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amounts, and said that would give me Credit
outside, these houses to be used as references, - &
Mr. G. Reed. had a good many goods of my
store and paid for them in no way except by
such services to my knowledge;

Q. At 15th. What amount of goods did you purchase
on credit during the fall of 1858.?

A. At 15th. Oct. I purchased on credit during
the fall of 1858. goods to the amount of about
Twenty eight Thousand Dollars.

Q. At 16th. When did D. B. Jackson & Samuel S.
St. John the Plaintiffs come to Albany in the
fall of 1858, and how long before the sale by
you to Jackson in December 1858, & where
did they stop ~~at~~ Albany and did they
or not occupy the same Room?

A. At 16th. Jan. D. B. Jackson and Samuel
S. St. John the Plaintiffs came to Albany in the
fall of 1858, about the first part of November.
They stopped in Albany at Standwix Hall
and occupied the same Room.

Q. At 17th. Did you have any interview with
Mr. G. Reed D. B. Jackson & S. St. John. be-
tween the 1st of November 1858, and the 7th
of December 1858, and if yes at what place
such interviews held and what was
the object of the same and what was
said and done at the same as near as you

Can we collect the same?

Ans to 17th Int. I don't recollect that I had any interview with Wm. G. Weed, D. C. Jackson. & St John together between the 1st day of November 1858, and the 7th day of December 1858. but I had several with Weed & Jackson separately during that time. I had one or two interviews with Jackson at the store also one interview at the Calverau House in the City of Albany with Isaac Smith & D. C. Jackson, Alfred Crofton and I think Wm. G. Weed during the said time. The object of the interview was the disposing of the goods, and to get them away. Jackson wanted the goods, & was willing to buy them during all the time that he was down here.

Int 18th. Did Weed Jackson & St John, or any of them know that the goods being received by you during November 1858, & a large portion of the goods then in your store or any of the goods received by you, at your store had been brought on Credit and were not paid for, and did you have any conversation with them or either of them with regard to your Creditors? If you state particularly with whom such conversation was had, and what was said.

Ans to 18th Int. Wm. G. Weed, D. C. Jackson & St John, all knew that there were a great

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many goods. Now in my store and being a-
cquired by me at my store that were bought on
Credit. and were not paid for. One collector.
a conversation that took place at my store
about a week before the sale to Jackson. took place
and while the inventory of the stock was being taken
Clamon Smith had been away buying goods
and on his return came into the store and paid in
the presence of myself and P. B. Jackson. That
he had just bought several hundred dollars
worth of meat and sundries and drawn for.
The next time I told him that it was against
my wishes that any more goods should be
bought on my credit. Smiler Jackson.
had quite a hearty laugh. remarking that he
had succeed so well. and when I objected to
it they said that I might as well die for
an old sheep as a lamb. Jackson said
it was a good thing.

Oct 19th Was any thing said by you. or by Mr.
G. Weed. to Jackson or St. John with reference
to sending off the goods in your store secretly to
prevent your creditors from seizing them or
with reference to the removal of said goods.
and if yes. state what was said and when
and by whom. the same was said and what
of any thing was said by Jackson and St.
John. or either of them?

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Ans to 19th Jan At the time of the sale to Jackson
Jackson requested that I should keep about
the store & keep in with the business as usual
until he got the goods away and asked me not
to let Mr. Wm. that I had sold mt. He said
it would take about three days to get them
packed and away?

Ans to 20th Do you know if Wm & Fred or Wm
possibly receiving any thing in money or goods
from Jackson or St John. & if yea what and
for what?

Ans to 20th Jan. I do not know if Wm & Fred or Wm
possibly receiving any thing in money or goods
from Jackson or St John.

Ans to 21st Was any thing said by or on the premises
of Jackson or St John. as to what was to be done
with the goods sold by you to Jackson as to when
they were to be sent, how packed or taken to the
depot, and if yea. state all that was said fully
and particularly and by whom the same was said;
Ans to 21st Jackson said that he was going
to pack the goods and take them West, and
after they were all off, Jackson told me he
had succeeded just rate in getting the goods
all safely away.

Ans to 22nd Do you know of any other matter or thing
material or important for the dependants to
know. If so, state the same as fully, and

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and particularly as especially interrogated:
 Ans to 2^d Int. I don't know that I know of any
 other matter or thing material or important
 for the defendants to put.

Orville Hinch

The Defendant's Counsel then offered in evidence the deposition of William H. Stratton
 taken under a Commission, issued out of &
 said Court and filed in that cause, on the
 13th May 1863. Plffs Counsel moved
 to suppress. Interrogatories N^{os} 4, 5, 6, 7, 8,
 9, 10. and the answers

The Court sustained the motion as to all of
 the answers to Interrogatory N^o 7. after and
 commenting on the facts. "I spoke to
 Hinch" &c. and to Interrogatory 9. and
 the answer to which ruling of the Court,
 the Defendants by their Counsel then and
 there accepted.

The following is the Depo-
 sition of William H. Stratton, which was
 read in evidence with the exhibits thereto
 attached except parts excluded:

Int 1st "What is your name age & occupation
 & place of residence?"

Ans to 1st Int. William H. Stratton thirty four
 years old. 1st Lt. 7th Regt. Ill. Cavalry

stationed at La Grange Fayette Co Tennessee
 Jan. 3^d? Do you know the Parties plaintiffs.
 and Defendant on the Capture to these in-
 ungalves mentioned or either and which
 of them and how long have you known them
 respectively?

Ans. to 2^d Qst. I have known the Plaintiffs
 since the Spring of 1858. I have no know-
 ledge of the Defendants or either of them
 Jan. 3^d? Do you know Parus C Jackson. &
 Orville Smith. William G Weed, Isaac Smith
 and Hannon Smith or any or either of them
 If you state when and where you first be-
 came acquainted with them and each of them,
 Ans. to 3^d Qst I know all of them I first
 became acquainted with Orville Smith in
 New York City in or about the Month of May
 1858. at the same period of time I became
 acquainted with Isaac Smith and
 Hannon Smith at the same place. I first
 became acquainted with Wm G Weed, &
 about the Month of July 1858. in New York
 City I became acquainted with Parus
 C Jackson about the 1st of December 1858.
 in Albany N. Y. I had seen him once or twice before.
 Jan. 4th Do you in the employment of Orville
 Smith then of Albany in the fall of 1858. If
 you state when and how, and for what &

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purpose you were employed by said Hinch
and whether you received any written authority
to act for said Hinch and if so annex the same
or a copy of the same, to your deposition or if
it is lost state the contents of the same?

Ans to 4th Q. I was in the employment of Orville
Hinch during the months of September & October
1858, in buying goods in New York, Boston &
Hartford. I received from Isaac Smith a
written authority to purchase goods for said
Hinch and annex a copy of same. Mark's
Exhibit "a" p. 9. M.

Q. 5th Did you during the autumn of 1858 or
at any other time have a statement of the assets
and property of Orville Hinch if yes state
by whom and under what circumstances the
same was delivered to you, and if the same
is in your possession annex it or a copy
of it and if it is not in your possession state
if you know what has become of it and annex
a copy or state the contents of it?

Ans to 5th Q. I did have a statement of the
property and assets of Orville Hinch delivered
to me by Isaac Smith to be used in establishing
the credit of Hinch in purchasing goods
for said Hinch. It is not now in my pos-
session I delivered it into the possession of J. B.
Clumbeant a lawyer of Albany N. York I

have understood the original document to be lost. I am, a copy of the said statement marked "Exhibit B," J. & M.

Int 6th: Did you purchase goods for said Mills French on credit during the fall of 1858. If yes, state at what time, and to what amount, and of whom, as far as you are able to recollect, & by what means, was the credit obtained?

Ans to 6th Int, I did. Between September 1st & November 1st 1858, the larger portion being purchased in October of that year. The purchases being to the amount of about \$3000.00. The chief purchases being from the firms of White Brown, Carn & Co. Melton, Nelson & Co. of Boston and of Day, Griswold & Co. of Hartford, Clothin, Mellen & Co. Both Little and other firms not recollecting of New York. The credit was obtained by means of the above statement of assets and property of said Mills French and reference to Strong, Adair & Co. of New York and Morgan & Cred. Co. of Albany.

Int 7th: Were you at Albany N York, the latter part of November, and the fore part of December 1858. If yes, state whether you then saw the Plaintiffs, Daniel & Jackson Wm. G. Fred. Isaac, Smith & Harmon Smith or either of them and if yes where and under what circumstances and state fully and

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and particularly any thing that was said
or done, by said persons or either or any of them
with reference to the store of goods of Orville Smith
about 7th Inst, & was in Albany at that time and
saw all the above named persons on or about the 1st
of December at the store of Orville Smith, about
the 9th of December I was in Smiths store Smith
space Smith and St John. were in the store at the
same time I spoke to Smith about paying me the
commission due me. when I was called away
by Harmon Smith to go to Mrs. E. Sheds office and
went to Sheds office accompanied by Harmon Smith
and Shud. and was asked into Sheds private office
by Shud. and was there and was told then and
there by Shud and Smith that they wanted me to
go to New York stating that night to purchase new
goods. Harmon Smith had some ten or twelve checks
drawn by Orville Smith on a bank in Albany
which were payable to parties in New York ranging from
25 to 75 dollar in their amounts proposing to me
to use the checks by paying them to the parties in
New York. they were drawn receiving from said
parties in return checks for one half the amount
of the checks so paid to them I declined the service
and the proposition to receive and use the checks
as proposed to me

Inst 8th I was now at the office of Shud & Smith in
or about the 9th day of December 1858 of year

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State how you came to be there who were present
and what was done or said at the time;

Ans to 8th Int. I was as already stated, I am on
Smith and Mr. G. O'Keefe were the only ^{persons} present be-
sides myself

Int. 9th Did you have any conversation with Isaac
Smith at the Store of Swells Lumber in Albany about
the 8th or 9th of December 1858 and if yes state
what was said and done and who were present at the time
Ans to 9th Int. I did. I recollect of no one being
present except Smith & myself. Smith said
if I would not appear for any of the goods from
Whom I had purchased goods for Lumber against
Lumber that he Smith would give me \$150⁰⁰ and
remarked that Lumber's store of goods had been
sold out

Int 10th State if you know what amount of goods
purchased on Credit were received at the Store of
Swells Lumber in Albany N.Y. during October
November and the 1st part of December 1858. and
at what time these goods were received and
whether the Plaintiff and P. L. Jackson were in
Albany when the same was received and what
probabilities if any they or either of them had
at the time that said goods were purchased on
Credit and not paid for;

Ans to 10th Int. At least \$20000. must have ac-
ceeded the Store during that time and a large

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portion of the same during the latter part of that time. The Plaintiffs and Jackson were in Albany during the latter part of November and the part of December 1858. were about lunch store from time to time and in company with Isaac Smith and Jm. G. Wren. I know of no other special opportunity they enjoyed but my impression is that they could have known the condition of the affair.

Int 11th Do you know any thing of the manner in which the goods purchased by Swille Smith were packed up and removed from Albany. If you state the same fully:

Ans to 11th Dec. I do when they first commenced packing it was done in such manner as to leave as much display of goods on the shelves as possible to the last. The packing was done in the basement or cellar and goods were shipped to the depot before day light in the morning of about that time the business being carried on in the store every day whilst packing as usual. I went to the depot on the morning of the 11th December 1858. and found that goods had been shipped in the name of the Plaintiffs that morning and the morning of the day previous which goods had come from the store of Swille

Int 12th Do you know any thing else material and important for the defendant to know in this case. If you state the same fully and particularly:

Ans to 12th I cannot think of anything else.

W. H. Mallon.

"Exhibit A" ("P. G. M.")

Albany Sept. 1st 1858.

Mr Wm H Mallon is authorized hereby to purchase goods from lots sold by me in my business as a Dry Goods Merchant. For that purpose he is authorized to use the statement this day by me made in regard to my assets & prospects.

(Signed) Orville Lincoln
"Exhibit B" ("P. G. M.")

Statement Sept. 1st 1858.

Stock on hand paid for.	10,000. 00,
Store fixtures " "	300.
Debt due store good.	1,000.
House Lot on 9 th St. Albany	16 00.
130 acres land on Platts Road between Albany & Schenectady worth \$9,000.	5,000.
Incumbered \$4,000. as part of the purchase money. Mortgage has five years to run from June 1857	
Mortgage on 15 1/2 acres of land in Bromfield N. Y. first incumbrance mortgage on same	2500.
Lot in Albany first incumbrance	
	500.
	800. 900. 00
Whole stock owned in good companies for	20,000.
(Signed)	Orville Lincoln

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The Counsel for the Defendant then read the deposition of John B. Sturtevant as follows.

Deposition of John B. Sturtevant.

Int. 1st. What is your name age, occupation and place of residence.:

Ans to 1st Int. My name is John B. Sturtevant age is about thirty five occupation is that of an attorney and Counselor at Law and place of residence is the City of Albany State of New York.

Int. 2^d. Do you know the parties plaintiffs, and defendant in the Caption to these interrogatories mentioned or either and which of them and how long have you known them respectively.:

Ans to 2^d Int. I do not know the parties plaintiffs and defendant in the Caption to these interrogatories mentioned or either of them.

Int. 3^d. Have you ever seen or had in your possession a statement or writing purporting to be signed by Willie Smith and a copy of which is hereto annexed marked "Exhibit A" or have you such statement now in your possession or control. If you have such a statement in your possession or control please annex the same or a copy of it to your deposition and if it or not now but has been in your possession please state when you last saw the same and what has become of it.:

Ans to 3^d Int. I have seen and for several months had in my possession a statement in writing purporting

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ing to be signed by Orville French that paper
 is not now in my possession or under my control
 a copy of that statement in writing and made
 by a clerk in my office by my direction while
 that paper was in my possession, is still in my
 possession a verbatim duplicate copy of which
 is hereto annexed marked "Schedule G. B. S." I last
 saw that paper purporting to be an original about
 the 31st of March 1860 and I trust I can de-
 liver it to Wm. H. Hingley of the City of Albany
 or a clerk of theirs upon settlement or arrangement
 of certain suits then in my charge against
 said French in which suits said Wm. H. Hingley
 appeared and acted as attorney for French,
 Ans. 4th In answer to the foregoing interrogatories
 you say that such statement is lost. please
 state whether you have made search for the
 same, and whether you are satisfied that the copy
 hereto annexed and marked "Exhibit A" is a true
 copy and whether you know the handwriting of
 Orville French and of yes whether the signature
 to the original statement of you have ever
 seen such statement was genuine or otherwise
 Ans to 4th I have made search for that
 paper purporting to be such original statement
 among other papers in my office and cannot
 find it I never did know Orville French
 personally never saw him write nor did I

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I'm in his handwriting I do not know whether or not
the signature to that statement purporting to be an
original was or not genuine The signature to that
purported original statement was admitted or con-
ceded to me by said Stud & Chugoley or one of them
and in the suits referred to in my answer to the last
above interrogatory to be genuine

J B Hinckley

"De laule J. B. J."

Statement of Orville French assets Sept. 1st 1858.
Assets.

Stock on hand paid for.	10 000 .00.
Store fixtures paid for.	300 .00
Debts due the store good	1 000 .00
House & Lot. owned at Albany	16 000 .00
13 ¹ / ₂ acres Land on Plunkt Road between Albany & Schenectady worth \$9000.	
Insurance 4000 as part of the purchase money	
Mortgage paid for years & run from June 1 st 1834	5 000 .00.
& Mortgage on 15 1/2 acres of land in Broome Co State of New York. First mortgage	2 500 .00
& Mortgage on House & Lot. in Albany city. First mortgage	500 .00
	\$ 20,900 .00

Whole stock Insurance for \$20,000 in good

Companies The above is a true and correct
statement of my assets after deducting all my liabilities
upto date Albany Sept. 1st 1858. Orville French
(a copy)

The Defendants by their Counsel then read in evidence the statement & exhibit attached to the deposition of Elisha H. Collins and herein before contained. The Defendants by their Counsel then read as evidence the depositions of Charles P. Armstrong and William L. Kern as follows.

Deposition of Charles P. Armstrong.

Int. 1st What is your name age occupation and place of residence?

Ans to 1st Int. My name is Charles P. Armstrong age forty one, occupation is Farmer and my place of residence is in the City of Albany.

Int 2^d Do you know the parties plaintiffs and defendant in the caption to these interrogatories mentioned or either and which of them and how long have you known them respectively?

Ans to 2^d Int I do not know the parties plaintiffs and defendant in the caption to these interrogatories mentioned or either of them.

Int. 3rd Are you acquainted with a tract of land described in the annexed statement marked "Exhibit A" as 130 acres of land on Plains Road between Albany & Schenectady & if you state what opportunities you have had of becoming acquainted with it and its value and the value of land in its neighborhood?

