence on that point I have no distinct recollection
Did not Mr. Perry always contended before the former action was
disposed of that there was no partnership between these parties? —
Answer — Mr. Perry always contended that there was no partnership or
if there was the defendants could not prove it. Was not Mr.
Perry very familiar with transactions of these parties? — Answer
I cannot say whether he was or not.

Robert Morrison

John Paschall being produced sworn and examined deponeth and saith in answer to the interrogatory before named that I did ^{stone} some work on a house on the farm occupied by James E. Roach, John Roach and Thomas Roach and to the best of my recollection the work amounted to between thirty five and forty ~~and forty~~ dollars and that James E. Roach paid me in groceries out of the grocery kept by him in Kankassee and the balance in Cash. I saw Mr Henry Bussey work on the house before named, that he was at work on the house some time, but I dont know how long and that I saw James E. Roach pay him some money and groceries but I dont know how much was on that account, nor do I know that Mr Bussey did any other work for James E. Roach; I heard the Roaches say that Beansvines and Toulous made and burnt the brick for the house but dont know who paid them. I understood from all the Roaches that they worked the farm in common and in partnership.

John Paschall

There not being time to conclude the testimony on the part of the plaintiff by consent of parties I adjourn the further taking of the depositions until to morrow morning at 9 o'clock -

R. B. Servant
Commissioner

Tuesday morning September 30th 1851 -

There being no witnesses on the part of the plaintiff in attendance and all of them not having testified, by consent of the parties I adjourn the further taking of testimony until to morrow morning at 9 o'clock -

R. B. Servant
Commissioner

Wednesday morning October 1st 1851.

October 1st 1851 - by consent of parties I continue the taking of depositions to morrow morning at 9 o'clock -

October 2nd 1851 - by consent of parties I continue the taking of depositions to morrow morning at 9 o'clock -

October 3rd 1851 - by consent of parties I continue the taking of depositions to morrow morning at 9 o'clock -

October 4th 1851 - by consent of parties I continue the taking of depositions to February 3rd 1852 -

R. B. Servant

February 3^d 1852,

The deposition of William Golding a witness produced, sworn and examined on his oath says — Question by plaintiff what do you know about the business of James E. Roach and Thomas and William Roach — Answer I borrowed twenty five Dollars from Thomas Roach and he informed me that it belonged to the firm at Kankaskia, that Thomas Roach told him he wanted a certain percentage for James E. Roach, that it all belonged to him.

W. Golding

Alexis Beauvais being sworn says that he made bricks for the brick house of the Roachers and that James E. Roach paid him thirty one Dollars for making said bricks; James Sasource also made bricks for said house; Louis Sasource also helped to make said bricks I wanted Mr Thomas Roach to hire a hand to work in the brick yard and he told me he had nothing to do with it unless James E. Roach said so —

Alexis Beauvais

The plaintiff rested his case, and then by consent of parties the taking of the foregoing depositions was postponed to some time to be agreed upon between this and the next term of the Circuit Court for the County of Randolph State of Illinois April 20th 1852, under the following notice the parties came by their attorneys. Started for the plaintiff and Hamilton for Defendant; Chester Ill., April 13th 1852,

S. P. Perry Esqr. Searching with your permission we will take depositions before led^d servant on tomorrow week which will be the 20th inst of yourself or Roaches please take due notice thereof and govern yourself accordingly

Truly yours S. P. Hamilton,

John Ripps produced sworn and examined on his oath deposes and saith in answer to the following interrogatories on the part of the defendant — Question 1st. Do you know or not whether any of the property owned by James Roach, Thomas Roach and John Roach on their farm in this County died or was lost or destroyed previous to the death of the said James E. Roach if so state what kind and the value of the same

Defendants Counsel, objected to the question. Answer. I saw a mare dead on the said farm and said to be the property of the said Roachs and the said Mare was called Nance; and I also saw an Ox that was shot belonging to said farm and understood that he died, question Do you know whether or not Thomas Roach and John Roach laboured on said farm from the year 1843 to June 1849 - if so state how much their labour was worth, —

Answer - I came to this state in 1843 and the said Thomas Roach and John Roach were on said farm at that time and have remained there up to this time, and in that neighbourhood, wages were from ten to twelve dollars per month, the answer to objected to by plaintiffs Counsel, but if the item of wages is included in the plaintiffs acct it is waived, Corp examined by plaintiffs Counsel —

Question - do you know who furnished said mare or Ox or either of them? Answer - I saw them on the farm but do not know who furnished them —

Question - do you know or not whether the said Thomas Roach and John Roach were partners with the said James E. Roach in the culture and management of said farm - Answer - I dont know -

Question how many days did John Roach work on said farm - Answer - I dont know -

Question how many days did Thomas Roach work on said farm? Answer I have seen them at work on said farm but dont know how many day they worked -

Question - did said mare and Ox die whilst the said Roachs were in partnership - Answer - I cant tell you any thing about it -

Question - do you know or not whether James E. Roach ever furnished any money, cattle or other property for the use of said farm - Answer - I dont know -

Question - did you ever hear either the said John or Thomas Roach admit that the said James E. Roach had furnished money or stock for said farm, objected to by Defendants attorney - Answer, I heard them say that they had bought a yoke of Oxen from Short, I think I heard them speak of purchasing a steer from Luke Stelly -

