

No other evidence but that of the appellant in denial of the claim was given upon this item.

But it is now urged by counsel for the respondent that his client erred in his testimony and that the copartnership books and some memoranda upon the back of a blank form of promissory note and of a deposit slip, shew this.

There are two answers, however, to this contention. (1) Although the reference lasted a very long time after the evidence of the respondent was given, and although this is the second appeal since the Master made his report, no attempt of any kind has been at any time made to correct upon oath the alleged mistake. So that there is the oath of the respondent, unretracted in any manner by him, against the assertion of counsel representing him, without even a suggestion from the client of any mistake or of any desire to be released. This to my mind is an abundantly sufficient answer to the contention. But (2) neither the books nor the memoranda in their figures shew any mistake; on the contrary, they may be looked upon as confirming the evidence; though it must be said that the books seem to have been ill kept, and neither they nor the memoranda would, unaided by evidence, demonstrate anything decisive upon this question.

Both, however, do shew that at the time of the settlement the balance in the books to the credit of the appellant was \$205.24; and that that sum was reduced to \$105.24 by deducting from it the very sum of \$100 with which it is now sought to charge the appellant again; and so confirm the respondent's evidence upon the point. The words in pencil on the deposit slip are not verified in any manner, and are not evidence.

That there was a settlement between these two parties in which the \$100 was taken into consideration and account cannot be denied; all the evidence and figures shew this, and the respondent has admitted upon oath that such was the fact, and that in that settlement the appellant paid the sum in question; it is quite too much, in the face of all this, to give effect, after the lapse of seven years, to any manipulation of figures, in argument only, with a view to shew that all that was sworn to and all that appears as before mentioned is fallacious; or to give effect to unverified words appearing in a loose memorandum.

The appeal on this ground is allowed; and the Master's finding and report in respect of it will stand.

The other grounds of appeal were disposed of on the argument. Success is divided; there will be no order as to costs.