Ans to 3rd Int. I am acquainted with a tract of land

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described in the annexed marked "Schedule A" is 130 acres of land on Platts Road between Albany & Schenectady my opportunities of becoming acquainted with it and its value are that for fifteen years I have lived in the immediate vicinity of and own a farm a part of which forms the said 130. acre tract and have known the price paid for land in the vicinity and I know the value of this land.

Q. 6th. If in answer to the foregoing interrogatory you say you are acquainted with said tract and its value, state what was the value of the same, on the 1st day of September 1858?

A. to Q. 6th. Q. 6th. This tract of land on the first day of September 1858, was worth about Twenty dollars per acre. I should think no more.

Charles P. Smithong

Deposition of William L. Lenn.

Q. 1st. What is your name, age, occupation and place of residence?

A. to Q. 1st. Q. 1st. My name is William L. Lenn, age 37, Inty. Lenn. occupation Hammer. And reside in the City of Albany.

Q. 2nd. Do you know the parties plaintiffs and defendants in the Caption to these interrogatories mentioned or either and which of them and how long have you known them respectively?

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Ans 2^d Int. I do not know the parties plaintiff and defendant in the caption to these interrogatories mentioned or either of them

Int 3rd Are you acquainted with a tract of land described in the annexed statement marked & "Exhibit A" as 130 acres of land on the Plank Road between Albany and Schenectady and if yes state what opportunities you have had of becoming acquainted with it and its value and with the value of land in its neighborhood;

Ans to 3rd Int. I am acquainted with a tract of land described in the annexed statement marked "Exhibit A" as "130 - acres of land on Plank Road between Albany and Schenectady and know its value. My opportunities of becoming acquainted with said tract and of its value and with the value of land in its neighborhood are that for ten years I have lived in the immediate vicinity of this tract and own a part of it at the present time and have been knowing the prices paid for land in the neighborhood

Int. 6th If in answer to the foregoing interrogatory you say you are acquainted with said tract and its value state what was the value of the same on the first day of September 1858.

Ans to 6th Int. This tract of land on the 1st day of September 1858. was worth not more than twenty dollars per acre.

Ans to
of September
dollars

Am L. L. L.

17 / For the further maintenance of the fair on
their part. Wharf, the Consul for the defendants
Called George Anderson

Int. Did you as one of the deputy sheriffs of John Gray
sell these goods of money in fact.

Ans. Yes sir

Int. Under special executions?

Ans. Yes sir.

Int. So that return of the amount, day brought, made
by you?

Ans. Yes sir

Int. What was the aggregate amount, the good brought

Ans. \$4642. ¹²/₁

Int. Where about were they sold?

Ans. 94 Randolph street 4 doors from Pearson
The south side of the street

Int. How long did it continue?

Ans. Some days. I think a week or perhaps more

Int. At what hours?

Ans. We commenced at 10 o'clock in the morning
and then till four or five in the afternoon generally
with an hour, or half an hour, in between for

Int. Was there a full or scarce attendance there
at the time?

Ans. There was a crowd there all the time we are

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articles in Bills and by the papers and took great
pains to get hidden there as well as people generally.
The store was quite full. sometimes there was hardly
room to move about. It was the best sale I ever
had as Sherry Schmitt

Q. Now about the competition in buying?

A. There was very great competition in buying.

Q. Now had these goods from the time you received
upon them to the time you sold them been in the
custody of the Sherry?

A. Yes Sir.

Q. The same goods you received on?

A. Yes Sir.

Q. In your custody all the time?

A. Yes Sir.

Q. Never been out?

A. No Sir.

Q. State whether you recollect there were tickets
or tags on a number of articles with the statements
of the number of yards?

A. Upon a great majority there were tags or tickets
with the number of yards on the piece.

Q. When you sold off a piece did you measure what you sold?

A. We made two measurements of them.

Q. When you sold them?

A. No not only measured them once.

Q. State whether the amounts in actual measurement
swelled up to the amounts stated on these tickets?

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Ans they did not.

Int Did they in any instance?

Ans. In some instances they did but in a great many they did not & in a majority they did not. & what would they fall short?

Ans. I think from two to ten yards.

Int In a piece of how many yards?

Ans Some pieces were from 14 to 22. and some as high as 30. or 32 yards

Int. Had any part been cut. or were they all full pieces

Ans Some of the bleachers ran bleached shirting and shirting were full pieces but the majority were cut goods. seemed to be the tag end of an old stock

Int. Do you know Mr Peau who pretends to go there and measure for Jackson

Ans. I think that was the gentleman who came to me. and asked permission

Int There were two gentlemen?

Ans Yes sir.

Int Did you see them prison?

Ans I saw them there.

Int How did they go?

Ans. They called off by the piece & by the tag.

Int How many days did you see them work there

Ans. From two or three days. I was perfectly astonished when they got through at the short time they had been at it. For I had some two or three men there and it took six or seven days for us to get

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Amalg.

Int. Did you see them measure them at all?
Ans. No sir I did not.

Examination

Int. What was the number on Randolph st.

Ans. 84.

Int. What building was it in;

Ans. A building they called Eddy's building

Int. Or of Eddy

Ans. Yes sir

Int. Who actually was in the building and took charge of the goods

Ans. Mr. Anthony kept them and a young man named Charles was

Int. Who else?

Ans. Myself

Int. And Mr. Eddy

Ans. He was in and out, but he did not have charge of the building at all.

Int. It was his building was it not.

Ans. Yes sir it was and used as a storeroom for the ships

Int. How long were they kept there

Ans. From the time I took them from the depot & December 17th 1858 to the time they were sold in May. I had men in custody all the time who kept at the store and had charge of them all ^{the} day.

Int. Is this return the amount after deducting the expenses of the sales.

Ans. The gross amount is \$4642 ¹²/₁

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For the further maintenance of the issue on their
behalf, the Counsel for the Defendants called
Benjamin L. Nelson.

Qnt. Did you hear Mr. Manson testify?

Ans. I did.

Qnt. Were you present there with these goods?

Ans. I was after the two first days.

Qnt. In what capacity were you there?

Ans. I assisted in making the goods and putting
them back in their places and then delivering them.

Qnt. Did you measure them?

Ans. I did not.

Qnt. Did you know anything about the custody of
these goods before the sale?

Ans. I did not. I did not go live after the sale
commenced.

Qnt. How was the sale?

Ans. It was going on all the time.

Qnt. How as to business?

Ans. It was very good, all the time. It was always
very good and brisk.

Qnt. What do you say you did about the goods?

Ans. I marked them the buyer's names and what
they paid per yard, ^{per yard} ~~per yard~~ deliver them after the sale.

Qnt. Do you know of Mr. Rob. a merchant here and
a gentleman from New York examining the goods?

Ans. I know Mr. Rob. & Mr. Doherty. They were,
there daily or Doherty was and they were examining

do you do & the marks on them after the sale. ^{was}
 over, before they were delivered
 Int. Was not the amount paid by each purchaser
 marked upon them?

Ans. yes. It was marked upon a ticket and
 pinned upon the goods & they were then put back.
 Int. Did they examine the tickets the prices paid
 and the number of yards

Ans. yes sir

Crop Examination

Int. What was your business at that time

Ans. I was custodian

Int. For whom?

Ans. For the Sheriff

Int. For John Gray

Ans. yes sir.

Int. What are you in now?

Ans. In the City Fire Department.

Direct Resumed.

Int. You were not custodian of this lot of goods
 Ans. No sir

The Council for the Defendants
 then read in evidence the Deposition of Hugh
 Boherty as follows.

Int. What is your name age occupation and
 place of residence?

Ans. to Int. My name is Hugh Boherty I am
 thirty six years of age. my occupation is the

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business of buying and selling Dry Goods and my
place of residence is the City of New York
Q. Do you know the parties plaintiffs and de-
fendants in the caption to these interrogatories and who
or either and which of them, and how long have
you known them respectively?

A. to Q. I know all the parties plaintiffs and
defendants except the defendant Eugene Brown
whom I do not know. I have known the plaintiffs
St John, etc since about December 1850 and I have
known the Defendants Gray and Conley ever since
the year 1858

Q. What has been your business during the
past few years, and how long have you been
engaged in such business and what opportunities
of any have you had to acquire a knowledge
of the value of dry goods and merchandise?

A. to Q. I have been engaged ever since the
year 1839 in the business of buying and selling
dry goods at whole sale and retail. Ever
since the year 1842 I have been in business for
myself. I have made my own purchases and
to a large extent my own sales and have at
all times exercised a direct personal supervision
of the details of my business. My business has
been quite extensive amounting some of
the time to over three hundred thousand dollars
per annum. I have done business in Boston

and Chicago before I came to New York,
 Sat 4th. Were you present at a Shuiff sale of
 goods on Randolph street in the City of Chicago
 in the Spring of 1858. main elections against
 O'wille Smith and in favor of J. A. White and others
 and Arthur T. H. and others?

Ans to 4th Int. I was present several days of such
 sale. I was absent only one day of the time the sale lasted.

Int 5th. If in answer to the foregoing interrogatory
 you say you were present at said sale. State
 what was the general character of the goods whether
 new or shop worn whether cloths and other ar-
 ticles were entire or in fragments?

Ans to 5th Int. The general character of the goods
 was that they were all considerably shop worn
 and some of them were very much so. The cloths
 and other articles were in fragments and remnants
 I don't collect seeing any entire pieces of goods
 I examined the whole stock carefully with the
 intention of purchasing part or the whole.

Int 6th. If you say you attended said sale
 state how the same was conducted whether or
 not. Were many present at the sale and
 how the goods sold?

Ans to 6th Int. The sale was conducted as such sales
 usually are there was a large number of persons
 present every day. I think the goods sold
 well on the average. They brought more than

I should have been willing to give for them, They
sold so well. that I was willing to put goods of my
own in for sale, and did put goods of my own in
and they sold at highly favorable prices.

Ans. 7th. If you were present at said sale state
whether you knew what the market value of such
goods was. and if you say you know, what was
the market value of such goods state how the prices
for which said goods sold compared with the
market value of such goods. State whether the
goods sold for more or less than their market value
on the average. and how much more or less. Please
state fully and particularly?

Ans to 7th. Ans. I knew the market value of
most of the goods. say nine tenths of them
the prices for which the goods sold were on the
average fully up to their market value. Some sold
for more and some for less than their market value,
but the average was fully up to the market
value. and I think exceeded it, but I cannot
at this length of time state how great the excess
was.

Hugh C. C. C.

The Defendants Counsel then "agreed in writing
Interrogatories No. 79 and answers a part of the
depositions of William H. Shallow herein before
set forth which was objected to and objection

sustained to which all but of the Court. the Defendants by their Counsel then and there excepted

The Defendants Counsel then read in evidence the following Deposition of Jm. W. Ross.
 Int. 1st What is your Name age, occupation, residence, and how long have you been in business,
 Ans. to 1st Int. Jm. W. Ross. business wholesale and retail dry goods business and have been for over 12 years. reside in Chicago Ills.

Int. 2^d Were you present at a Shuiffs sale of goods on Randolph St. in the Spring 1858, of goods sold on executions in favor of White Brown Davis & Co. and others against Orville Finch, if you state what opportunities you had of judging of the value of said goods, and how the prices for which the goods were sold compared with the Value of the same?

Ans. to 2^d Int. I was present at such sale. I cannot give the request of some one in the employ of White Brown Davis & Co. or Mr. Conley I am not sure. while we went through the goods examined them I should before the sale commenced stayed there probably at that time as long as I could. There several times during the progress of the sale to see how things were selling so that I might be able to testify as to their sale. I did not see every thing sold, but only got a general idea of

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how they were selling. Every thing which I saw sold. brought very high prices so much so that I was surprised to see them sell for such prices I would have bought myself. if I had not bought higher prices than I was willing to give or than I could have purchased for elsewhere. I mean I stood ready to buy them if I could get them for less than they were worth. I did not purchase any.

Jm M Ross.

The Defendant here states this case.

Carr & Jackson called on Belief John & Plaintiff person and examined by J. H. Hales.
Qnt. Where do you live?

Ans I live in Milwaukee.

Qnt What is your business?

Ans I am now acting as United States Marshal.

Qnt For Wisconsin?

Ans For Wisconsin.

Qnt Do you know Samuel S. Johnson?

Ans Yes Sir.

Qnt How long have you known him or about how long?

Ans I think since 1852.

Qnt Where did he reside in December 1858?

Ans He resided in Wisconsin.

Qnt Where did you then reside?

Ans In Madison Wisconsin

Qnt What was your business at that time;

Ans My business was selling goods, & as Rail Road Contractor in part I was mnr of a Rail Road

Qnt What Rail Road;

Ans The Wata Lion

Qnt Do you know Orville Finch;

Ans I do.

Qnt How long have you known him;

Ans I met him first in 1857 for a very short time I think in Albany New York

Qnt Do you remember the time of the sale from Orville Finch to you about December 1858.

Ans Yes Sir

Qnt How long before that time did you first become acquainted with Orville Finch

Ans I think a few months before that I was introduced to him;

Qnt Where;

Ans It was either in Albany or New York. I am not certain

Qnt Where did you first become acquainted with Isaac Smith

Ans In the year 1857 I think in the Spring.

Qnt Where was that;

Ans That was in Madison Wisconsin

Qnt Where did he then reside

Ans In Michigan at Jackson. He was a Merchant, there I think at that time.

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Int. Do you own a Mr. Ayer in the state of New York?
Ans. Yes sir.

Int. Near Albany?

Ans. Yes sir.

Int. What is his Christian name?

Ans. William & Ayer.

Int. Where did you first become acquainted ^{with him} ~~with him~~?

Ans. I became acquainted with him in 1857.

Int. Where?

Ans. I think I met him in New York first.

Int. Do you recollect of yourself going from New-
Orleans to Albany in the fall of 1858.

Ans. Yes sir.

Int. Can you fix the time?

Ans. I cannot exactly I think it was in October some time.

Int. The fore part or the latter part?

Ans. I think the latter part.

Int. What called you to Albany at that time?

Int. When did you say you knew Isaac Smith first?

Ans. I think in the spring or summer of 1857.

Int. Do you remember yourself and Mr. Smith at any
time making a purchase of goods of Mr. & Ayer.

Ans. Yes sir.

Int. About when was that?

Ans. I think that it was in July or August 1857.

Int. Where did Mr. Ayer do business at that time?

Ans. He was then doing business in Albany.

Int. Where did you at that time live?

Ans. I resided in Madison Wisconsin

Int. If you met Mr Smith at any time about when
entered into business when was it under what circumstances
Ans. Mr Smith came to Wisconsin first time with letters
& introduction he was then trading in Jackson Mich-
igan He represented that he had on hand at that
time some \$18,000, or \$20,000, & wanted to go into
business at Madison

Int you say that Mr Smith came to you with a
letter & introduction & wanted to go into business
Ans. yes sir

Int. When was that?

Ans. It was in the Spring or Summer of 1857.

Int. Did you go into business?

Ans. yes sir

Int. Where?

Ans. at Albany.

Int. What business?

Ans. Mercantile business

Int. Buying and selling goods?

Ans. yes sir

Int. What was the name of the firm?

Ans. I think it was Isaac Smith & Co

Int. Composed of whom?

Ans. of Isaac Smith & Daniel Jackson.

Int. How long did that firm last?

Ans. I think we sold goods 3 months, or over.

Int. Where did you purchase goods?

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and the first was from Mr. Loyer. We bought his stock out, & then we purchased some \$1000 of 12.00. worth in New York.

Ans. After the expiration of this 3 or 4 months who & came on the business?

Ans. After that I sold out to Isaac Smith.

Ans. What were the terms of that sale in writing?

Ans. I think it was in writing.

to writing. A paper of which the following is a copy.

Anchoring agreement entered into this 28th day of October 1857, Between Isaac Smith of the City and County of Albany of the State of New York of the first part. And D. C. Jackson of the City of Madison County. Wisconsin of the second part. Whereby as follows, that the said D. C. Jackson for the consideration hereinafter named agrees to Bargain sell and transfer all his right and title remaining in the firm of Smith & Co unto the party of the first part, on the following terms and conditions, In addition to the sum already paid to the said D. C. Jackson by the party of the first part to receive the balance after the liquidation of the firm's debts in three equal payments of \$1000 each. The party of the first part is entitled to all the assets of the firm and agree faithfully to pay all its

liabilities

In Witness Whereof the parties have hereunto
affixed their names and are fully bound by
these presents.