Answer do you know whether or not the said James E. Roach ever received any benefit from the proceeds of said farm. - answer I dont know -

Question - have you ever seen the said James E. Roach work on said farm - answer I saw him picking up grubs or turtles. I think at one time -

John Stipe

William Mulholland, produced, sworn and examined, deposed and said - Question - do you know whether or not any of the property owned by James E. Roach, Thomas Roach and John Roach on them in this County died or was lost or destroyed previous to the death of the said

James E. Roach, if so what kind and the value of the same, &
objected to by plaintiffs Counsel - Answer there was a Fanning
Mill on the farm that was burnt, and at the same time a stack of wheat
or its loss burnt. One Ox also died on farm, it was supposed that
it was shot, and that the fanning Mill was worth twenty Dollars, and the Ox
twenty Dollars, and I dont know how much the stack was worth, -
Question, do you know whether or not Thomas Roach and John Roach
laboured on said farm from the year 1843, to June 1849 - if so state
how much their labour was worth, Answer I have seen their labour
on said farm repeatedly between those periods! I cant say what their
labour was worth, - Crop examined by plaintiffs attornies -
Question how many days do you know that John and Thomas
Roach worked on said farm between the time that they went upon
said as partners up to the time of the death of the said James E. Roach -
Answer, I cant say how many days but repeatedly between the years 1843,
and 1849 - Question - do you or not know that James E. Roach, re-
ceived any benefit from said farm - Answer, I dont know that he did, -
Question, did you ever see the said James E. Roach work on said
farm - Answer, I have saw him working on said farm
between the year 1843 and 1849 - repeatedly, - Question - did you
ever hear either the said John Roach or Thomas Roach say that James
E. Roach furnished the stock for said farm, & objected to by pl-
aintiffs Counsel - Answer, I ^{if I did} have no recollection
of it at present, - William Mulholland.

I do hereby certify that the foregoing depositions of the witnesses respect-
-ally who deposed was sworn to and signed by said deponents before
me, and in my presence, and that the said depositions were taken by me on
the days named in said depositions at my office in the Town of
Chester in the County of Randolph and State of Illinois between
the hours of ten o'clock in the morning and five o'clock in
the afternoon of said days; and that said depositions were taken
and the adjournment had by the Court of the parties to the suit
upon which said depositions were taken, given under my
hand and seal this 20th day of April AD 1852,

R. B. Servant (Seal)

Justice of the peace of the County of Randolph and State of
Illinois

Costs paid by plaintiff —

Justice costs taking depositions		\$10.50
" " To issuing 13 subpoenas		" 2.45
" " " DW 24. witnesses		" 1.50
" " " Certificate		25
		<hr/>
		\$14.70

Const Cost To Serving subpoenas & mileage	\$18.95	" 18.95
witnesses To 24- witnesses	12.50	" 12.50
		<hr/>
		\$46.45

Recd payment from plaintiff

R.B. Rowant

In the Randolph Cir Court Ill Sept J. 1852.
In the case of Lewis S. Perry Exr of James E. Roche
vs
John Roche and Thomas Roche } In Chancery

To said defendants or T. F. Hamilton self for
them you are hereby notified that the said complainant will on
the 25th day of June A.D. 1852 proceed Jonesborough Union
County Illinois at 10 O'clock A.M. to take the deposition of Fran-
cis C. Mill in said case to be read in testimony in said suit at said
term of said court, when & where the said defendants or atty can at-
tend cross examine said witness affidavits having been filed
as required by statute

June 9th 1852

Lewis S. Perry
by atty C. N. Walker

I acknowledge service of the above
Chester June 9th 1852

T. F. Hamilton

Self for Dept

The depositions of Francis C. Mill of the County of Illinois
and State of Illinois a witness produced sworn and examined
before Thomas Hileman County Judge in and for said County
and State on the 25th day of June A.D. 1852 at the Court house in
Jonesborough in the County and State aforesaid in pursuance of
the notice hereto attached to be read as ^{evidence} on the trial of a certain suit
in Chancery now pending and undetermined in the Randolph County
Circuit Court in the State aforesaid, wherein Lewis S. Perry executor
of the last will and testament of James E. Roche deceased is plaintiff
and Thomas Roche, John Roche are defendants on the part and
behalf of the said plaintiff, the said Francis C. Mill being first duly
sworn according to law deposed and says in answer to the several
interrogations on the part of the said plaintiff as follows viz.



