

sets have only been sufficient to pay the plaintiff \$5,813 68, which falls short of the sum to be paid him, to make the equality proposed by the contract, by \$1,892 02, so, that in order to place the parties upon a footing of equality, the defendant should pay the plaintiff the sum of \$630 67, being one-third of the amount of this deficiency, as the loss resulting from this deficiency should be borne by them in proportion to their interest in the profits, that is, two-thirds by the complainant, and one-third by the defendant.

But it is said the complainant was only to be paid the sum of \$7,705 70, in case that amount was realized from the assets, and consequently that the whole risk of their collection was upon him. I cannot think the parties so intended, or that such is the true construction of their contract. Equality, so far as the division of the profits was concerned, clearly appears to have been intended, and no reason can be assigned why the plaintiff should be willing that the defendant should retain the sum of \$5,050, standing to his debit, and treated as profits, and that the sum of \$7,705 70, which he (the plaintiff) was to receive to place him on a footing of equality, should depend upon the contingency of collections. My opinion, therefore, is that the defendant must bear his share of the loss resulting from the deficiency. He has no right to retain his \$5,050, whilst the complainant, instead of receiving as his share of the profits \$7,705 70, shall receive no more than \$5,813 68. The defendant must, therefore, pay the sum of \$630 67 to make that equality contemplated by the contract, and a decree will be passed accordingly.

The only remaining question relates to the claim for interest. The contract says "that no interest is to be allowed or paid by or to either party from this date." It is argued, on the part of the plaintiff, that this stipulation is to be referred exclusively to the sums which may be received and divided between the partners, in case there should be a surplus after paying the plaintiff his \$7,705 70. I do not, however, concur in this view. It refers, in my opinion, to all sums which may be paid to either party from the date of the contract. The