Witness

J. L. Miley

J. Smith

D. C. Jackson

Int. State in where has writing that paper is
Ans. The name is one Isaac Smith & Daniel C. Jackson
Int. By whom was it executed
Ans. By Isaac Smith & D. C. Jackson:

Int. Do you know Isaac Smith handwriting
Ans. Yes sir

Int. Is the signature there has handwriting
Ans. I think it is

Int. Is the other signature there yours?
Ans. Yes sir

Int. Is that ~~xxx~~ the instrument on which you
incorporated your interest to Jackson.

Ans. Yes sir

Int. What is the date of it?

Ans. October 28th 1857

Int. What did Smith do after the hands

Ans. He took possession of the goods he had possession
at that time

Int. What was the consideration for the sale when
was paid to you rather for your interest?

Ans. There was nothing paid down he was to go on
& pay Mr. Lacy for the just purchase then pay

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the New York debt and lastly pay me what I
had paid down. I got nothing. He only agreed
to pay Mr. Ayer, & the New York debt, & afterwards
myself, for the interest I had on the Am. coin. &
had given endorsed notes for the Ayer goods. &
paid some money down.

Int. How much did you pay?

Ans. I paid \$4500 down.

Int. To whom?

Ans. To Mr. Ayer.

Int. When?

Ans. At the time of the purchase.

Int. Were you to get that back?

Ans. Yes sir.

Int. From whom?

Ans. Mr. Smith.

Int. That is what you were to have from Mr. Smith
after paying off the firm liabilities?

Ans. That was all I relied upon what I had ad-
vanced to Mr. Smith.

Int. How long were the liabilities at the time you sold out?

Ans. I think something over \$15000.

Int. How did they arise?

Ans. From the purchase of the Ayer goods,
which were \$8000, & \$10000, & the purchase of
some \$12000 worth in New York?

Int. How long did Smith continue to do business
alone after you sold out to him?

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Ans I do not know the exact time it was
some 4 or 5 months I think.

Int. Did he sell out to any body after that?
Ans He sold out to Harmon Smith & Orville Litch
Int Did you know any thing about that sale
at the time it was made?

Ans I did not.

Int. Did you know Orville Litch at that time.
Ans I think I had met him

Int. Only once or others?

Ans only once

Int That sale would be some time in the spring of 1858.

Ans yes sir

Int. How long did Harmon Smith & Orville Litch
do business together after that time?

Ans I do not know exactly some months I think.

Int. Tell Harmon Smith sold out?

Ans Tell he sold to Litch I don't know the ex-
act time

Int He sold out to Litch?

Ans so I understood

Int. Do you know exactly when that sale took place.

Ans I do not know exactly I think some months after

Int. Did you have any knowledge that Harmon Smith
was to sell out to Litch or Isaac Smith to Harmon
Smith & Litch?

Ans No sir

Int. What time was it you went to Albany the last time?

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Ans I think it was sometime in October 1858.

Int. Begne the Pale American;

Ans yes Sir 1858.

Int. What was the reason of your going to Albany at that time?

Ans. a suit was commenced against me for one of the Ayer notes which Mr Smith wished me to take up. \$1700.

Int. Is a part of the original purchase?

Ans. yes Sir as part of the original purchase

Int. Where was the suit commenced against you

Ans. at Milwaukee.

Int. What was the amount?

Ans. \$1700

Int. How soon afterwards did you go to Albany?

Ans. I went in a few days.

Int. What did you go there for.

Ans. I went to see Mr Smith & Mr Litch I wanted to know why Mr Smith had not taken care of this matter as I called on Mr ^{Litch} Smith & we went over to see Mr Litch. Mr Litch was then holding the goods. I proposed to them to turn out goods enough to pay the creditors. Mr Litch, the creditors in New York & myself. If there was no other way I would take the goods & pay off the creditors.

Int. What debt?

Ans. The debt of Isaac Smith & Co to Ayer and to other parties in New York.

But what did Mr. Smith say to that?
 Ans. There was some hesitation at first we went
 to see Mr. Jayer. & we tried to make some arrangement
 to pay him. & finally went to Smith & Smith and
 said that I would undertake to take the goods and
 pay the creditors of I. C. and. After several nego-
 tations they backed out of that & kept me along
 week after week. Every time that I proposed making
 an arrangement they seemed as though they
 were trying to keep me out of any claims. I
 thought there was a little management in the affair
 which was not right. I then heard that Smigley,
 & Weed were intriguing & called upon them &
 told them that I thought they were interfering
 in my business & did not like it & I told them
 that I had originally been connected with
 Isaac Smith in the purchase from Mr. Jayer.
 & was liable for about \$15000. now. They then
 told me they were holders for Mr. Smith to the
 extent of some six \$6000, & they would not
 let the sale go on unless they were protected.
 I then thought I would give up the matter
 for a while, & afterwards saw some of my friends
 told them about the matter & told them I was
 in want of money. I then made arrangement
 for money. & afterwards saw Smigley & Weed
 again. But before this they told me they
 would give me up the whole stock of goods

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+ pay Mr Lurch's notes if I would pay them
 \$600. in cash. I finally succeeded in getting a
 some paper that Mr Reed accepted endorsed
 by Roseus R Kennedy, after securing the ~~other~~
 paper. I made the purchase of the whole stock
 Int. What did you pay for the stock?
 Ans. I paid down in my paper endorsed by Roseus
 R Kennedy \$600. one note \$1500. one \$500. one
 \$1500. one \$500. one \$1500. & one \$500. making
 in all \$6000

Int. What else Mr Jackson?

Ans. I have paid notes which I had of Mr.
 Lurch one \$300. one \$300. & another on which
 there was due \$2400. and also Paul Reed bonds
 \$3000. taken for \$2572 ²⁰/₁₀₀ a bond or bonds on
 the La Crosse Road

Int. Was it bonds or only one bond.

Ans. I don't remember whether it was three or one

Int. Was that the market value of these bonds
 at that time

Ans. I had sold bonds previous to them?

Int. What have you to say about the value of
 these bonds that were for \$3000 nominally what
 was the value of them?

Ans. They had been selling at about 60 cents &
 must perhaps come up some more.

Int. That would be about \$2400.

Ans. Yes Sir

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Int. Did you give any thing else ^{change} ~~but~~ that for the goods.
 Ans. That comprises the amount I think except,
 that there was a deduction made upon the goods
 Int. How much did that amount to which you
 paid. How much does it figure up.

Ans. \$16972 ²⁰/₁₀₀

Int. What did you do with the goods after you had
 purchased them. Now may state all the transactions
 after the purchase as you recollect them.

Ans. Took possession of them & sold them at private
 sale during one day on the next day which
 was I think the 4th of December I sold them
 to Samuel S. St John. the same stock.

Int. How much did you sell them to him for.

Ans. That if I sold the same amount of goods
 the same inventory was made or from deducting
 the amount. I had sold during the day

Int. How much was that.?

Ans. I think it was between \$80 & \$100. that day.

Int. Where did St John live at that time.

Ans. I don't, at Water town or Columbus.

Int. Had he not been over at Albany sometime.

Ans. He was there several weeks.

Int. What was he doing for.

Ans. I think I wrote to him to come.

Int. What for.?

Ans. I wanted him to look over the stock & if I could
 sell them to him I would sell them.

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Int. What was he doing at that time
 Ans. I think he was Rail Roading at that time
 Int. Was he constructing it or what?

Ans. I think he was running it.

Int. What business had St John been in before that?

Ans. At Hall River Wisconsin selling goods.

Int. How long previously?

Ans. Well a few months.

Int. Why did you send for him particularly?

Ans. I think he was a good judge of Dry goods.

I thought he was calculated to sell these goods.

Wabash & Milwaukee were good places to
 sell them & as I had a good deal of interest in
 the Rail Road. I thought I came down
 my influence in his way.

Int. How did you have an interest in the Road?

Ans. I was then owner & was running the Road.

Int. Look at that Bill of Sale & say if it is ex-
 cepted by you.

Bill of Sale from Jackson to St John. For a new

Ans. It is

Int. What is the date?

Ans. 8th December 1858

Int. It purports to be a bill of Sale from yourself
 to St John of the foregoing goods.

Ans. Yes Sir

Int. How much did he pay you for it?

Ans. He paid me \$3500 down. He paid me

in a draft, that I had accepted in favor of Simpson an old contract of mine for \$2500.
 Q. What next?

A. Whilst I was engaged in negotiating for the goods I called on Mr. Ayer to see if he would take part of my pay in goods in case I purchased them. He said he would. I made the same arrangement with Mr. St John to let Mr. Ayer take \$4000 worth of goods which was arranged by him to be taken. Mr. St John paid me in goods sent to Mr. Ayer. \$3700.

Q. What other consideration?

A. Well I think that was all that was paid at that time.

Q. Were any notes given?

A. After that he gave me his note for \$6000. which I turned over to Mr. Remedy with my endorsement as collateral security for the \$6000 I had received from him.

Q. Was the residue in notes?

A. Yes Sir.

Q. Made by whom?

A. Mr. St John.

Q. Payable to whom?

A. Payable to Jackson.

Q. Do you recollect how much it figured up to?

A. I do not. Some thing over \$9000.

Q. What was the amount?

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Ans. \$9,600. is my best recollection regarding
Int. At any rate you say that of the notes \$6000 were
given to Mr Kennedy?

Ans. Yes Sir

Int. What for.

Ans. As security for the notes he gave me for the
purchase from Finch as collateral

Int. What was done with the balance of the notes

Ans. Mr St John paid them I kept them & he
paid them to me, some of them

Int. Of these notes given by St John how long has
they been. according to your best recollection

Ans. I think the first \$6000. corresponded a good
deal with the Kennedy notes the rest was
on some little time

Int. Are they all due?

Ans. Yes Sir

Int. How long have they been due.

Ans. Some time

Int. Has Mr St John. or not paid the notes

Ans. He has.

Int. What do you know about them?

Ans. I have had the notes all taken up the
notes of Kennedy which I handed are in my
possession

Int. With regard to the others?

Ans. They were paid.

Int. By whom

Q. By Mr. St John.

A. To whom?

A. To me.

Q. What was Mr St John's pecuniary condition at the time this sale was made by you to him?

A. He has been selling goods to men in my employ upon the Rail Road previous to that date & how long had you known him?

A. I think some ten years then?

Q. What was his pecuniary condition at the time you made this sale to him at Albany?

A. Well, I don't know exactly I had no idea of what he was worth exactly but I should think \$3000. to \$4000.

Q. Had you had transactions with him frequently before that time?

A. Yes sir.

Q. To what extent & in what amount?

A. Well, several thousand dollars paid between us.

Q. I notice some notes in the consideration which you paid to Finch for the goods some notes of Finch. What was the nature of these notes how came you by them?

A. They were taken of Finch & placed in the hands of Mr Dixon, of Croton who had endorsed my paper to the extent of \$14000.

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Int. who was the owner of them?

Ans. I was the owner of them.

Int. How did you become the owner of them?

Ans. Mr. Norton gave them to me & I went on and purchased the goods.

Int. How did Mr. Norton get these notes?

Ans. They were handed to him by Samuel & Isaac & I think.

Int. For what purpose?

Ans. They were handed to him for me.

Int. Why for you?

Ans. It was to pay for the purchase he had made from Smith of the dryer goods.

Int. What interest had you in that by which you should have these notes?

Ans. I supposed that I was interested when he made the sale. If he ever did make it & that he would make application of the proceeds to the payment of my credit. I supposed he would apply every dollar. That was the arrangement between Mr. Smith & myself.

Int. And these ^{notes} were made by Samuel Smith & Isaac for Isaac Smith interest?

Ans. Samuel Smith I did not know ~~any~~ ^{about} them. They took Isaac's notes for the interest as to Samuel Smith I do not remember him that was. In purchasing the dryer goods I wanted to pay from him in

bonds. we negotiated some. o. days. I finally
gave up the negotiation. Mr Lyster. said he
would take them at first but afterwards he
thought he could only take \$5000. & then I
got Mr Noxon. to endorse my notes to the extent of
\$14 000. Mr Noxon was a kind of watching the
thing for me. & so when this sale took place
they took the notes over to him
But Isaac Smith agreed to keep you hampered
I suppose.

Ans. Yes sir

But And he gave these notes to Noxon for you.
Ans. Yes sir

But. Do you know anything of the purchase
by Orville Smith from Hammon Smith.

Ans. I only know from what they said
But who.

Ans. What Orville Smith & Smith said

But. What did they say?

Ans. When I was down there

But. Do you know anything about the pur-
chase by Orville Smith from Hammon Smith

Ans. Only by hearsay

But. What did you know on account of Orville
Smith buying goods in New York.

Ans. Nothing except by hearsay

But. What did you know on ~~account~~ in regard
to the amount of Orville Smith indebtedness

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to other parties besides yourself, and the matter
can be represented by Reed & Smigley at the
time you made this purchase.

Ans. I know nothing about it.

Int. What persons to your knowledge was
or will be indebted to besides yourself
& those to whom Reed & Smigley had given
guaranties

Ans. I know none except myself & Reed & Smigley
Int. Did you not see a large quantity of goods
in Albany when you were there.

Ans. Yes Sir

Int. What did you know of them

Ans. I went through the store with Mr. Hayes.
& he showed me the marks upon them & being
the same. I had originally bought from him.

Int. Did you see any other goods there

Ans. I saw other goods there quite as largely of other goods

Int. Did you know where they came from.

Ans. I did not.

Int. Did you know whether any of these
goods were purchased for cash or on credit.

Ans. I did not know anything about it.

Int. What did Reed & Smigley say to you at that time
in regard to his owing debt except those owing
to Reed & Smigley & the one owing you?

Ans. I know nothing more except that he said
that whatever he got for the goods he was giving

to pay to his creditors

Int. Did you know what creditors

Ans. No sir only as to Mr Kingsly & Mr Weed

Int. For any thing you knew were due any
& what other creditors besides those represented
by Weed & Kingsly

Ans. Isaac Smith claimed to be a creditor.

Int. To what extent,

Ans. To some \$1000 I think

Int. Did any of those goods go to Isaac Smith
which you purchased

Ans. No sir

Int. Was he the only person other than yourself
& Weed & Kingsly who claimed to have any interest
in these goods

Ans. All I know of. I would explain here &
did I think Finch said he had made arrange-
ments for some \$300 or \$400 worth of goods & if
they came in he wanted I should take them
I think these goods came in,

Int. Did you consent to take them

Ans. I think I did.

Int. From whom were they purchased

Ans. I do not recollect the name except that
it was a matter of accommodation

Int. Do you know whether he bought them on
Credit or for Cash.

Ans. I don't. I think however on credit.

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Int. Were they brought in Albany?

Ans. I think they were I think he said they were.

Int. Did he state whether they were for cash or on credit?

Ans. No sir.

Int. Do you know which it was?

Ans. I do not.

Int. There is a statement in the deposition of Horich that "William G. Wad. D. C. Jackson & J. J. St John all know that there were a great many goods there in my store & being received there that were brought in Credit." State what you know about it.

Ans. I do not know any thing about it.

Int. The witness Horich goes on to state, "I recollect a conversation that took place at my store about a week before the sale to Jackson & while the inventory of the stock was being taken. Harmon Smith had been buying goods for me & he said in the presence of my self & D. C. Jackson, that he had brought &c to the end of the answer. Do you recollect any such conversation or any such incident, Ans. I do not.

Int. Did or did not any such conversation take place as stated in the nineteenth interrogatory of Mr. Horich's testimony.

Ans. No sir.

Int. Did any thing similar transpire?

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Ans. No sir, not to my knowledge all that I recollect is that he mentioned that there were some goods he had acquired which might come in, and he wanted to know if I would take them to the extent of \$300 or \$400.

Int. Was that before they came in or after?

Ans. It was before they came in and he wanted to know if I would take them. I told him I would.

Int. Can you be positive as to what I called your attention to in reference to the testimony of Orville Finch in which he swears you stated that he might as well die for an old sheep as a lamb.

Ans. No sir I do not recollect.

Int. Did you or not even make such a statement?

Ans. I did not.

Int. What else did you know in reference to the financial condition of Orville Finch at that time?

Ans. I know that he made an assignment.

Int. But at the time you were negotiating that sale what did you ascertain then?

Ans. I know nothing of his financial condition at that time of my purchasing, excepting that he had several parties to whom he owed money.

Int. What do you know of any intention on the part of Finch at the time he made the sale to you or at any time in regard to any purpose or intent on his part to either hinder or delay

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or defraud his Creditors.

Objected to by J. Smith Counsel for Defence
The Court overruled the objection.

To which ruling Mr Smith then and there
excepted and still does except.

Ans. I do not know any thing at all I did not
know of his intention to defraud his creditors although
it was pretty sharp practice on me.

Int. You have stated that you knew J. H. J. J.
Isaac Smith, James Smith and J. H. J. J.
You know Mead & Chugsey?