Interrogation 1st ^{or} ~~had~~ you known the parties plaintiff and defendants
in the title of these interrogations named or either or which of them and how

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long have you known them respectively. Answer, I know them all, James E. Roach came to Nathaskia Illinois some time during the month of March in the year 1838 or thereabouts and knew him from that time up to the time he died which took place sometime during the year 1848, Thomas Roach came to the same place about 12 or 15 months after the arrival of James E. Roach and John Roach came between 2 or 3 months after the arrival of Thomas Roach and have known John and Thomas Roche from the time of their arrival up to April last. Interrogatory 2^d What was the condition pecuniary & of parties when land was by them. Answer, I know that James E. Roche bought a farm from a Mrs. Brewster in Randolph County Illinois. dont know any thing about Thomas Roche and John Roche buying land. the land bought from Brewster by James E. Roach was bought before Thomas Roach and John Roach came. I know that James E. Roach was a money man. I at one time when James E. Roach was selling took from him. I think near three hundred dollars in cash. he had a Saddler Shop and a very good stock of materials in it dont know exactly how much but I think it worth about five or six hundred dollars. Recollect at one time we estimated the work made up in the shop to five hundred dollars. without estimating materials in the shop then on hand. at or about the time when he bought the farm and when the estimation made of the value of the shop. he also had a good many debts owing to him for saddles and harness sold. I dont know that Thomas Roach & John Roach were worth one dime. Interrogatory 3^d What become of the proceeds deceased took to the farm. Answer, I dont know what become of the proceeds after they were taken to the farm.

Interrogatory 4th What crops were raised on the farm each year & what were the crops worth. To whom sold, for how much, and what become of the proceeds. Answer, I dont know any thing about the crops raised on the farm. I know that Thomas Roach brought Pork from that farm and sold it in Nathaskia at one time to John Presbeger that is all that I know about the proceeds of the farm. Interrogatory 5th Was the family supported from the

proceeds of the farm what was such support worth. Inward
I know that the family lived on the farm as to their support
and the value thereof from my own knowledge I know nothing
about it

State of Illinois 
County of Union 

I do hereby certify that the above dep-
osition of Francis O'Neil was sworn to and signed by the depone-
-at before me and in my presence, and that the said deposition
was taken by me on the 25th day of June A.D. 1852 at the Court
house in ^{the} Jonesboro in the said County of Union between the
hours of ten o'clock in the morning and two o'clock in the
evening of said day. Given under my hand and seal this
25th day of June A.D. 1852

Thomas Hileman County ^{Seal}
Judge Union County Illinois

Fee for taking deposition	\$1.12 1/2
.. .. Certificate	.25
Swearing myself	6/4
Certificate of my clk	.25
Witness fee to F. O'Neil	.50
	<u>\$2.18 3/4</u>

State of Illinois 
Union County 

I Thomas J. Finley Clerk of the County
Court of Union County State of Illinois. Do hereby certify that
Thomas Hileman whose name is affixed to the foregoing
certificate was at the time the said certificate bears date
the Judge of said County Court duly commissioned and qual-
ified that the signature purporting to be his is genuine.



Witness whereof I have hereunto set my hand
and affixed the seal of said County Court
at office in Jonesboro this the 25th day of
June 1852.

Thomas J. Finley Clerk

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and the court at the April Term of Circuit Court 1852.
made ~~the following~~ ^{an} order ~~of~~ ⁱⁿ which the following is a copy
Lewis S. Perry Exr of James C. Roach
vs
John & Thomas S. Roach } Chancery on
} account

And now on this day comes the said parties
their attorneys and on motion leave is given to the
parties to file additional items of account and
this cause is continued till the next Term of this court
to take evidence &c. -

whereupon the following ~~evidence~~ ^{depositions} are filed
in court & which ^{of which the following is a copy} ~~on the letter & figures~~ following
to wit - The deposition of William Golding and others of the
County of Randolph and State of Illinois, Witnesses produced,
sworn and examined before me B. B. Servant a Justice of the
peace within and for said County and State on the 29th day of July
A. D. 1852 at the office of the said B. B. Servant in the town of
Chester in said County in pursuance of the agreement of parties and
the annexed notice to be read as evidence in a certain suit now
pending and undetermined in the Circuit Court of said County
wherein Lewis S. Perry executor James Roach deceased is
Plaintiff and John Roach and Thomas Roach are defend-
ants, on the part and behalf of said Plaintiff. The said Will-
iam Golding first being duly sworn according to law depose
and oath in answer to the several interrogations hereafter
put on the part of said Plaintiff as follows viz. Q. 1st do
you know the parties plaintiffs and defendants in the above
^{entitled} written suit or either or which of them and how long have you
known them respectively. Answer. I do know all the parties and
have known them all from ten to twelve years. At this stage of taking
the deposition by consent of parties the further taking of Mr. Golding
deposition was continued to the 10th day of August next at 10
o'clock A. M.

William Golding

Patrick Riley being produced and sworn deposes and saith that he knows all the parties and have known them about nine years. Question, What crops were raised on the farm of the said Roache each year & what were the crops worth, to whom sold for how much, and what became of the proceeds. I have never seen said farm and therefore cannot say what was raised on it. The owner of Daniel Riley's mill have bought wheat from John & Thomas Roach which I presume was raised on the farm of aforesaid. So the best of my recollection we have bought from the said Roache for the last four years at said mill from forty to fifty bushels of wheat per annum, at an average price of seventy five cents per bushel, before that time I was not regularly engaged in the mill we paid John & Thomas Roach for said wheat,

P. N. Riley.

By consent of parties the further taking of depositions was continued to the 10th day of August proximo at 10 o'clock A.M.