Ans. I got acquainted with them at the time
I was in Albany, I never knew them before.

Int. Also what you know with regard to the intention
of all or either of these gentlemen named with
regard to their intention to hinder delay or defraud
the Creditors of J. H. J. J. at or prior to the
time J. H. J. J. made the sale to you.

Objected to by J. Smith Counsel for Defence,
Objection overruled by the Court.

To which ruling Counsel for Def. then
and there excepted and still does except.

Ans. I did not know of any thing.

Int. What did you know of J. H. J. J. purpose
or the purpose of any other gentlemen to
defraud or cheat any gentlemen or any other
Creditors.

Ans. I did not know any thing.

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Int. How did what was done with the \$1000. in
notes that were endorsed by Reuben R Kennedy
Int. I paid them to Lurch, and Lurch paid
them to Obed Springsley all but one note.

Int. When was that payment made

Ans. It was made at the same time I paid as to the goods
Int. Do you know if these notes have been paid and
taken up, by any body and if so by whom.

Ans. They were taken up.

Int. By whom were they taken up

Ans. By Mr Kennedy.

Int. By whom were they made;

Ans. They were made by my self endorsed by Mr Kennedy

Int. Who paid Mr Kennedy;

Ans. Mr St John has paid him;

Int. you took up these notes with the notes you
received from Mr St John.

Ans. Yes Sir

Int. What whether these St John notes have been paid or not,

Ans. They have.

Int. How do you know;

Ans. I have had them in my possession

Int. How came they in your possession;

Ans. They came through the hands of Leol Norton
to me

Int. What right had you to them;

Ans. These notes I had endorsed for Mr St John

Int. And you took them to take up your endorsement

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Ans yes sir

Int. When you saw these goods in the hands of the
shippers you recognized the Jayer goods?

Ans yes sir

Int. State whether the firm of Isaac Smith & Co
bought any goods in New York during the time
you and Smith were in business together.

Ans They did between \$10000 & \$12000.

Int Did you see any of these goods in the shelves
of Orrin Smith?

Ans I do not know that I did.

Int Do you remember seeing any marks on these goods?

Ans I do not know that I did

Int. What had become of these goods?

Ans. They were sold to Samuel Smith & Orrin Smith

Int. Were not some of them in Smith's possession
when you went down to Albany in the fall

Ans They were.

Int. If so do you know about them?

Ans. They were a portion of the Jayer goods. I
was talking to Mr. Jayer and asked him to take
a portion of his pay in goods.

Int Did you not see any marks of Isaac
Smith & Co on the goods?

Ans I cannot say.

Int How came you to go into this purchase
with Isaac Smith down at Albany?

Ans. Well we just thought of getting him up

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at Madison Mo.

Q. What business were you were engaged in then
Ans. I was building Rail Roads and running
Roads. I was rather opposed to his buying his
stock in from Jackson Mich and he returned
to Jackson. and sold out his stock in a few
weeks or months I went to New York and he met
me there and told me he could make this purchase
ofAYER. of Albany and I asked him how he
could purchase it and he said he could pay
some \$5000. or \$10000. down. finally he sent
for Mr. Ayer. and upon consideration I pro-
posed. to pay him \$10000. if the stock suited
us. Mr. Ayer returned to Albany and he conclu-
ded. not to make the trade with us. Mr. Smith
came on again he said he could make the
purchase of I could pay \$5000. we then
went to Albany and concluded the purchase
after which we commenced business in Albany
Q. Why in Albany?

Ans. Mr. Smith thought some of the goods were better
adapted to Albany than to Mo. My idea
was to take them away at the first commence-
ment. of the negotiations

Q. Did you know a man named Van Dusen
a clerk in Mr. Ayer's store?

Ans. I think I do.

Q. Now in regard to the manner in which

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these goods bought, were put up at Albany, go
on and till the very the manner in which the
goods were put up packed up and shipped,
gave all the history beginning at the Commence-
ment and going to the consumation of the trade
and the drawing of these Bills of Sale, Invention
and all that;

Thus After I purchased the goods. I was then ne-
gotiating on different days with Ayer, to pay
him his claim so far as I could. He had
previously agreed to take a portion of the in
goods. in case I purchased the stock I made
the same arrangement with Mr St John,
On the day I took possession of the goods I
commenced selling as usual, the clerks
were all there and I think Mr Larch was there
not all the time but a portion of the time I
sold at private sale, and at the same time
Ayer was selecting his goods & carrying
them up stairs on the next day I sold to
Mr St John and gave the stock over to him
Previous to this I had said to Mr Licio and
others that I had taken possession of the
store and I supposed I should have to pay
them for their services, Mr Larch stepped up
and said he had hired them till Saturday
night, and thus the matter rested. I
went on selling goods, and the next day

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Mr St John took the goods & he took the money
& kept up the appearance of the store as well as
he could as though the goods were selling at private sale.

That day all the goods were packed. We had then
there a long time and were anxious to get away but I
was there one night as late as ten and eleven o'clock.
The goods were taken into the cellar to pack. I
think while they were packing the goods Mr St John
brought his goods down into the cellar to pack.

The goods were packed and mounted, 55 St John
Milwaukee. The goods were packed and ship-
ped every day Mr St John had particular charge
of the packing and shipping.
But who assisted?

Ans There was quite a number of clerks.

But what directions if any were given in your
presence with regard to the route to be taken to
go to the Rail Road or in regard to it on the
day when these goods were taken to the
Rail Road & shipped?

Ans I gave none at all.

But what did you hear?

Ans I did not hear any given

But in regard to the time of packing these goods
the mode of packing and the place, with refer-
ence to being private and what directions
did you give?

Ans I gave none. They were packed, and

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they were taken out of the store, down into the cellar. they were taken out of a window on the side street but do you know what routes were actually taken in taking these goods to the Race Road.

Ans. I do not know what was said but there was sleighing at the time. I think the main street was bad. whilst on some of the back streets there was more snow

but you gave no directions

Ans. No Sir

Q. Did you know that any directions were given by any body.

Ans. I did not

Q. I find a statement here in the deposition of Jacob Paulsen in answer to the 6th Inter. "the first lot of goods I saw taken from the store marked for Milwaukee. were taken Wednesday Decr 8/59 &c." to the end of the Interrogatory. State what directions were given by you or any other person as to the place from which the goods should be taken from the shelves of the store.

Ans. When Mr. Ayer was taking his goods & taking them up stairs the clerk rearranged the goods in the store they were trading at the time and so kept up as good an appearance as they could.

Q. Was it by your direction

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Ans. I do not know whether it was my direction or not. but it was done by the eluder.

but Did you give any instruction at all?

Ans I do not think I did.

but, state what instructions, if any, you gave on the subject
Ans I could not very well give instructions because Mr Fryer was then the man who was selecting the work charge. No man then touched the goods except by his instructions.

but Do you know when it was?

Ans ^{probably} it was on the Tuesday

but Do you mean to be understood that it was not on the Wednesday

Ans I think it was Tuesday.

but. This statement is, "that on Wednesday December 5." what do you know about such instructions

Ans I do not recollect giving any such instructions

but What about any body else?

Ans I do not know of any body giving such instructions

but "On Wednesday morning between seven & 9 o'clock. orville Lunde told Henson & myself. that he wanted us to be Masons &c &c"

Did you hear any such conversation as that I did not.

but I will read this whole interrogatory now

"that he wanted both of us to be Masons &c &c"

now what do you know in regard to this & statement to the truthfulness of it & whether

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any such conversation, took place, between
Mr. Amick & these clerts. Whether this man
Manfinsen or Hudson or any other man;
Ans. He might have had the conversation but I did
not know anything about it.

Int. What arrangement was there at that time be-
tween you and Amick of any with regard to the
destitution of the goods in the manure stable as in
that interrogatory.

Ans. There was no arrangement that I know of.

Int. What took place or passed or was said about
the goods getting up to the depot, or as to making
as good a show as possible or what did you know about it?

Ans. Not any thing from Mr. Amick

Int. or any body else?

Ans. No sir.

Int. If such an arrangement had been made, as to
secrecy or as to the unusual mode of storing the
manure would you not have been likely to
recollect it?

Ans. I think I should still there might have
been some thing happened that I forgot.

Int. Could you have forgot, such a thing as that?

Ans. I think not.

Int. Where was you Janrly living at that time?

Ans. At Madison Wis cons.

Int. How long were you away from home at that time?

Ans. 9. or 10 weeks

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Int. Did any member of your family go to Albany
Ans. My wife came while I was there.

Int. There is a statement made by one of the
Witnesses that St John, & you occupied the same
Rooms. at the Stanwix Hall state of you did,
Ans. There was no one occupied the Rooms with
me at Stanwix Hall except my wife when she
was there for about a week.

Int. On ~~the~~ 11th it is stated "The night before
the last of Sara goes" &c.

What do you recollect about that Circumstances
Ans. I think I remained in the Hall till about
10 or 11 o'clock that night.

Int. It is stated here that you remained
all night

Ans. No sir that is the latest I was all the
time.

Exam. continued till 9 A.M. next day

Thursday June 25th 1863.

D. B. Jackson. re.

Called, and examined by J. H. Kales.

Int. I will call your attention to a statement
annexed to the deposition of Elisha Gayden
Collier purporting to be a Copy of the
Statement of Orville Knapp. assets dated
September 1st 1858, will you look at that Copy
Witness did so.

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But when does it purport to be made?

Ans. Sept 1st 1858,

But where were you on Sept 1st 1858?

Ans. I do not recollect exactly, but I think in Wisconsin. Tell the Court and the Jury what knowledge or information you had of the making of that statement at the time that the purports in the case got to have been made, or at any time afterwards and up to the time you purchased the goods of Orrell Smith in December 1858.

Ans. I know nothing about the statement,

But, how long had you known Smith previous to Sept 1st 1858, and how many times had you seen him?

Ans. I think I met him once or twice in New York or Albany.

J. D. Mather offered in evidence the agreement, which we proved yesterday between Isaac Smith and Parius Jackson and also the article of agreement entered into Oct 28th 1857 between Isaac Smith & P. B. Jackson.

Agreement read to the Jury.

But they say that

Ans. I have already answered to him by Mr. Smith. But, what conversation had you with Smith or with any one in relation to his affairs about Sept 1st 1858. Ans. I had no conversation whatever about his affairs. But, what knowledge or information had you that that statement or any similar statement was or was not to be made by Smith or on his behalf by any body.

Ans. I do not know of any such statement,
 Qnt. I notice that in the statement was rec'd
 in regard to stock that Finch had stock on
 hand for \$1000. What knowledge had
 you in regard to that item whether it was true
 or untrue either on the 1st Sept. 1858 or between
 that time and the time of your purchase in Dec 1858.
 Ans. Well, I knew nothing but I naturally supposed
 that he should have some stock because originally
 Mr. Smith had sold him his stock

Qnt. There is a statement of land between Albany &
 Schenectady put down at \$900. as the property of
 Finch. What do you know of that property or whether
 it belonged to Finch or what its value was
 Ans. I never heard it mentioned till I heard it men-
 tioned in Court.

Qnt. There is a further statement that it is encumbered
 for \$4000. What do you know of that?

Ans. I do not know any thing about it.

Qnt. When did you first learn in regard to the prop-
 erty that Finch had claimed or had ever pre-
 tended to claim any interest?

Ans. Only in Court.

Qnt. There is a further statement here in reference
 to a mortgage on one hundred and fifty one
 and a half acres of land in Broome County State
 of New York first mortgage \$2500. What do you
 know in regard to that and when did you first learn

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of it.

Ans. I did not know any thing about it of my own knowledge, all I know I have learned in Court since the suit commenced.

Int. Are you acquainted with the firm of Melmon, Nelson & Co or either of the members of that firm and I am not.

Int. Are you acquainted with Elisha Hayden Collins and No Sir.

Int. Whose deposition has been read in this case: Ans. No Sir.

Int. What do you know about Swelle French making a statement either to Hayden Collins as stated in the deposition or to Melmon, Nelson & Co in regard to his solvency or pecuniary condition either on the 1st Sept. or any other time?

Ans. I do not know any thing about it.

Int. When were you informed for the first time if ever that any such statement was claimed to have been made.

Ans. Only here in Court.

Int. Was your attention called to this statement in this manner and definitely on the other trial that you recollect.

Ans. It strikes me there was something said at the other trial.

Int. Are you certain about that?

Ans. No Sir I am not certain but I have heard it talked about some when outside or in.

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Int. In connection with what case?

Ans. This case here

Int. Are you acquainted with W. H. Shalton formerly of Albany

Ans. I have met him once or twice

Int. When did you first see him

Ans. I must have seen him once on the North River going up from New York

Int. When was that?

Ans. I think in 1856, or 1857.

Int. When did you next see him and where?

Ans. I saw him at Albany on the 9th Dec 1858. I think he was in Albany. I know when I was there purchasing goods from Finch.

Int. But the deposition read of Mr. Shalton in the answer to the 6th interrogatory which has been read in evidence he states that "between Sept. 1st and Nov. 1st 1858. (a large portion being purchased in October in that year) that purchases of goods were made by Orville Finch, that the purchases were to the amount of about \$30,000, that the chief purchasers were from White Brown Davis & Co. The-
Mason, Stetson & Co. and Griswold & Co. and other firms in the Cities of New York and Boston." What knowledge or information had you during the month of October or at the time you made the purchase in Dec 1858 in regard to Finch purchasing the goods of the firms mentioned

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Ans I did not know any thing about it?

Int. What did you know about it at the time you made the purchase

Ans. I knew nothing about it then I did not even know the firm

Int. are you acquainted with these firms or with any of them

Ans I am not.

Int. What assistance if any did you give to Mr. Litch or in any way procure for him or obtaining credit of these firms or of any firms in Boston New York or Hartford at any time

Ans. I never gave him any credit any information or any assistance for I knew nothing about it. So what persons if any did you make representations or cause representations to be made in regard to the credit and commercial standing of Horrell Litch at the time or previous to the time of making the purchase in Dec. 1858.

Ans I never gave any information or any credit.

Int. What house claims or business did you have or cause to be had by yourself or Horrell Litch prior to the making these purchases of him

Ans I had no dealings I had no house claims with him till the time at which I purchased goods of him in Albany I was very little acquainted with ^{him} except by reputation at that time

Int. At the time you made the purchase of Litch

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or previous to that time what knowledge information or belief had you in regard to the means by which Finch had obtained credit if he had obtained any credit in New York Boston or Hartford for goods purchased by him.

Ans. I do not know of any means he had of obtaining credit except as to what he purchased from Smith and Jackson. He had a good store then of some \$18,000 or \$20,000.

Qnt. At the time you made this purchase in December 1858, or previously what knowledge information or belief had you as to what Isaac Smith or Harmon Smith or Fred or the firm of Fred & Smagely had done to procure a credit for Dr. Wille Finch to purchase goods in Boston New York or Hartford.

Ans. I did not know Fred & Smagely & knew nothing of the matter till I had been there some time negotiating to get Mr. Finch to turn out goods & pay the credits of Isaac Smith and Company. Qnt. What did you learn then.

Ans. Every thing I did was kicked over by some means or other.

Qnt. What knowledge had you as to their intentions.

Ans. I had no knowledge.

Agreement between Isaac Smith & Co. Jackson presented to Thayer.

Qnt. Look at this.

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witness did so.

But still the facts in relation to the object and purpose for which you made this purchase.

objected to by Mr Smith Counsel for defense
The Court You may state the facts in relation to your purchase

Ans. The object of my going to Albany was to secure a debt, which I supposed was due me from Isaac Smith and Orville Smith and to save my Creditors that is Mr. Jayer of Albany and merchants in New York from whom I had purchased goods when Isaac Smith ~~is~~ and I were in Company amounting to \$3000. I wanted to use all the means Smith had and also Smith and to take care of Mr. Hoxon and Mr. Rose of Worcester who had endorsed my paper to the extent of \$1400. a portion of that paper I had been paid for at that time. I called upon Isaac Smith and asked him why that paper had not been protected. The arrangement made between Smith & myself was to take care of the Creditors and the goods or the means which the goods brought were to be applied to the payment of Jayer and the New York Creditors. Mr. Smith said he understood that arrangement and when he purchased the goods he was to carry the arrangement out. I was there negotiating & else not the matter and I said

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had become security for Lynch for some time
and they would not allow the sale to take place
till that was paid I then gave up the chase.
& thought I would let it go. I then saw Col
Noxon and told him the position in which I was
placed and told him ^{that} I would attempt to carry
out my ideas, if he would assist. He said he
would do all he could. He then asked Mr Kennedy
to endorse my paper which Heed & Pungoley said
they would take. I came back and made a
bargain with Gwille Finch for all the goods
in the store. The trade was closed. I made the
payments as agreed and took possession on
the 7th of December. I sold goods on that day
myself and then sold the stock to Mr St John.
Q. Why did you find it necessary to purchase
the whole stock of goods at that time?