B. B. Servant

August 10th 1852

The taking of the depositions was resumed according to continuance, Owen Calling being produced sworn and examined according to law on his oath answers to the following interrogations. Quest. 1st. Do you know the parties to this suit plaintiffs and defendants? Ans. I know ~~know~~ the parties to this suit and have known them seven or eight years. Quest 2^d. What crops were raised on the farm of the said Roache each year, and what were the crops worth. To whom sold, for how much. And what became of the proceeds. Answer. Wheat, corn, and Oats, principally, the crops to the best of my knowledge were worth for each year one hundred and seventy five dollars, but some years the farm was not well cultivated. The wheat was sometimes sold to Daniel Riley and at other times to Mr. Swanwick and Mr. Cole dont know to whom the corn and oats were sold. dont know at what price the crops sold. But I sold wheat during the time

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the cultivation of said farm for sixty cents to one dollar per bushel. I don't know what became of the proceeds, but Thomas and John Roach sold the crops, there were also hogs raised on said farm, but don't know what became of them John Roach went on said farm in the year 1842.

Cross examined by defendants. Quest. ^{1st} Were there not some years that there was no crops raised on said farm Answer. The crops were all destroyed one year, which in all that I particularly recollect, but there was an other year that there was a partial failure by being destroyed by cattle.

Quest. Did you know ^{James} John E. Roach before you knew Thomas and John Roach, Answer. I knew him two years at least before I knew them. Quest. Was he a man of means, Answer.

He was a man of means, he had a stock of saddles and harness and bridles & he had also had a stock of groceries in a grocery store at Kaskaskia but does not know whether he had opened the grocery before Thomas Roach came to the country or not. Question. Did Thomas Roach attend to the grocery and if so how long. Answer. He did attend to the grocery from the time it was opened until it was closed a period of about two years.

Question. Did you ever deal with James E. Roach on the said farm. Answer. I have dealt with him on the farm and sold him a mare for forty five dollars. Quest. Do you know whether or not James E. Roach received any money from John or Thomas Roach. Answer. I do not.

Direct examination resumed by plaintiff. Quest. Who was the moneyed man of the three Roaches. Ans. as far as I know James E. Roach was the moneyed man of the three.

Cross examined resumed. Quest. How do you know that he was the moneyed man. Ans. as far as I know he ^{bought} ~~paid~~ and ^{with} bought for things on the farm. Direct examination resumed by the plaintiff. Question. What was the value of the rent of the farm Answer about forty dollars per annum

Cross Examinee

Question. What did the decedent and the defendants each expend or do towards the erection of the house & making improvements on the farm. Answer. I do not know.

Owen Cullen.

Daniel Bolinger being produced sworn and examined deposes and says in answer to the following interrogations on the part of the plaintiff. Q. What became of the groceries decd took to the farm. Answer. The groceries were sold on the farm. Q. What crops were raised on the farm each year, and what were the crops worth. To whom sold. For how much, and what became of the proceeds. Answer. Wheat Corn and Oats principally. to the best of my knowledge (setting aside the year the crops were destroyed by the cattle) they would average one hundred and seventy five or eighty dollars perhaps more. The wheat to the best of my knowledge was sold to the millers Reily Luanwicks and Cole. I sold wheat during the time from sixty five cents to one dollar and five cents per bushel. I do not know what became of the proceeds. Q. What was their work ^{on} the farm worth. Ans. about seventy five dollars per annum each. Q. What was the value of the rent of the farm. Ans. about forty dollars per annum. Q. How long have the defendants lived in the county and what business did they follow before the farm was bought. Answer. It might be six months or perhaps a year, Thomas kept the grocery at Parkersburg. but I do not know what John Roach followed. Q. Crop examined by defendant. Q. From whom did you purchase groceries at the farm. Ans. from James E. Roach decedent.

Daniel Bolinger

James Craig being produced and sworn and examined deposes and says in answer to interrogations in the part of the plaintiff. Question. What crops were raised on the farm each year & what were the crops worth. To whom sold. For how much, and what became of the proceeds. Answer. Whilst I was in the employ

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ment of Mr. Swanwick at his mill at Chester in the fall of
1849 & in 1851 up to July Thomas and John Roach brought wheat
to mill for which they obtained an average of seventy five
cents per bushel to the best of my recollection

James F. Craig
By consent of parties the further taking of depositions was
continued to September 10th proximo at 10 O'clock A.M.

R. B. Stewart

September 10th 1852

John Stipe being produced and sworn according to law dep-
oseth and saith in answer to the several interrogatories hereinafter
put on the part of the defendants as follows to wit. Question 1
Do you know the parties plaintiffs and defendants in the foregoing
suit, or either or which of them and how long have you known them
respectively. Answer I have known all the parties I have known
James Roach some four or five or six years, and Thomas and
John about nine years. What crops were raised on the
farm each year, and what were the crops worth. To whom sold
for how much, and what became of the proceeds. Answer. Wheat
Corn and Oats, and the average yearly value of the crops (taking
one year with another) was not worth more than one hundred
dollars, and perhaps not so much. I dont know to whom or to
whom that any was sold, and of course dont know what became
of the proceeds. Question. What was their work worth. The labor
of John & Thomas Roach on the aforesaid farm during the years
before named, was worth from ten to twelve dollars per month
if found. that during the rate of wages for farm hands about those
years. It is usual for persons employing hands to find them but
where they board themselves, the wages would be the price of board
in addition which board ranged from one dollar to one dollar
and fifty cents per week and that John and Thomas Roach
boarded themselves. Question. What was the value of the rent
of the farm, Answer. About forty dollars a year.

Question. Was the family supported from the proceeds of the farm
What was such support worth. Answer. I suppose they were, dont
know what support was worth, 1st 2nd 3rd and 4th of the prizes
Interrogations know nothing about. Do you know any thing about
John and Thomas Roach advancing James Roach money
Answer. I heard James Roach say that he received one hundred
and ninety six dollars advanced him by John Roach and
the same time witness said to him that he had been informed that
Thomas Roach had advanced him James Roach, two hundred
and fifty dollars, and that he James Roach answered that it could
not be so much, but that if he could effect a certain settlement
with them John & Thomas Roach it would all be accounted for.
Do you know that James Roach & wife boarded with John & Thom-
as Roach in 1848 and 1849 and if so how long. I know that they
boarded there for some length of time in those years but how long
I do not know. Question. Did you ever rent any part of said farm
from James Roach and if so to whom did you pay the rent.
Answer. I did rent a part of said farm from James Roach on
shares, and as usual left his rent in the field.

John Stipe

William Mulholland produced and sworn and in answer
to the first interrogations propounded to John Stipe says that.
Answer. I have known all the parties to this suit James Roach six
or seven years and John and Thomas about the same time
Question. What crops were raised on the farm each year and what were
the crops worth. To whom sold for how much, and what became of the pro-
ceeds. Answer. Wheat Corn and Oats, principally, and was worth
on an average of one year with another, not more than one hundred
dollars, which would be a high estimation. Dont know to whom sold
or how much, or what became of the proceeds. Question. Was the
family supported from the proceeds of the farm. What was such sup-
port worth. I have eaten there frequently and from what I saw I supposed
that the family was supported from the farm. I dont know what the
support of the family was worth. Question. What was the worth of the
farm worth. Answer. From ten to twelve dollars per month when

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boarded, and when not found, which was the case with John and Thomas Roach five or six dollars more. Question, What was the value of the rent of the farm. Answer, Not to exceed forty dollars per annum, taking one year with another, Question, How long had the defendants lived in the county and what business did they follow before the farm was bought. Answer, I dont know how long they had lived in the county before the farm was bought but I recollect that before that purchase that Thomas Roach attended the grocery store in Kaskaskia. Question, Do you know that James Roach and his wife boarded with John and Thomas Roach in 1848 and 1849 and if so how long. Answer, I do know that James Roach and his wife boarded with John and Thomas Roach from the fall of 1848 to the summer of 1849 some six or eight months. Question, Was James Roach a man of pecuniary means before John and Thomas Roach came to the county. Answer, James Roach said to me that he had listed his property for taxes at two or three hundred dollars, 1st 2^d & 8th of the judges interogations he knew nothing about.

William Mulholland and

Joseph Beare produced and sworn, answers to the following interogations. Question, What is it worth per month to attend a retail grocery without board. Answer, I am paying to the man that attends my retail grocery twenty five dollars per month and he boards himself

Joseph Beare

State of Illinois
 Randolph County

I do hereby certify that the foregoing deposition of William Golding and others were sworn to and signed by the deponents before ^{me} ~~me~~, were taken by me and in my presence, and that the said depositions were taken by me on the 29th day of July the 10th day of August and the 18th day of September at my office in the town of Chester County of Randolph State of Illinois, between the hours of 10 o'clock in the morning and five o'clock in the evening of said day, given under my hand and seal, this tenth day of September 1842

W. B. Severant
 Justice of the Peace

Justices Costs \$6.25
 Constables, " 3.20

Wednesday September Term 1852
September 29th 1852

Lewis S. Perry Exor of James E. Roach

vs
John Thomas Roach & Chancery on account
And now on this day comes the said parties by
their solicitors and the Court having heard the bill, answer
and exhibits, the evidence produced & taken, this cause under
advice and decree ^{be rendered} ~~as of this Court~~ as of this Court

of which the Court made the following decision to wit
Perry Exor vs Chancery
Roach & Roach } In Chancery

In this case I think there can be no doubt that
a partnership existed between the three brothers in farming &c, from
the facts that they owned the farm together they all contributed toward
building a house thereon - they all resided there together part of the
time - and one of the witnesses swears that he understood from all
of them that they were in partnership - what the terms and
conditions of that partnership were is not proved and can only be a matter
of legal inference from the testimony, in the absence of any express contract
the presumption of Law is that the partners are entitled to an equal share
of the stock and profits Bussell on part. 57. 158 - 1 J. J. Marsh. R. 500.
5 Dana R. 211, Gould vs Gould 6, Mass R. 203, 3 Kent Com 28, 29.
The complainant as Exor. is therefore entitled to a credit for all the deceased
contributed to the concern over one third, to one third of the profits,
and to one third of the effects on hand at the time of his death, A. reference
will therefore be made to Col. Servant Master in Chancery to take an
account of the articles of personal property furnished for the house or farm
by James E. Roach & their value, the amount paid by him for stock on do.
also the amount paid by him in erection of house & the amount paid by
him for farm, also the probable profits of farm while clefts were in
partnership, also the personal property held by firm at the time of
the death of Jas E. Roach and its value, and in the real estate now

held by firm. In ascertaining these facts the debts may be examined as well as other witnesses on oath - The depositions already taken considered by the Master, the mode of proceeding before the Master is clearly pointed out in 4 Gil. R. 386, and in Brockman vs Auger 12 Ill. R. 280, as there was no express contract that the debts were to be paid for their labor, no allowance can be made them on that account. Moffitt vs Lewis 11 Ill. R. 397-