A. I found it necessary as the only way to se-
cure what Mr Finch was owing on the purchase
of goods from Hammon and Deane Smith.

Q. What was that represented by
A. By notes.

Q. But who held those notes.

A. They were in the hands of Col Noxon and
some others. Col Noxon had endorsed my paper
to the extent of \$4000.

Q. When was that?

A. In August 1857.

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Int. For what purpose;

Ans. For the original purchase from Mr. Loyer.

Int. Were they paid;

Ans. Yes sir.

Int. Had the indebtedness to Loyer been paid when the notes were placed in the notorious hands

Ans. No sir.

Int. For what purpose did he hold these lunch notes

Ans. He held them for his security and my security & suppose to secure the debt of Isaac Smith for my benefit and his.

Int. Of what were these lunch notes the proceeds

Ans. They were the proceeds of the sale of Cannon Smith & lunch of the goods that formerly belonged to Jackson & Smith and which I had sold to Isaac Smith. He agreed to apply the proceeds to the liquidation of the debt of Mr. Loyer and the men in New York.

Int. When you sold out to Isaac Smith what knowledge information or belief had you that Isaac Smith would not in person take the goods and carry out the agreement which had been entered into between you in October 1857.

Ans. I supposed he would do so.

Int. What knowledge information or belief had you that he would transfer the stock to any other person or persons.

Ans. I had none.

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Q. When did you first learn it had been done
A. I don't feel any more one year, perhaps
six or eight weeks ago that he had the notes
of Dr. Smith the proceeds of the sale and he sup-
posed it to be all right.

Q. The goods were purchased from Isaac Smith
by Harmon Smith and Orville Smith

A. Yes sir

Q. At that time what knowledge had you of
the business financial condition of Harmon Smith
and Orville Smith

A. I knew nothing

Q. Were you in any manner consulted about
the sale of the goods from Isaac Smith to Harmon
Smith and Orville Smith

A. No sir

Q. Afterwards there was a sale from Harmon
Smith to Orville Smith directly

A. Yes sir

Q. What knowledge had you at the time of
the making of that sale that it was goods or
was to be made so.

A. I knew nothing at all about it till I got down
there.

Q. When were you during all the time these
sales were made just from Isaac Smith to
Harmon Smith and Orville Smith and then from
Harmon Smith to Orville Smith

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Ans. I think I was in Wisconsin.

Qnt. If you were in any part of the State of New York State where it was

Ans. I do not know now I might have been. but I think I was not.

Qnt. Were you at Albany.

Ans. I think not.

Qnt. When were you last at Albany being to October 1858. When you went to secure this debt

Ans. I was there I must clearing up my head with Mr. Smith.

Qnt. When was that how many months previous or about how long

Ans. I might have been in October or November. It was some three months I guess.

Qnt. You made the purchase of the goats in Dec 1858

Ans. Yes sir

Qnt. You went there in October

Ans. Yes sir

Qnt. How long was it before October that you had been previously in Albany.

Ans. Well. I do not recollect now being there before that time unless it was at the time I made the sale to Isaac Smith

Qnt. Was that about August?

Ans. Yes sir August we purchased the goats. I think it was about three months after that that we made the sale to Isaac Smith

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But so that it would be nearly a year.

Ans. 10 year or 8 months

Qnt. Had a correspondence paper between you and Isaac Smith or Howell. Which in regard to his matter.

Ans. I think I received a letter from Isaac Smith saying that he had sold out.

Qnt. Where into correspondence now.

Ans. I think it is at my office in Wisconsin.

Qnt. You have stated that the firm of Isaac Smith & Co. was indebted at the time you sold out.

Ans. Yes Sir.

Qnt. And that under the agreement Isaac Smith was to take care of these firm debts.

Ans. Yes Sir and the goods were to be used in no other way.

Qnt. State whether you succeeded in taking care of the liabilities or any part of them of the firm of Isaac Smith & Co. were all the debts paid.

Ans. No Sir they were not.

Qnt. What part of these debts did the goods pay and what part did they fail to pay.

Ans. They paid the notes of Litch to a certain amount.

Qnt. Litch's notes were not the firm debts of Isaac Smith & Co.

Ans. I think Mr. Smith paid two or three of the last notes to Litch and I think some were due in 3, 4 & 6 months and the balance perhaps in one and two years.

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Int How much of the debt of Isaac Smith do these notes of Smith fail to pay

Ans. I think there was originally about \$15000, but how much were you still liable for and the Company liable for after these notes had been paid was at a considerable amount

Ans. Yes Sir

Int. Was it \$500 or \$5000.

Ans. I think \$800 or \$900

Int. Was that after realizing on the Smith notes

Ans. Yes Sir. It might have been less or more, somewhere in that vicinity. There were some new York debts against us that were due I think he took up one or two of the notes. the others I have had to settle myself.

Int. Out of what funds did you settle that.

Ans. Out of my own pocket

Int. Have you ever been indemnified or with for these acts,

Ans. No Sir only by promises.

Int. Have you ever by Smith been indemnified for these things?

Ans. No Sir

Int. Have you ever been in the mercantile business

Ans. Yes Sir

Int. How long.

Ans. I think about 12 or 13 years.

Int. Where was that.

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Ans. I was in business in Michigan Ohio and Wisconsin

Qnt. How long prior to the time of making these purchases had you been in mercantile business

Ans. A few months

Qnt. Where was that?

Ans. Madison Wisconsin

Qnt. At what place

Ans. at Leont & at. Hall River

Qnt. Were you able to judge of the prices of goods

Ans. I had been in the habit of purchasing for some time

Qnt. Did you know the value of the goods

Ans. I think I was a fair judge.

Qnt. What do you know of the making of the inventory of the goods here.

Ans. I was in the store most of the time the inventory was making up.

Qnt. Did you see the goods?

Ans. I did not all. but closely through

Qnt. What was the value of that stock of goods at the time of your purchase in New York

Ans. The stock of goods was a very good stock of goods. They were a stock of goods selected for the Albany market. Many of them however were good quality but some were poor. Of the goods we purchased from Taylor were good goods they were not worth as much as clean new stock

2/4

Int. Larning the stock altogether,
do I have not changed my opinion from the first
but what was that?

Ans. 80 cents.

Int. That is 80 cents off the invoice price

Ans. Yes sir.

Int. You say then they were worth \$16,972.²⁰/₁₀₀
which you paid for them

Ans. Yes sir.

Int. In the Albany Market were they worth the same or more

Ans. Well I should not want to pay more. My opinion
is that was all they were worth.

Int. But you think they were worth that?

Ans. I do.

Int. What is Mr Rogers business?

Ans. Building & Rail Roads.

Int. What was his business at the time he became your partner?

Ans. I think he was then owner of a Rail Road in Wisconsin.

Int. Was he in any other business?

Ans. I think he was connected with the Puget Sound Canal.

Int. What was he reported to be worth at that time?

Ans. I considered at that time about \$200,000.

Int. What was Mr Kennedy reported to be worth at the
time he endorsed for you.

Ans. He was reported to be wealthy, as he was
interested in a bank and was a large farmer.

I did not know him as well as I did Mr Rogers
but think Mr Kennedy's paper could be used

2/5

full as well as Mr. Rogers. a letter,
 Int. He was President of the Saratoga County Bank
 was he not.

Ans. yes sir I learned from Mr. Mungley that they
 could use his paper full as well as any other

Crop Examination by Mr. Stone

Int. How long have you resided in the state of Wisconsin
 Ans. I think a little over 10 years.

Int. Where did you reside immediately before
 you lived here

Ans. I resided in Ohio

Int. How long did you reside in Ohio.

Ans. I think some three years

Int. Where did you live immediately before you
 resided in Ohio.

Ans. I resided in Michigan

Int. How long did you reside in Michigan

Ans. I think some 20 years.

Int. What business were you engaged in in Michigan

Ans. I have been in the Mercantile business and in
 the Milling business

Int. In what business were you engaged immediately
 before you left Michigan

Ans. The Milling business.

Int. In what business were you engaged in Ohio

Ans. I was engaged in building the Toledo and

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Cleveland. Rail Road & m selling goods
Int. Did you become acquainted with Samuel
of St John in Ohio

Ans Yes sir

Int Was that when you first went there

Ans No sir

Int How long had you been there?

Ans I think about a year

Int How did you become acquainted with him

Ans I think he came and went into one of the
stores I had there

Int Went into your employ?

Ans Yes sir

Int How long was he in your employ there?

Ans I think some thing over a year

Int What business did you go into on moving
into Madison

Ans I went into the Rail Road business selling goods

Int Did you know Mr St John the first year
you moved there

Ans I knew him but I do not think he was there

Int Was he there the second year after you moved there

Ans Yes sir

Int Was he in your employ?

Ans Yes sir

Int In what capacity?

Ans He had charge of a stock of goods at Ripon

Int How long was he in that capacity?

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Ans. I think about 5 months.

Int. Was he afterwards employed in any other capacity?

Ans. I think he was in charge of a store at Bears Dam.

Int. How long was he there?

Ans. 10 months or a year.

Int. Was he employed by you after that time?

Ans. No Sir.

Int. Was he connected with you in business after that time?

Ans. No Sir.

Int. What business were you in when he was at Bears Dam?

Ans. I was building a Rail Road.

Int. If a d he anything to do with it?

Ans. I think he was employed in running the road.

Int. After its construction?

Ans. Yes Sir.

Int. Did he have anything to do with the construction of it?

Ans. No Sir.

Int. When was that Road finished?

Ans. 14 miles out of Milwaukee to Columbus was finished about 8 years ago.

Int. Were you interested in any other Rail Road?

Ans. I was interested in the Madison Iron Lake Road.

Int. Was St John connected with that Rail Road?

Ans. I think he was located in that connection.

Int. When was that?

Ans. I think in 1856.

Int. How long did he remain located there?

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Ans. I think some where about 9 months or a year.
Qnt. Were you ever engaged in constructing any other
Road.

Ans. The Toledo & Cleveland

Qnt. I mean in Wisconsin.

Ans. Yes sir

Qnt. What Road.

Ans. The La Crosse & Milwaukee

Qnt. Had he any connection with that.

Ans. Not that I know of.

Qnt. Was he in business while that road was in
process of construction

Ans. Not that I know of

Qnt. Was he a contractor on that line

Ans. I think not

Qnt. Was he a sub contractor for any portion of it,
in its construction

Ans. I think not.

Qnt. What was your position as to that road.

Ans. I was the original contractor.

Qnt. When were you engaged in the construction of
that Road.

Ans. In 1853, & 1854, I believe

Qnt. Have you been engaged in the construction of
any other roads than those you have named.

Ans. Yes sir I have

Qnt. What Roads

Ans. I was constructing and building me of which

219
Q Was part owner from Madison to Watertown.
A Not then was that.

Q. It was in 1858.

A. Was Mr St John connected with that Road in any way shape or manner.

Q. I think when the Road was finished he run that Road.
A. Were you part owner of that Road at that time
Q. I was.

A. How long was he engaged in running that Road.

Q. Well I don't recollect 6 or 9 months or a year.

A. Was that in 1858.

Q. It was the latter part of 1858. or 1859, that he was running.

A. What was he doing in 1858?

Q. He was selling goods in Watertown.

A. Had you any interest in the goods he was selling.

Q. No sir.

A. How long did he occupy that capacity of running that Road in 1859.

Q. I think he was on the Road a year.

A. up to 1860.

Q. I think so. but am not quite sure about the time.

A. What business was he engaged in in 1860.

Q. I think he was on the Road.

A. Were you part owner at that time?

Q. I think I was.

A. What business was he engaged in in 1861.

Q. Well I don't recollect of any business he was

220
in, except on the Race Road, & selling goods.
Q. What business was he engaged in in 1862?
A. He was Deputy Marshall.

Q. And you

A. yes sir

Q. In what business is he now?

A. He is Coroner Marshall or assistant Coroner.
Marshall of Wisconsin

Q. How long did he remain deputy Marshall under you?
A. Over 6 months perhaps a year. He went into
the Army after a while

Q. Is he not a deputy Marshall now?

A. I do not know but he holds the papers yet

Q. Have you ever attended at Madison Wisconsin
during the sessions of the Legislature

A. yes I have.

Q. How many sessions have you attended

A. I cannot say how many I have done part of the time

Q. Have you ever attended as a lobby member

A. I believe so.

Q. How often have you attended as a lobby member

A. I have been there more or less for the last 5 or 6 years

Q. When did you become acquainted with Isaac Smith

A. I think in the Spring or Summer of 1857

Q. Where did he come from?

A. From Jackson Michigan I think

Q. Where did he come to?

A. To Madison Wisconsin

221

Int Did you have any knowledge at that time
as to his pecuniary means

Ans Nothing but his representations at all.

Int When did you say he came from Michigan
to Wisconsin & saw you.

Ans In 1857 I think

Int. What time of the year was it?

Ans In the Spring or Summer I think

Int. Was it the Spring Summer Fall or Winter

Ans I don't recollect distinctly.

Int What is your best recollection

Ans In the Spring

Int How long did he remain in Madison

Ans About 10 days I think

Int When did you next see him

Ans The next time I saw him was in New York.

Int When was that

Ans I think it was in July

Int Of the same year.

Ans Yes Sir

Int Who did you see with him in New York

Ans I saw Mr. Loyer with him,

Int Did you meet him by previous arrangement.

Ans I wrote him saying I should be in New York about that time.

Int Where did you direct your letter

Ans I directed it to Jackson Michigan

Int. Was he in New York during the time you said
you would be there

Q 227

Ans He was there a very little time
Qnt You saw him in New York.

Ans Yes sir

Qnt Mr Lyster was with him

Ans Yes sir

Qnt. Did you see Mr. L. Reed with him on that occasion

Ans I think not.

Qnt. Did you see him during that summer:

Ans 1857:

Qnt. Yes sir:

Ans No sir:

Qnt How long did Mr Lyster remain in New York at this time
Ans. I think only one day - hardly that:

Qnt. Did you conclude the arrangement for the purchase of these Lyster goods at that time:

Ans I think not.

Qnt Did you then negotiate for the purchase:

Ans No sir I think not

Qnt Was there any thing said about that at that time

Ans Yes sir

Qnt. When did you next see Mr Smith

Ans I saw him within 3 or 4 days.

Qnt. How often did you see him whilst you were down there

Ans Well. I think he spent a day here at that time

Qnt. Did he keep going and coming to you every 3 or 4 days during the time you were in New York

Ans. No he only came twice,

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Int. What was Mr. Smiths business in New York, at that time

Ans. I did not know he had any business

Int. Was he in business in Michigan

Ans. I think he had just sold out there.

Int. He had no business in New York.

Ans. I think he was there for the purpose of buying stock & arranging a partnership with me in the company

Int. Where did you see him next

Ans. At Albany

Int. Did you stop there on your way home

Ans. Yes Sir

Int. Did you see Mr. Lyles at that time

Ans. Yes Sir

Int. How many days did you attend there

Ans. One or two days

Int. When was that

Ans. I think in August.

Int. What part of August

Ans. I think the fore part of August

Int. Did you purchase the goods from him at that time.

Ans. Yes Sir

Int. Where were they shown

Ans. They were in a store belonging to Mr. Lyles.

Int. How long did you stay in Albany after purchasing the goods

Ans. I think I left the next day after the purchase

224

was made

Int. You left them in charge of Mr Smith,

Ans. yes sir

Int. What was the consideration for paid by
Mr. Smith & you for them.

Ans. I think \$18,000.

Int. What did you pay.

Ans. I paid \$4000. down in \$5000 from mortgage
bonds of the La Crosse & Milwaukee Road. I gave
the paper of myself & Mr Isaac Smith Cor. \$14,000
indorsed by Mr Dixon of New York & Mr Rose of Wisconsin

Int. When was it made payable

Ans. Some I think in 60 days some in 3 months
4 months 5 months 6 months & some in one
and two years

Int. Did you pay anything further than that
mortg. bond amounting to \$4000. & these notes
due not at that time

Int. Where did Mr Dixon reside at that time

Ans. I think at Cuscuta Saratoga County N.Y.

Int. What business was he engaged in at that time

Ans. I think he was interested in Rail Roads

Int. Where

Ans. I think in Wisconsin

Int. What Road

Ans. I think the Walatonia

Int. That is the Road of which you were patron

Ans. yes sir

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Q. Where did Mr Rose reside at that time?