Wm. H. Underwood
C. J.

whereupon the Master files his report of which the following is a copy to wit -

To the Hon. William J. Underwood, Judge of the Circuit Court of the County of Randolph State of Illinois: -
The undersigned Master in Chancery of said County to whom the papers herewith transmitted in the case of Roache, Ex. vs. John and Thomas Roache, respectfully reports that the investigation of the case has been attended with many difficulties, owing to the voluminous testimony taken at different times on ^{intermittent} material points, but after particularly reviewing all the testimony and particularly hearing other witnesses, have come to the conclusion as stated below, excluding all the testimony except that bearing directly on the partnership, but furnishing a statement marked (A) of all the business transactions between the Roaches aforesaid, so that your Honor will have all the facts before you upon which to apply the Law

James E. Roache put into the farm money, stock &c.	\$ 603 82
John and Thomas Roache " " " " "	446 00
Expes by James Roach	\$ 157 82
The profits of the farm was proven to be \$1050. 1/3	350 00
Balance due James E. Roach	507 82
excluding all except the mere partnership transactions	

April 1st 1853
 Respectfully yr Obedt Servant
 R. B. Servant
 Master in Chancery
 fees \$10.00

(A.)

James E. Roach put into the farm building &c.	\$	372	12		
D. H. Strain groceries		41	25	John Mann	39 00
Raleigh Sulcer		9	50	Michael Kelly	74 20
Robert Gant		50	00	Antoine Seguin	26 00
James M. Wheeler		46	50	M. P. Smith	24 00
Owen Cullen		45	00	John Paschall	37 50
Peter Derouyer		3	75	Alexis Beauvais	31 00
M. C. Buatt		50	00		\$ 603 82
Frank O'Neil		61	00	James Roach boarded John	
Joseph Slater		20	00	and Thomas Roach to the	
Luke Kelly		\$ 372	12	amount of	\$ 28 00

It was proven that John Roach paid towards farm and building and Thomas Roach paid

\$ 196 00	average profit of \$1500 per annum for 9 years the period of partnership amount for the whole time to.	1350 00
250 00		
\$ 446 00		

John and Thomas Roach boarded James E. Roach to the amount of

\$ 98 00	but that for the period of two years of that time it did not yield anything	
	deduct two years	300 00
\$ 400 00	Nett proceeds	\$ 1050 00

It was proven by Frank O'Neil that James E. Roach took the farm groceries to the amt of

But it was also proved that he sold them himself

It was also proved by several witnesses that the farm yielded an advantage

It was proved that John and Thomas Roach worked on the farm each six months in each of the nine years, and that their work was worth \$8 1/4 per month - \$1008 00

and that James E. Roach worked one month - \$ 8 00

James E. Roach, board and labour included, advanced,	\$	639	00
John and Thomas Roach, board and labour included, do	\$	1552	00

Lewis S. Perry, Exr of James E. Roach

Thomas Roach and John Roach

The above case was referred by the Judge of the Circuit Court to the Master in Chancery of the County of Randolph to make up an account between the parties and report to the next term of the Circuit Court of said County and by agreement of parties Monday the 17th day of January 1853, was set apart to hear additional testimony; One of the defendants Thos. Roach ^{came} and the plaintiff after being three times solemnly called came not - The said Thomas Roach after being duly sworn according to Law, on his oath deposed and said in answer to the following interrogatories to wit - who were the owners of the land upon which the Brick house and other improvements were made, - Answer - Thomas Roach and John Roach the defendants owned three fourths and James E. Roach dec'd of the estate of whom Lewis S. Perry's Executor is defendant owned the other one fourth, - were you and John Roach the tenants on the land on which said Brick house was built - Answer we occupied the land - how long a period elapsed from the time you commenced the occupancy of said land until the part of said land belonging to the estate of the said dec'd, was sold by his said Executor, Answer - about nine years

Thomas Roach

Sworn to and subscribed before me this 17th day of January 1853
R. B. Servant, Master in Chancery

The Court charges the parties as follows. Defts Do.

To amount advanced on farm by Jas E. Roach	\$603. 82
advanced by Defts	" 446. 00
	<u>4) 1049. 82</u>
	262. 45-
Jas. advanced more than his portion	341. 37
1/4 of profits -	262. 50
Board of Defts	28. 00
Board of Defts	<u>\$ 631. 87</u>
Board of Defts	98. 00
	<u>\$ 533. 87</u>

Perry Esq vs
Thos & John Proach

Bill to account

- 1st what was the condition pecuniary &c of parties when land was bot by them
- 2nd What became of the proceeds deceased took to the farm
- 3rd What crops were raised on the farm each year & what were the crops worth. To whom sold, for how much and what became of the proceeds.
- 4th Was the family supported from the proceeds of the farm. what was such support worth.
- 5th What was their ~~respects~~ work on the farm worth.
- 6th What was the value of the rent of the farm.
- 7th How long have the depts lived in the County and what business did they follow before the farm was bought
- 8th What did the ^{deceased} & the depts each expend or do towards the erection of the house & making improvements on the farm

W. H. Underwood

whereupon the Court at the May Term thereof AD 1853, made the following order or decree of which the following is a copy to wit,

Servs S. Perry Esq of James E. Proach
vs
John ^{Proach} & Thomas Proach } Chancery on
} account

And now on this day comes the said plaintiff by Baker and Starbird his atty & the said Depts by Roemer & Hamilton their attys. and the Master in Chancery to whom this cause had been heretofore referred to make the account & take evidence between the parties to this suit having failed his report of the same which after an examination and correction is approved & ordered to be filed, which account of said Master's finds for the plaintiff executor aforesaid the sum of five hundred and thirty three dollars & eighty seven cents it is therefore ordered adjudged and

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decreed by the Court that the said Plaintiff pay as aforesaid
recovers of and from the said defendants the said sum of
five hundred and thirty three dollars & eighty seven cents as
found due by the master aforesaid together with his costs
& charges in and about this suit in his behalf expended &
may have ^{execution} ~~effected~~ for the same &c

whereupon the Defts files their bill of exceptions, the following of
which is a copy: — Perry administrator of Jas Roach

vs
Thos & Jas Roach }
}

And now comes the defendants by their solicitors and excepts to the Masters report
and assigns as reasons for the exceptions the following —

1. that the said Master in his report, made no allowance for the work and labour performed
by defendants done upon said farm, the evidence being clear upon that point, and the
bill, answer & evidence showing satisfactorily that the said J^r Roach performed
no labour and was not a partner at all in the management and cultivation of
said farm — — —
2. that the said Master allowed the complainants testator one third of the proceeds &
profits of said farm, while the evidence taken by him showed that he held only one
fourth of the land — — —
3. that it appears from the reports that he examined witnesses in addition
to the testimony contained in the deposition, and that he reports no evidence in
writing but merely his conclusions without giving even the names of the witnesses
he examined on the points — — —
4. that he made no allowance for the board furnished by said defendants to said com-
=plainant, although he admits in his report that said board was furnished — — —
5. that he allows nothing to defendant Thos Roach for his services performed by him
for the deceased as clerk in his store for two years, although the evidence sustains
this claim, and for that said report is generally informal and insufficient
and not in accordance with the evidence taken in the case,

Hamilton & Hoerner,
for Defendants.

exceptions overruled
— allowed
— overruled
— allowed
— overruled

State of Illinois }
Randolph County } S. S. J. James M. Call Clerk
of the Circuit Court within and for the said County
do hereby Certify that the foregoing is a true and correct
transcript or copy of the papers on file in my office
as also of the orders decrees &c, & proceedings in the case
of Lewis & Perry Executors of James O. Roach ^{deced} against John
and Thomas Roach

In witness whereof I have hereunto subscribed
my name and affixed the official seal
of said Court at my office in Chester
this third day of December A.D. 1853.

J. M. Call, Clerk

No 12

Levis Le Perry Esq of
James C Roach Esq

By

John Roach &
Thomas Roach

Appeal from Randolph

Filed as of the
24: July 1854.

Wm D. Weston Clerk
By N. Johnston Deputy

Prepaid of 5.00

In the Supreme Court

November Term A.D. 1854

John Roche and
Thomas Roche } plffs in error

Lewis L. Perry - } defendant in
Exor of James } in error
Roche deceased

and now on this day
came the plffs in error John Roche and
Thomas Roche by Nelson and Brown their
attornies and say that in the record and pro-
ceedings & process in the above styled Cause
there is manifest error in this the Decree of
the Circuit Court of Randolph County in this
that the Decree of said Court ~~was~~ ~~made~~ ~~and~~ ~~adjudged~~ ~~in~~ ~~favor~~ ~~of~~ ~~the~~ ~~plffs~~ ~~in~~ ~~error~~
whereas the Decree of said Court ought
have been rendered and adjudged in
favor of the plffs in error and so the plffs in
fact seek that in the Revision of a Decree
of said Court ~~there~~ there is for the Cause
above manifest error

and for assigning errors
specially in the above styled Cause the plffs
by his attorneys says that the said Court
erred in rendering ~~the~~ ~~interlocutory~~ ~~decree~~ ~~therein~~
in this that said Decree was based upon
~~no~~ ~~competent~~ ~~evidence~~ or depositions taken before
a Justice of the peace whereas this Court did
at a prior term of said Court appoint a Special
Commissioner to take said to take and hear
evidence in said Cause

2^d that the said Court in rendering said interlocutory
Decree at the September term A.D. 1852 of
the Randolph Circuit Court for the reason

by its said interlocutory decree held and decreed that a partnership existed between James Roche deceased and the plaintiffs in error John Roche and Thomas Roche - whereas there was no such partnership proven to have existed between the said James & the plaintiffs in error