A. In Milwaukee

Q. What was he.

A. He was the President of the Water Lane Road
Spt. How long had Greyer had that stock & on
hand

A. I could not tell you.

Q. Did you know at that time

A. I should think some of it he must have had
on hand some time but I do not know. Mr.
Smith took the inventory

Q. When did you next go to Albany?

A. I think in about 3 months after that

Q. You then sold out to Isaac Smith.

A. Yes sir

Q. How large an amount of goods had been
purchased in New York in the mean time

A. I think between \$10,000, & \$12,000.

Q. What was the amount of the sales in the
mean time

A. I do not know. I think Mr Smith told me
\$80 to \$100, per day

Q. Did you examine the books to see if that was so
A. I did not in full. I saw several days that
it was over that amount

Q. Did you examine the books to see how these
proceeds were disposed of.

A. I think he purchased some goods for cash

Int. How much in amount.

Ans. I should think \$500 or \$600.

Int. What else did he do with the avails.

Ans. He had taken up some paper.

Int. How much.

Ans. I think all in all New York, except about \$500 or \$600.

Int. What else had he done with the avails had he paid any of the Gayer papers.

Ans. I think he had.

Int. Were the avails of all the sales between the time you purchased from Gayer & the time you sold, not to Isaac Smith applied to the payment of the debt.

Ans. I did not say that.

Int. Did you make an invoice when you sold out to him.

Ans. I did not.

Int. How did you estimate the amount of the goods on hand.

Ans. We make an estimate from knowing what the stock brought from Gayer. was & the amount of the purchases in New York afterwards.

Int. You examined the books to see what had been done with the proceeds of those sales.

Ans. No I did not fully at that time.

Int. How \$5000 or \$6000. New York debt had been paid.

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Qus. That amount remained unpaid

Ans. Well I was about \$1200 to begin with and that would make about \$1600 paid would it not.

Qus. Yes sir

Ans. How much of the Payer notes had been paid.

Qus. Well I think the sixty & the ninety days notes but I don't know.

Ans. What were the respective amounts of those notes

Qus. I do not recollect exactly probably \$5000 or \$800. or \$1000.

Ans. Can't you give us some idea of the amount of that first note to Payer

Qus. It is past my memory now without the paper.

Ans. Was it a thousand dollars.

Qus. I should think it likely was

Ans. You think that or 4 notes were paid:

Qus. I don't so I might be mistaken

Ans. Did you take any notes of Isaac Smith when you sold out to him

Qus. I did not.

Ans. You took no agreement to assume the firm liabilities.

Qus. Yes sir

Ans. Did you know what those liabilities were at the time precisely

Qus. Only by his representation

Ans. Did not you examine the books to test the

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concern of his representations
Ans I run through to see merely what was doing
Int How long were you in concluding your sale to Smith
Ans I think from 3 to 5 days perhaps longer
Int you say the bargain for the Hager goods
was made at Albany;

Ans I think New York.

Int I understood you to say in Albany

Ans It was closed up in Albany the inventory
was finished & I told him I could not take
him unless he could take \$10,000 in bonds.

Int Had you seen the goods before you had a deed
upon the terms

Ans. No sir I had only the representations of Mr
Smith

Int Had Mr Smith procuredly to your sale to him
desired to purchase your interest

Ans I think not I do not recollect it

Int you had given the business your attention
Ans I had not

Int When were you next in Albany

Ans I think it was about three months
Cannot be positive as to the time precisely

Int This purchase from Isaac Smith from
you was in October 1857

Ans. Perhaps so I do not recollect dates.

Int When do you say you were next in Albany

Ans I don't recollect being there again for several months

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Int. How many months

Ans. I cannot tell you

Int. As nearly as you can tell

Ans. It must be at least 6 or 7 months.

Int. How long did you remain at that time,

Ans. I remained some 8 or 10 weeks.

Int. In Albany all the time,

Ans. I was in New York & resided a portion of the time

Int. Was that after or before July 1858,

Ans. It was in October 1858.

Int. You were not in Albany till October 1858.

Ans. I do not recollect now I might be.

Int. Were not you often at New York in the summer of 1858.

Ans. I think I was.

Int. Did not you visit Albany at that time

Ans. Yes I visited there New York & purchased goods

Int. Were you not at Albany in the summer of 1858.

Ans. I do not recollect. I might have been.

Int. Did you not see William G. Wood at New York in the summer of 1858.

Ans. Well I might and I might not. I do not recollect now

Int. What is your best impression,

Ans. I was thinking the first time I saw him was at Albany but I might have been at New York.

Int. Did you see Orville French at New York in the summer of 1858.

Ans. I think I did.

Int. Did you not see him in company with Wm. G. Wood

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Ans. Not that I collect.

Int. Your impression is that you saw Hirsch
in the summer of 1858 in New York.

Ans. It seems to run so in my mind.

Int. Was that the first time you had seen him?

Ans. I think the first time was in Albany.

Int. When?

Ans. I think when Smith & myself purchased the
goods of Hayer.

Int. What was he doing then?

Ans. I cannot tell you.

Int. When did you see him?

Ans. I think it was at a public house or where I
do not know.

Int. Who introduced you to him?

Ans. Mr. Smith.

Int. You think it was about the time he bought the goods?

Ans. I think about August 1857.

Int. Were you not in Albany in the summer of 1858,

after you had sold out to Isaac Smith & he to
Hamm & Smith & Orville Hirsch?

Ans. I do not recollect.

Int. Did you see Hayer then?

Ans. I do not know. It is my impression I saw him
the same year.

Int. You are positive you saw him the same year.
you purchased the goods from in New York?

Ans. I think I did. I think I saw him in New York.

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Int. Tell you saw William G. West. true,

Ans. No sir I don't think I did.

Int. Did you or did you not see William G. West in the Summer of 1858. in the City of New York.

Ans. I do not recollect that I did

Int. When and where did you first see him

Ans. I think it was in Albany:

Int. When?

Ans. In 1858.

Int. What part of 1858.

Ans. I think it was about the time I was purchasing the Goods of Finch

Ans. Now think that is the first time you had seen him

Ans. I think so I might have seen him on a steam boat, going to or from N. Y.

Int. And would you have known him if you had seen him on a steam boat unless you knew him before.

Ans. Some one might have pointed out to me.

Int. Then you are positive you never saw him in Albany before that time.

Ans. I think not.

Int. The first time you saw Finch he was in company with Isaac Smith?

Ans. Yes sir.

Int. When did you next see Mr. Finch?

Ans. I do not know whether I saw him when I sold out to Isaac Smith Suber & Smith.

Int. Were you not in Albany in 1858 ^{after} you

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Sold out to Isaac Smith?

Ans. I might have been

Sat. I was not young in New York that summer

Ans. Without saying positively I think I should

be abt. 4 or 5 in New York in 1858. I only judge

from the fact that I used to go to New York frequently

Sat. You generally went to Albany when you went there

Ans. I generally went that Road.

Sat. How often did you go that year.

Ans. I do not recollect I have it not in my mind

Sat. Previous to that year how often did you go to New York

Ans. Quite often

Sat. How often?

Ans. Every three or four months.

Sat. When did you first see Garrison Smith.

Ans. I first saw him in Troy.

Sat. When?

Ans. 1857

Sat. By whom were you introduced to him

Ans. I think by Mr. Miller

Sat. What was the occasion of your being introduced to him

Ans. I think I told him that I knew Isaac Smith

Garrison Smith was in a store in Troy

Sat. What was the occasion of your being introduced to him

Ans. Possibly as an acquaintance of Isaac Smith.

I do not know.

Sat. Who first sent Isaac Smith to you.

Ans. He came with letters of recommendation from persons

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at Jackson

Q. Who were the men?

A. Mr. Dixon was one I think and some gentle man in Jackson. I don't recall it now.

Q. Was that after or before he ^{had} sold out,

A. Before

Q. When were you first sued upon this note to Geyer?

A. It was perhaps a week or 10 days before my going East

Q. In what year?

A. I must have been in 1857

Q. You were sued in 1857?

A. I think so.

Q. What note was it you were sued upon,

A. I was sued upon one of the Geyer notes

Q. What time had it to run?

A. I do not recollect now.

Q. Was it one of the short notes?

A. I think it was one upon 6 months

Q. How large was it?

A. \$1700

Q. Were these notes payable monthly along,

A. I think some were and some were not.

Q. Were they payable in 2, 3, 4, 5, & 6 months & so on.

A. I think they were some of them & I think there were notes payable in one & two years.

Q. What was the size of the note due upon the due

A. I do not recollect now

Q. Was the note you were sued upon issued by Dixon & Ross

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Ans yes sir

Qnt. Was Noyes then living in Cresent?

Ans I believe he was

Qnt. Where was Noyes then living

Ans At Albany

Qnt. Was that note then owned by Noyes

Ans I believe it was

Qnt. How far is Cresent from Albany

Ans I think about 16 or 20 miles

Qnt. That note was signed by you and Smith & generally endorsed by Doe & Noyes?

Ans yes sir

Qnt. What was Mr Noyes position at that time

Ans He was a man that was owing considerable and had a very large amount of securities

Qnt. Was he considered solvent at that time?

Ans For any thing I know

Qnt. Had any suit been commenced upon that note in the State of New York

Ans I think not

Qnt. Was judgment obtained upon that note against you

Ans I saw not positive I know a summons was out before I started.

Qnt. Was due a judgment obtained?

Ans. It sh^{me} I think was but I saw not positive

Qnt. When was it obtained?

Ans I think during my absence to Albany

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Q. In what Court was the suit commenced.
A. In the U.S. Court.

Q. How long after you were sued was it before you went to it?
A. I think a week or 10 days it might have been a week.

Q. Were there any other suits remaining against you in Milwaukee at the time you went last in 1858 or in any Court in ^{October, November, and December} the ensuing September, or either of these months 1858.

A. I think there was.

Q. Was there a Creditor Bill at that time running against you.

A. I think there was.

Q. Had an injunction been issued upon it.

A. I do not know there might have been my impression or there was not, but I don't remember.

Q. A judgment had been obtained on execution returned unsatisfied and a Creditor Bill obtained.

A. I think so.

Q. Who was the complainant in that Creditor Bill.

A. I do not recollect the name now.

Q. Was it an Eastern party.

A. It strikes me it was.

Q. In what Court was it.

A. In the United States Court I think.

Q. What was the amount.

A. I don't recollect now.

236 Int. Was it \$1,000.
Ans. I think it was.

Int. Was it \$2,000.

Ans. I think it was \$1,000. or \$2,000.

Int. Which was it.

Ans. I should think it was between \$1,000. & \$2,000.

Int. At the time of your alleged purchase from Smith
was that Cart running.

Ans. I think it was.

Int. Do you recollect precisely what month
it was. you went to Albany during which
time you purchased these goods of Smith

Ans. I think it was in October

Int. The first of October.

Ans. No I think about the middle or last.

Int. How long had you been in Albany before
St John arrived:

Ans. It strikes me 1 or 2 weeks

Int. What business was he then engaged in.

Ans. Rail Road. I think

Int. Was he running that Road & which you were one of the men

Ans. I think he was.

Int. In what shape.

Ans. I think he was conductor there

Int. What were his wages

Ans. I think now \$60 per month

Int. How long had he been engaged in that capacity
on that Road.

237. Q. A few months.

A. Had Mr. & John any family

Q. Yes sir

A. Where were they living

Q. I think at Columbus.

A. How large a family had he.

Q. I think none but his wife

A. Now where hands were the notes which Isaac Smith Co. gave to Fryer. at the time you reached Albany on this last excursion when you made this alleged purchase.

Q. I suppose they were in the hands of Fryer there that had not been taken up.

A. How many were there then due?

Q. I think some where in the neighborhood of \$10,000

A. Were they due

Q. No not all

A. How many were due unpaid.

Q. I think this was the first \$1700.

A. Was not that the note that was due one year after date

Q. I think not.

A. Was the note made payable one year after date then due.

Q. No I should think not.

A. How large an amount had more than one year to run

Q. I think there was 0. I think it was 1 or 2 years

A. How large were these two last notes

Q. They might have been \$1700. \$2000 or \$3,000

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I am not positive

Int. How many were there unpaid at that time?

Ans. I should think there were \$10,000.

Int. How many in all were there unpaid including the \$1700.

Ans. There must have been some \$11,000 or \$12,000

Int. Upon which debts had been commenced.

Ans. No sir

Int. You took in the \$1700

Ans. Yes sir

Int. And the original was \$14,000.

Ans. Yes sir

Int. So only that \$2,000 only had been paid.

Ans. Well I. O. O. B. notes had been paid I am not positive about that.

Int. Is Fryer paid now.

Ans. I think he is

Int. How.

Ans. Well I paid him some \$4,500.

Int. When

Ans. At the time I made the purchase, or soon after.

Int. What did you pay him

Ans. Well it was some \$2,700 in goods.

Int. But at the time

Ans. I paid him \$5,000.

Int. In what.

Ans. Same. Mortgage bonds.

Int. On what Rail Road.

Ans. The La Crosse Railroad

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Int. Was there more than one bond.

Ans. It strikes me there were 2 or 3 bonds.

Int. Were they bonds issued by the company.

Ans. They were issued by the Farmers. Indorsed by the Rail Road Company I think.

Int. What was the date of them.

Ans. I do not recollect. I think they were running some 8 or 10 years.

Int. Cannot you recollect about the date of them.

Ans. I cannot now. It strikes me they were issued about the time when they commenced building the Rail Road.

Int. When was that.

Ans. In 1854, I think.

Int. Were these bonds you gave to Fryer. paid in 1854.

Ans. I could not tell you I should think they were issued in 1854, 1855, or 1856.

they were issued along about that time.

Int. In whose custody were they at that time.

Ans. They were in my Custody I think.

Int. That was all of the first payment made by Fryer.

Ans. Yes in \$5,000.

Int. How did you pay Fryer. when you went down in the fall of 1858. for the balance. when you went to settle up with him.

Ans. I paid him \$3700. in goods. I paid him also lands in Michigan I think some cash.

Int. How much.

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Ans I paid about \$150.

Int And the balance was on some lands in Michigan.

Ans yes sir

Int All that he got then of the avails of the Lumber
stock was \$3700. which you paid him

Ans I paid him that after I had arranged with St John.

Int Were the notes renewed?

Ans I think they were.

Int. When was it you first agreed with Fryer that
you should pay him a part of these notes in goods from the store?

Ans Well it was during the time I was making these negotiations.

Int When was it?

Ans It was several days I don't know how many but
I wanted to pay him off.

Int Was it in October?

Ans I think it was in November.

Int. What time in November?

Ans. I should think it was in the latter part.
it might have been in the middle of Nov.

Int. When did he select the goods?

Ans. He took the goods after I had purchased them.

Int. When did he select them?

Ans I think he commenced on the 7th or 8th of December.

Int. Where did he take them to?

Ans up stairs some of the goods.

Int. And then did he take them down stairs?

Ans. yes sir.

Int And they were packed

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Ans I think so.

Int. How long after he took them up stairs did he take them down stairs

Ans I think one or two days.

Int. Were they the first goods selected out of that stock

Ans I think so.

Int. Did you see Gayr. every 2 or 3 days. while you were there

Ans Well I think I did

Int. How soon after you got there did you see him

Ans. I went to his office immediately

Int. Did you tell him then what you could do.

Ans I did not know what I could do exactly I went there to settle the affairs with Mr. Smith.

Int. When did you first propose this thing to Gayr.

Ans I think it was in November.

Int. Was it the first or middle of Nov.

Ans I think it was about the middle

Int. When did you first propose to turn out goods to him

Ans. I think it was in November. It might have been earlier

Int. When did he take them away from the store.

Ans. He took them away at the time Mr. Smith was packing his goods.

Int. Were there \$3700 worth of goods all the goods that Gayr. took out of the store of Smith. after your arrival in Albany.

Ans. I do not know. but that he took more. I guess so & that he had purchased some more by Albany

Int. Were not these goods taken by him up stairs
about the time he made the arrangement.

Ans. No. not the full arrangement. Because several
days elapsed I did not know I could carry out
Said that day did he take up stairs
Ans. I think it was the 8th.

Int. What day did he take them down.

Ans. Perhaps the 9th or 10th. I think it was one or two days after
Int. Had he selected the goods before Mr Smith had
the trade with Mr Litch

Ans. Oh no.

Int. Was Mr Litch also about this time selling
any quantity of goods, to Mr Litch.

Ans. I understood he did.

Int. Did you see any thing of the amount.

Ans. No.

Int. Did you see him take any away.

Ans. I did not.

Int. Did you see any selected out. at that time

Ans. It seems to me I did see him select goods
but I do not recollect now.

Int. Did you see him select goods of any amount.

Ans. No. not any large amount.

Int. Was there any large amount set apart for
him other than the goods sold him while you were there.

Ans. I do not know that I saw any.

Int. When did you commence taking this inventory.

Ans. Some 4 or 5 or 6 days previous to the purchase

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Int. Who assisted in packing them?

Ans. Mr. Lewis thought I think Hammond Smith.

Int. Did Mr. O'gan?

Ans. I think he did.

Int. Did Mr. Van Olesen

Ans. I think so

Int. Did Mr. Murrell?

Ans. I believe he was there

Int. Was Mr. Shotton about there at that time

Ans. I think not.

Int. Did you see him in the store before the goods were finally shipped away

Ans. I did not.

Int. Were not you present in the store occupied by Orville Litch on the 9th December, 1858, about that time whilst these negotiations were going on when Mr. Shotton in that store demanded his commission of Mr. Litch for making purchases.

Ans. No sir I never saw Mr. Shotton in the store I think not. Still he might have been in

Int. Did you not see him in that store on or about December 1st 1858.

Ans. No sir

Int. Did you see him in that store at all.

Ans. I did not.

Int. Did you during any of that time in the month of Dec 1858, was you present when Mr. Shotton demanded his commission of Mr. Litch for the purchase of goods

Ans. No Sir

Int. How large a portion of those goods were made up of the original stock you purchased from Ayer.

Ans. It is very difficult to tell

Int. Was there half.

Ans. From half to a third I should think. Int. Of the goods purchased by you from Hinch how large a portion was due of the goods purchased by you from Ayer.

Ans. I could not tell you

Int. Was there a third

Ans. I should be inclined to think there might be a third. There might be more or less it is difficult to tell by just running through a closet in that way.

Int. Tell me what proportion of the goods were made up of the goods that you purchased from Ayer, in which you and Isaac Smith bought in New York.

Ans. I could not tell

Int. Was there half?

Ans. That would altogether depend on circumstances. It would be a mere matter of opinion I mean nothing.

Int. What is your opinion

Ans. My opinion if you let me explain matters as I understand it.

Int. I don't want your explanation tell me what your opinion is.

Ans. My opinion is that in going through with Mr. Ayer, I saw a great many goods that

245

purchased from him

Int. How large a portion of the goods you purchased from Jayer & you purchased in New York made up the stock of Amick.

Ans. It is impossible for me to tell that. Int. Was there a third.

Ans. There must have been at least a half. I could not tell.

Int. Were any portion of the goods, in that store marked & sold Smith also or with any thing upon them to indicate that they belonged to Isaac Smith & Co originally.

Ans. I think the Jayer goods had

Int. Had not the other goods purchased in New York.

Ans. They might have had.

Int. What other creditors besides Mr. Jayer had you to satisfy.

Ans. I cannot mention the names I can recollect one or two about Praper & O'Neary of New York

Bliss & Whillcock. I don't recollect the names of any others.

Int. Were the avails of these goods purchased by you from Amick used for the satisfaction of these claims.

Ans. Now I do not know. but I might have used some

few dollars of that from Mr. St John, none of the goods were used.

Int. What other creditors besides these New York creditors & Mr. Jayer. did you desire to satisfy.

Ans. I do not know of any now.

Int. How large an amount of the notes of Mr. Smith were on the hands of Mr. Nelson & held from you

246
Q. I thought all the notes they had given were handed
to Mr Norton by Mr Smith.

A. Were they the individual notes of Mr Finch,

Q. I think they were

A. The individual notes.

Q. I don't see.

A. What was the amount of these notes.

Q. \$6000. or \$8000 I am not sure

A. What was done with them

Q. I think they were paid to Mr Finch

A. Summured to Mr Finch

Q. Yes sir

A. When

Q. At the time I purchased the goods from him

A. What purchase

Q. The purchase of the Finch goods.

A. How did you come by them

Q. I came by them through Mr Smith or Norton

A. What Smith?

Q. Isaac Smith. Isaac Smith took the
notes of Finch and held some himself and gave
some to Mr Norton.

A. Who delivered them to you.

Q. I think either Col Norton or Isaac Smith

A. Had you these notes when you started from
Milwaukee.

Q. Oh. No

A. Who had

247

Q. I think Norton or Smith they made up
 the was a Norton

Ans. I think so.

Q. How soon after you got there were they going
 up.

Ans. They were not going up till about the time
 of the clearing up of the trade.

Q. Who sent for you to come to Albany.

Ans. Mr Norton informed me that the thought I
 had better look after my matters at Albany.

Q. Have you paid all the New York Creditors
 of Deane & Smith & Co.

Ans. I think not

Q. How much is due yet in claiming

Ans. I think there is a claim of \$800.

Q. Do you not know how it stands.

Ans. I do not.

Q. By whom has anything that has been paid
 been paid

Ans. I suppose by me, I know that Mr Smith has paid some

Q. How much have you paid

Ans. I think I paid Hudson \$700 & \$900

Q. When

Ans. I think last year

Q. In what

Ans. In money

Q. You are sure you paid in money

Ans. Yes sir

507m

248

Int. When did you pay it
Ans. I paid some while ago & some not a great while
Int. When did you pay the first
Ans. I think it was over a year.

Int. How much did you pay over a year ago
Ans. Perhaps \$200. I don't remember exactly.

Int. How much did you pay within a year
Ans. Well the balance till it was closed up

Int. Did you pay it in money.

Ans. I think I did.

Int. Don't you know

Ans. I think I do.

Int. Well then tell us

Ans. I think I paid them something that was
the same as money something in cash.

Int. What portion did you pay of the original claim
Ans. I think about 40 per cent.

Int. The new state debt of \$20000000 was all
compromised and paid up

Ans. I think not.

Int. Don't you know.

Ans. Mr. Smith might have done so.

Int. Have you paid any except the one of Wheeler's

Ans. Yes I think I paid Cooper & Smith

Int. How much

Ans. Some \$500 or \$600. I made arrangements
for

Int. We are not to know what you have paid

2/29

Q. They came up to see me I made an arrangement for some paper.
for what amount of paper.

A. About \$1200

Q. Has any of it been paid

A. I think about \$500. I made arrangements.

with Col. Norton & pay it I think he did

Q. With the exception of what you have before
stated is that all you have paid the New York
debt of Isaac Smith & Co.

A. Yes. It strikes me I made another payment
There were several bills of \$100 & \$200. which
I paid I think of Emma Jackson.

(I can state that I originally paid all these
claims to Mr. Smith) I think there was
one or two claims I paid but I cannot recol-
lect the names now. If I paid them I paid
them in cash. but I cannot recollect the names
now. one was a Boston house. I think I cannot
recollect possibly now.

Q. So that all the New York debt of Isaac &
Smith & Co. you have now paid

A. I don't think of any now. but it seems to
me. there is some other houses I paid but
I cannot bring it to my mind.

Q. Who holds the claims outstanding against
the original firm of Isaac Smith & Co. not paid
nor compromised & what do they amount to
A. It is these New York claims I suppose.

250

But what do they account to,

Ans. \$3000 to \$6000, unless Mr Smith has paid them
But. Did you purchase all the goods Finch had
on the 7th of December 1848

Ans. I think so Mr Finch had control of it and
I don't know positively I expected to get down
But. you examined the stock & saw the inventory taken
some of the goods taken into the cellar.

Ans. I saw some taken into the cellar.

But. How long was it after you purchased
from Finch before he sold to St. John.

Ans. I think the next day

But. How long had he been on Albany when
you made the sale to him

Ans. He must have been long. I should think
But. When did you first propose to sell to St. John.
Ans. I proposed soon after he came down if I could
purchase them

But. What did St. John pay you.

Ans. Paid me in a draft of \$3500.

But. on whom.

Ans. against me

But. Drawn by whom.

Ans. By Mr Newman.

But. Was it accepted by you

Ans. yes sir

But. When was it drawn

Ans. It was drawn in Providence some months

951
previous to my coming down.

Int. What was the date

Ans. That I could not tell

Int. In whose favor was it drawn?

Ans. In Othman's favor.

Int. Who is Othman?

Ans. He was a sub contractor on the Rue Road.

Int. Did you receive the draft at its full face?

Ans. Yes sir.

Int. What was the balance of the consideration paid you by St John.

Ans. The balance was paid in notes with the exception of the proceeds of the first day's sale.

Int. What notes?

Ans. \$100 St Johns.

Int. Were they in advance notes?

Ans. Yes sir.

Int. Was there any endorsement?

Ans. No sir.

Int. How long had they to run?

Ans. It seems to me they were payable 3, 4, 6, 9, 12 & 18 months after date but I don't collect exactly.

Int. What did you do with these notes?

Ans. \$6000. I turned out to Mr Kennedy.

Int. What was the balance done with?

Ans. I kept them myself.

Int. What was the aggregate amount of the notes?

Ans. I cannot tell exactly. I think some \$95000.

252

at 9600, some while.

Qut who is Mrs Kennedy?

Ans He is a banker & a large real estate owner at Saratoga.

Qut was this the gentleman who endorsed your paper.

Ans yes sir.

Qut did you give him this as security

Ans yes sir.

Qut have they been collected.

Ans I believe they have.

Qut Did you receive the proceeds of the collection of these notes.

Ans No. I don't recollect that I have received the proceeds.

It is Kaler Counsel for Plaintiff

It is a conclusion of Law whether he received the proceeds or not. He has already stated that he turned them over. If they were paid to Mrs Kennedy of course he received them. But as a matter of fact, he did not receive them. Thence I realized on these notes whatever they were.

By E. A. Stone for Defense

Qut how did you realize.

Ans By Mr St John taking them up.

Qut how did he take them up.

Ans. That I cannot tell you. they were shown to me. I saw them in his possession.

Qut whose possession?

Ans St John.

Qut when?

253

Q. I think some time after they were due,
Mr. Piquet go and get these notes from St John.

A. Yes sir.

Q. Do you think he got them of your own knowledge.

A. I do not.

Q. Where are the balance of the St John notes you
did not turn out.

A. I used them in various ways.

Q. How.

A. I used to do it in paying claims in Milwaukee.

Q. What claims.

A. One was a claim I made in favor of
Martin another in favor of Friend & Brother.

Q. What was this Martin claim.

A. I think it was for supplies upon the Paul Road.

Q. Was the St John note turned out to Martin been paid.

A. Yes sir.

Q. How do you know.

A. Mr. Martin told me so.

Q. To whom was it delivered.

A. To Mr. St John.

Q. Was it endorsed by you.

A. I think it was.

Q. Where did St John get the money to pay it.

A. I don't know unless he sold goods.

Q. When did he pay it.

A. I think about 6 or 7 months after being
at Milwaukee after purchasing the goods it

254

must have been 1859

Int. What was the amount of that note,

Ans. It strikes me it was \$1000 or over

Int. What did you do with the other

Ans. I don't know I said it to James Brother

Int. Where are they

Ans. They are much about in Milwaukee

Int. What did you let them have of for,

Ans. I purchased clothing for them,

Int. For what purpose

Ans. For going on the Rail Road

Int. What was the amount of that.

Ans. It strikes me \$600 or \$800,

Int. How long had it to run

Ans. I do not recollect.

Int. Had it a year.

Ans. I don't know so long, till I cannot tell.

Int. Do you know if it has been paid

Ans. It has.

Int. By whom.

Ans. By Mr. St. John.

Int. What did you do with the other

Ans. I used them up in various ways I don't know
I had out some hundreds of dollars out
of his store

Int. For the purpose of being used on the Road

Ans. Yes sir

Int. Was it out of three goods which you had from

Mr. Lench's place

Q. Yes sir

A. But how did you use the others

Q. I used them in various ways some for -
buying some of my creditors

A. What creditors

Q. Some of my sub contractors I think Mr. [unclear]
paid me some myself.

A. How long is it since the last was paid

Q. They were all taken up before they were due.

A. How long is it since you have had these notes,
Q. Not for some time.

A. Not so long.

Q. I have not had had any since 1858 or 1859.

A. What time in 1858.

Q. Well I took them in 1858. But I think after 1859
I had disposed of them

A. You had none in 1859

Q. I think not.

A. Do you know Mr. Humbley

Q. Yes sir

A. How long have you known him.

Q. Not a great while

A. How long?

Q. Some 3 or 4 years.

A. Who is he and what is his business.

Q. I think he is a merchant.

A. Do you know he is.

25th

Q. How long has he been a merchant & where.
A. That I cannot tell you.

Q. Where

A. At our Prairie

Q. When?

A. In 1858 and 1859

Q. Where is our Prairie?

A. It is about 12 miles from Madison on the
Kalamazoo Road

Q. Is he connected with that Road.

A. No sir

Q. Does he sell goods to the men on the line?

A. I suppose he naturally would.

Q. Have not you dealt with him

A. Well some I may have

Q. How much?

A. Perhaps \$100.

Q. When?

A. I think in 1859

Q. What time of day year. The Spring of 1859, or the
winter of 1858-9.

A. I do not recollect.

Q. Was it in the Spring or Summer of 1859

A. It may have been in the Summer.

Q. Was it not in the Summer.

A. I don't know I have no date.

Q. Do you know Peter Fleckner?

957

Q. I have

A. When?

Q. Some 3 or 4 years ago

A. Did you in 1859.

Q. It strikes me I did

A. When did you first know Rogers

Q. I think the first time I saw him was in Albany

A. When did you first see him in Albany

Q. I think it was in October

A. Do you know whether it was in Albany?

Q. Yes. I think that is the first time

A. Do you know it.

Q. Why about as well as I know anything.

A. That is in 1858.

Q. Yes. 1858. I think

A. Have you known him since

Q. I have.

A. What business has he engaged in now.

Q. I do not know.

A. What business has he been engaged in during the last 3 or 4 years.

Q. I cannot tell the time he was in Wisconsin

I saw him in Albany

A. He came to Wisconsin

Q. Yes sir

A. Did he go due to Wisconsin when the goods were shipped.

Q. I think he did within a few days

258

Int Did you come off then?

Ans yes sir

Int. What route did you take?

Ans I think I came by way of Buffalo.

Int Did you stop there?

Ans yes sir

Int Did you inquire about the goods?

Ans. yes sir I inquired and a man told me that goods & such descriptions had gone on.

Int Did you then come forward to Chicago?

Ans. yes.

Int. Did you ascertain whether such goods had come here?

Ans. Yes sir I did

Int Did you then go on to Milwaukee?

Ans. yes sir

Int Did Mr St John go on with you?

Ans I think he went before.

Int. To what place?

Ans. I think he went to Walpole at Milwaukee

Int Did the goods go to Milwaukee?

Ans. Some went to Milwaukee all the goods that were shipped except those that were stopped here.

Int. Were now in Milwaukee when they arrived?

Ans. No I think not I believe one day was some time when I arrived

Int. Had any of me on to Walpole?

Ans I ^{think} they had

Int. When did you first learn that some of these goods

25

had been stopped at Chicago by Mack and
the drab and Mr. Whitney told me.

Int. When?

Ans. It strikes me it was about the 18th or 20th of
the month yes I don't I left Albany on —

Int. you can make your calculations yourself &
give us the result when you get through

Ans. I don't the 17th or the 18th was about the first time
in December 1858

Ans. I don't do.

Int. What did you do upon hearing they had been
attached

Ans. I don't I came down here with Mr. St. John.

Int. immediately upon hearing that.

Ans. Very soon within a day or two.

Int. Was that acceptance which Mr. St. John de-
livered to you as part of the Consideration de-
livered to you at Albany

Ans. yes sir

Int. who had it then.

Ans. Mr. St. John.

Int. How came it then.

Ans. He had taken it up.

Int. How do you know.

Ans. Well I don't he had a drove of Mr. Thompson's
some goods he was having at the time.

Int. How do you know that fact.

Ans. yes sir Mr. Thompson saw it. I accepted it for him

260

Int. Where were the notes you received from St. John, as a part of the consideration for his purchase from you delivered to you.

Ans. At Albany.

Int. Where on the 8th do?

Ans. The day I sold the goods.

Int. The notes were really made & delivered

Ans. Yes Sir

Int. Had Mr. St. John any pecuniary means any Capital at that time

Ans. I think he had a few thousands dollars in goods on hand at that time

Int. What business was he engaged in at that time

Ans. He was in the dry goods business till he went on the Rail Road.

Int. When did he go on the Rail Road?

Ans. In 1857 or 1858, he was on the Rail Road

Int. Was he not a Contractor on the road when you sold these goods to him

Ans. Yes Sir

Int. How long had he been?

Ans. A few months.

Int. What was his salary at that time

Ans. \$600.

Int. Had he any means or property above his debts outstanding - which he received from the Rail Road as salary

Ans. He had \$1000 draft of \$2500 & he had \$1000 more

961

of goods which at Columbus or Walabro.