3rd That the said Circuit Court erred in the rendition of its said interlocutory decree in decreeing the said James E. Roche deceased entitled to one third of the profits the Concern, and also entitled to a credit for all over one third that he contributed towards the Concern, and not allowing to the said plaintiffs in error a credit for all over one third that they contributed to the Concern

4th That the Court erred in its said interlocutory decree in not allowing any thing the plaintiffs in error for their labor on the farm owned by them as tenants in common with the said James E. Roche deceased

5th That the said Circuit Court erred in order by the said interlocutory decree to the said James E. Roche deceased and the defendant in error as his Executor all over one third that he contributed to the Concern ^{or share, at the time of the death of said James E. Roche} & third of the profits & effects whereas the said James E. Roche deceased and the Def^t in error as his Executor was not entitled to more than one ~~third~~^{fourth} of the rents of the farm

6th That the Court erred in its said interlocutory decree in allowing the said James E. Roche deceased a credit for divers articles of husbandry & stock that which is proven to have died or been destroyed by fire, or stock.

7th That the Court erred in ~~decree~~ rendering the said interlocutory decree in manner and form as the same was rendered by the said Court.

8th The Court below erred in overruling
exceptions 1, 3, & 5 to the report of the Referee
V. B. Sewant Master in Chancery of the

9th The Circuit Court of Randolph County
erred in not first rendering an interlocutory
Decree against the ~~defendant~~ the plffs in
error to account with the plffs in error before
~~interlocutory~~ decree was entered to be taken
by the Master

10th The said Circuit Court erred in the rendering
the final Judgment and decree in the above
styled cause against the plffs in error with
out allowing the 5 plffs such deductions and
set offs as they were legally and equitably
entitled under the evidence adduced in the
Cause

11th The said Court erred in the rendition of a
final Judgment and Decree for the amount
and in manner and form set forth in
the record against the plffs in error and
against them the said plffs in error
wherein for those and other errors in
the record & process aforesaid contained the plffs
say that the said Circuit Court in the rendition
of said interlocutory decree and final Judgment
herein erred and there is for the reasons
aforesaid in the record and process aforesaid
and the Judgment aforesaid. Manifest error
& that the same ought to be reversed for
Nelson & Keown for
plffs in error

And the said defendant in error says there is no error in
the record & proceedings herein as by the said plffs in
error alleged - wherefore he prays &c

N. L. Freeman atty for
def't in Error

No 12

November 1854

John & Thomas Roach

vs

Lewis L. Perry Exr.
of J. C. Roach De'd

Em to Randolph

Roach

v.
Perry.

Opinion by Eaton J

Several questions were raised and discussed upon the argument of this suit, only a part of which it will be necessary to examine, as some of them, such as the exceptions to the master's report, do not arise upon the record, and others are questions of practice too well settled to require examination here.

The first to be considered is a question of fact, as to whether a partnership was proved; and indeed this is the principal question in the case. We agree with the circuit court that the proof does satisfactorily establish a partnership. It is shown that the intestate and the defendants below owned the farm in common, and whether their interests in ~~the title~~ the farm were equal or not is quite immaterial to the present inquiry. The defendants resided upon and worked the farm most of the time, and so far as appears generally at least disposed of the surplus produce. The intestate resided in town where he was engaged in other business. He was in the constant habit of purchasing stock for the farm, implements of husbandry which were used thereon, and paying mechanics bills &c. A brick house was built upon the farm, for the material & work of which the intestate paid principally if not entirely, so far as payments are proved to have been made, and Paschall one of the witnesses says, "I understood from all the Roaches that they worked the farm in common and in partnership." When the complainant sued the defendants, at law, for the advances made by the intestate, they set up and proved in defence that they were in partnership

in the conduct and management of the firm
whereupon the plaintiff in that action took a
non-suit & filed this bill for an account as among
partners. To rebut all this proof of the existence
of the partnership there is absolutely nothing and
we cannot hesitate a moment in coming to the
conclusion that ~~the~~ partnership did exist.

The proof is silent as to the extent of the interests
of the several partners in the concern so that is
left to be determined by legal inference. Where
the proof shows a partnership, but does not show the
respective interests of the ~~several members of the firm~~^{several members of the firm}, the law
will presume that they were equal partners, so that in this
case we must conclude that each of the three part-
ners had one third interest in this enterprise.
It was properly determined that neither of the
partners ~~was~~^{was} entitled to charge the others or the concern
for his labour, care & diligence in attending to the
partnership business, there being no proof of any
special agreement among the partners entitling either
party to such compensation. Lewis v. Moffet 11 Ill 392
A reference was made to the master to state an
account among the partners upon the principle that
they were equally ^{interested} partners. From the report of the master
it is manifest that he made a mistake in his mode
of computation against the indebtedness by which the
amount due the complainant for advances ~~was~~^{over} and
above his share as an equal partner with the others, was
very considerably reduced. But of that he cannot now
complain. It is enough for the present purpose, that it
is very clear from the master's report, that the report
does not charge the ~~report~~^{defendants} with any too much.
The decree of the Circuit court is affirmed.

Roach
v
Perry

Opinion
Leaton

Copies

No 12

November 1854

John & Thomas Roach

v

Lewis L Perry Executor of
James & Roach Decd

Error to Randolph

Opinion by
Caton J.

Decree affirmed

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