Int. What was he doing with the goods:

Ans. I think they were packed up.

Int. Was that all he had.

Ans. I think so.

Int. Was he not owing debts at that time.

Ans. Not that I know of.

Int. How long before the sale was it he was engaged in selling goods. how long had these goods been packed up.

Ans. A few months I think.

Int. How many months?

Ans. I should think three or 5 months.

Int. What land was it you turned out to Mr. Ayer.

Ans. It was 80 acres of land in Michigan.

Int. What did you value it at.

Ans. At \$1000. at that time.

Int. Where was it in Michigan.

Ans. It was in Kalamazoo County.

Int. Was it improved.

Ans. I think not.

Int. Had you ever seen it.

Ans. I think not.

Int. Had he

Ans. I think not.

Int. Was there any other land except that in Michigan transferred by you to him.

Ans. That was all.

2/67

Int. And when you said you paid him from cash
Ans. I paid \$150. I think it was for cash,
Int. So that it was not paid to him
Ans. No.

Int. And he held all these notes of Isaac Smith & Co.
at that time.

Ans. Yes, sir.

Int. What kind of Bonds were these you turned
over. When at that time

Ans. They were Farm Mortgage Bonds, of the La Crosse
Rail Road

Int. What kind of Bonds did you give to Mr. Finkel
Ans. It was an order on Mr. Norton & Co. who he went
over to the bank of the Capital.

Int. What was it

Ans. I think it was a "Land Grant"

Int. On the face of it it was \$300.

Ans. I think it was.

Int. He took it for \$2572 20

Ans. Yes sir.

Int. That made the exact difference.

Ans. That was the amount I think.

Int. Were not these land grant bonds, bonds
which had relation to the western of the line only?

Ans. Yes sir.

Int. Was your duty to do with the western of the road,
Ans. I had the first 30 miles from Madison
to Portage City

7/6³

Int Do Portage City on the West end.

Ans. It commences at Madison & Columbus, both.

The west end of the Road is Lake St. Croix. The
just division of the La Crosse Rail Road from
Milwaukee to Portage. This is the La Crosse Rail
Road from Milwaukee to Portage.

Int. What was this bond?

Ans. I think it was a "land grant bond" or
a "farm mortgage bond" I would not be cer-
tain about it.

Int. It was a La Crosse rail Road bond.

Ans. yes sir

Int. Was this bond on the part of the Rail road
that was built or the part not built.

Ans. on both so long as it was not completed.

The La Crosse rail Road. completed 70 miles
of it was a land grant bond & covers the
land and Rail road both.

Int. Do not these land grant bonds cover the
part from Portage to Madison

Ans. yes sir

Int. So that part built?

Ans. It is pretty much graded
It is not built any portion of it.

Ans. No sir

Int. I understand that you paid to Mr. Lupton at
the time you settled after you had made the
purchase of Mr. Lupton \$375,000 of goods

264

or thereabouts 100 acres of Land in Michigan
of \$150. in cash. This is that all you paid to
Mr. Lyster

Ans. I think it is.

Qnt. Was Mr. Naxon a creditor of yours at the
time.

Ans. Mr. Naxon held a large amount of bonds
of mine he had advanced money to me, in \$10,000 of bonds.
But I do not recollect did you ever know

Ans. I think at that time I owed him about \$18,000.
Qnt. Were any of the proceeds a avails of the sale
to St. John, turned out to Naxon

Ans. No Sir

Qnt. Did you look up all the Lyster notes at that
time that were due unpaid

Ans. Yes Sir. Smith & myself, looked it up,
Qnt. Has your deposition ever been taken in this
case in the present suit.

Ans. I think not.

Qnt. Do you swear that you never gave a deposition

Ans. I give in my testimony

Qnt. In a deposition at Milwaukee

Ans. I do not know but that it was so.

Qnt. Did you not in the deposition taken
before C. Mannner at Milwaukee in the
December. 1860. at Mannner's Office in the State
of Wisconsin and County of Milwaukee
swear that you turned out notes received from

7/6⁵

It John come to Mr Norton and the araces of
about 45 or in goods & notes to Mr Norton did you
swear that?

Ans. I should think from my deposition due I did
Int. Did you not recollect your deposition being taken
due I did not when you asked me so not exactly now

By E & Jones (standing deposition to Whiney)
Int. Did you swear to that deposition?

Ans. yes Sir I did.

Int. At what time were the Lyra notes made pay-
able The notes given by Isaac Smith to you
depos. to Lyra. on the purchase of goods from him
Ans. As near as I can recollect. they were made
from 60 to 90 days. I believe due were one or two
notes that were very soon perhaps within four
months.

Int. Were due any six months.

Ans. I believe due was one but I am not positive
they extended on to 1 or 2 years. I think
Int. I understand you to say in your direct
examination that you agreed with Isaac Smith
that in case he would assist you in carrying
out that sale from Lyra to you that you
would yourself pay the new York debt.

Ans. I think I said that if he would straighten
up the matter I would pay half.

Int. Did not you say in your direct examina-
tion that if he would take hold and assist you

2/6⁶

in bringing out that had milk I wish you
would pay the new year debt

Ans I do not collect about that,
Int. Did not you say that you found diffi-
culty about that had milk I wish

Ans yes sir

Int. Did ^{not} you say in that connection that he
would assist you in bringing about that
arrangement.

Ans yes sir.

Int. Was it before or after you had purchase
of I wish

Ans It was before,

Int. How early before.

Ans I do not know

Int. Did he go to Milk and assist you in mak-
ing that arrangement.

Ans I think he did

Int. I mean the bringing about of the arrangement
between I wish and myself.

Ans I think he had some conversation

Int. Did he assist

Ans. I suppose he did but I don't know.

Int. Did he assist you in perfecting that arrange-
ment with ~~the~~ I wish

Ans I suppose he did sometimes I thought differently
Int. Did he assist you.

Ans I gave him the credit of doing.

60
767
Int. Don't you know what he did
Ans. I sometimes thought differently but I gave
him the credit of assisting.

Int. Do you not know that he assisted you
Ans. I think he did

Int. Do not you know that he did.

Ans. I cannot give any different answer. I think
he did

Int. Do you mean to be understood that while
pretending to act for you, was secretly
working against you.

Ans. I sometimes thought it was so.

Int. Do you now think so.

Ans. I am inclined to think so.

Int. When did you first get possession of the notes
made by Ameli

Ans. It was when I was in Albany last fall
Chasing the goods.

Int. Who handed them to you

Ans. I think Col. Noyes or Mr. Smith.

Int. Had you ever seen them before.

Ans. I had not.

Int. Are you sure of that?

Ans. Yes sir I do not recollect seeing them before

Int. When did Mr. Noyes first come to Albany after
you went down there to make the arrange-
ment with Ameli

Ans. I think Mr. Noyes passed through Albany

7/68

some week or two days ago ~~xxxxxx~~,

Int Did you see him

Ans I think I did.

Int Were any of these French notes due at the time they were handed to you.

Ans I doubt not.

Int Was Mr. Norton an endorser of all these notes made by Isaac Smith & Co to Loyer.

Ans yes sir

Int Are you sure of that.

Ans yes sir.

Int. Was Mr Rose,

Ans. yes sir I am pretty sure.

Int. Do you know where Isaac Smith is now.

Ans now I do not.

Int Where did you last see him

Ans. I think I saw him about a year ago in ^{Chicago} Ill.

Int Do you know where he resides now.

Ans I do not.

Int. Do you know where Harmon Smith resides now;

Ans I do not

Direct Resumed

Int Do you know where French resides now;

Ans I do not. except by hearsay

Int. Where did you see him last.

Ans not since I have cleared the goods

Qut have you been in communication with him since that time
Ans No Sir

969

Qut you stated in your cross examination that \$3700
worth of goods were turned out by you to Mr. Lyster
at Albany on account of the notes that he
told you have also stated that some Michigan
lands were turned out. How how much were
these lands taken by Mr. Lyster.

Ans \$800. I paid \$1000.

Qut. You stated that these \$3700. of goods &
\$800. of Michigan lands -

Ans. I must look it at \$800. with the
privilege reserved to me of receiving

Qut. you state that upon the payment of this
\$3700. in goods and the turning over of the Mich-
igan lands, you became entitled to take up
and did take up the whole \$1400. of Lyster's note
that remained unpaid.

Ans yes Sir with what Mr. Smith had paid
Qut now happened it that this \$3700. & \$800.
took up the balance of the notes. That
would leave \$4500 unpaid

Ans yes Sir

Qut who paid the residue or what arrangement
was made for the payment of that residue
& who paid it

Ans I think Mr. Smith.

Qut Did Mr. Lyster claim any more due

270

draw this \$4500. upon the whole making
as I don't not.

Int. Now did Mr Smith pay the balance & if
that would make about \$4500. he had paid
as I don't Mr Smith paid about \$500. she
made arrangements at all costs for the balance.
whatever the amount was.

Int Did Mr Ayer admit to have received all the
of these notes except what you paid at this time
as you said

Int Do you know of Mr Smith at about the
time you went down to Albany making an
arrangement with Mr Ayer at that time
by which he arranged to pay and did pay
a part of these notes in order to raise the
balance of \$4500. Now did Smith get the
arrows & what to turn over to Mr Ayer.

As I suppose he got goods & money from Mr Smith
Int And turned them over to Mr Ayer.

As I understood it was so.

Int Do you know anything of Mr Ayer. Having
from Mr Smith in the fall of 1855, about
\$4500. of goods or any amount of goods.

As I understood that he did

answer objections by E. S. Hows

objection sustained and answer ruled out.

Int. You have stated on the cross examination that
you had an opinion as to what proportion of

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the goods you bought of Mr Smith were originally
in the hands of Smith & Jackson, which
they bought of Mr Hoyer and of goods which
they bought in the city of New York, and state
that it might be a day or a half. Now did
you make up that opinion

Ans. I made it up by working through with
Mr Hoyer. He knew the goods better than I
did. I would not state positively about it. It
is a matter of estimate. I found a great
many of the Hoyer goods there.

Int. This man Smith did all the business at Albany
this year or

Int. Could you tell by examination what portion
of these goods you had bought of Smith & Jackson
and bought in New York,

Ans. Yes sir.

Int. You could as to these that were bought of Hoyer.
Ans. Yes sir.

Int. For any thing you know might not all of these
goods (except those from Hoyer) be the goods
that Smith & Jackson had bought in the city
of New York, or a large portion of them from
any thing aside from hearsay.

Ans. Yes sir except from hearsay.

Int. How were the debts of Isaac Smith & Co
due in New York managed what was the arrange-
ment in regard to the payment or compromise

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of these notes debt?

Ans. I don't think the arrangement was the one
I stated I was to pay half - Smith half.
Int. Do you know what proportion of these new
york debt due by the firm of Isaac Smith & Co
have since been paid or settled up
Ans. I do not I have been trying to think,
Int. Has application been made to you for
settlement of any that had not been paid or arranged
Ans. I don't think there is one of \$5000 while nothing has been
Int. And application has been made to you;
Ans. yes sir but I refused them to Mr Smith
Int. And you are still liable on these debts?
Ans. yes sir
Int. And Mr Smith is liable
Ans. yes sir
Int. Has Smith ever paid you the \$400 you
advanced
Ans. There is an unsettled account between
Mr Smith and me in which I claim a balance
I cannot tell the amount without looking
at the books.
Int. you have stated that you saw the notes given
by Mr St John. to you and which you had turned
on to different parties & Kennedy and others
that you saw them back in the hands of
Mr Lyper.
Ans. yes sir

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Int. When was that?

Ans. It was more than 2 years ago. more than that.

Int. The notes had your endorsement on them had they not

Ans. Yes sir.

Int. At the time you saw these notes were they matured and past due and in the hands of the holder

Ans. Yes sir.

Int. You have said that you learned about December 17th 1858. that certain goods were attached here in Chicago

Ans. Yes sir.

Int. Will you about to go on & explain from whom you learned that fact. when you were interrupted by Counsel on the other side I now wish you to go on and state from whom you learned it objected to by E & S Stons

The Judge. If there was some purpose in your asking that question, then he has a right to shut it by showing the circumstances which explain it.

Objection overruled.

Ans. I thought it was either Mr Whitney or Mr Phelps Int. That Mr. Whitney

Ans. I think it is one of the parties in the case.

Int. One of the Boston creditors

E & S Stons Counsel for the Defendants here took exception to the preceding ruling of

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the Court and does she except,
Int. I believe so. I think he met me at New
York. Has a conversation with me about these goods
Int. Before the attachment?

Ans. I presume it was.

Int. Did you at any time, since the commence-
ment of this suit meet this man Whitney of the
firm of White Brown Davis & Co. between New
York and Milwaukee, if so where was it?

Objected to by Mr. Smith for. Defth

Mr. Smith This is going into a new subject.

The objection overruled. To which ruling
the Court. Counsel for the defendants then
and then excepted and do she except,
Ans. I met Mr. Whitney.

Int. You said on your Cross examination that
notwithstanding this agreement of October 1857
on the part of Isaac Smith that he would pay
off all the liabilities of Isaac Smith & Co. that
if he would assist you on this occasion in
Albany regarding your assistance you would
the day half of the New York liabilities,
Now what assistance did you refer to to
be rendered by Smith to you.

Ans. I flattered him for selling the property in the
way he did and I wanted him to get the pro-
perty & I thought he had some influence in New
York. Int. Did he get the property cheaply back?

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the some part of it,
 Int. as to the other part what did he get,
 Ans. notes.

Int. what notes.

Ans. The notes of over 1000 French

Int. These notes spoken of in your direct examination

Ans. yes sir

Int. Of over 1000 French & paid to Norton:

Ans. yes sir

Int. you stated that you never saw the French
 notes before your arrival in Albany.

Ans. yes sir

Int. State whether you ever were informed by
 any one that such notes were in existence and
 where they were:

Objected to by E. A. Hous for Defs.
 overruled.

Exception

To which ruling the Council for the defendants
 then and there excepted and do the except.

Ans. Mr. Smith informed me.

Int. when?

Ans. when he sold out to Mr. Laniel

Int. which Smith was it that informed you
 the Isaac Smith

Int. How long after you were sure upon this
 of 1700 notes was it you went to Albany

Ans. It strikes me at weeks or ten days it might
 be a little longer or shorter.

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Int you have said that a few days after your
arrival in Albany Mr. Noyes, paperdumple came
and you said

Int. How did you know that?

Ans. I met him at the Clerical House

Int. State whether he knew that you would be
in Albany

Ans. I don't he expected me.

Int. State whether you had before that time
intended to have paying you would be there,
Ans. I think I did.

Int. State why it was that Mr. Noyes wrote to
you in regard to the non payment of the Sugar
indemnities

objected to by C & Stone for Sept.

Exception overruled.

Exception

So which ruling the Counsel for the defend-

ants then and there excepted and do so except
Ans. He had inserted my paper to my Sugar.

Int. you have stated that the Sugar notes a
part of them when you saw them at Albany
in the hands of Mr. Noyes were not due.

Ans. I believe none of them were

Int. What inducement was held out to Noyes
and what arrangement was made by him by
which he took up these notes that were not due
Ans. one thing was no paying him \$1000. in
money to take up his notes.

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Int. Any other reason,

Ans. I think he was anxious to arrange the matter of Smith & Jackson, as far as the case. Int. Had he not agreed to do so.

Ans. Yes sir

Int. What reason had you for wishing him to take up the notes before they were due.

Ans. To pay off the indebtedness of Smith & Jackson. Int. How could you accomplish this by getting him to take up his notes.

Ans. I could use the goods to pay off other debts. Int. Did you see these goods after they came to Chicago.

Ans. I think I did

Int. Where did you see them

Ans. I think they were in the hayrack of the ship, Int. Did you identify them as the same you had purchased in Albany.

Ans. Yes sir

Int. Did you see in any of these goods any marks objected to by Smith & Jackson. I think we stipulate that these are the same goods, The Judge, Well, if you will admit I will exclude the question.

Int. Did you see these goods on the day when Mr. Jackson

Ans. I did

Int. In what manner were they taken care of as far as you could see.

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Ans. I think some were laying on the counter piled up.

Int. Were any of them in boxes packed up.

Ans. I think they had been opened and taken out.

Int. What time was it when you saw them.

Ans. A few weeks after they were attached.

Int. How late did you see these goods in the season of 1859. Did you see them after the 6th May 1859.

Ans. I do not recollect.

Int. Did you see them after the inventory was taken.

Ans. I do not recollect. It strikes me I did but I cannot recollect.

Int. Do you not remember that you came down from Milwaukee on your way to New York.

Ans. That you were directed by me to go and make an examination of these goods just prior to the sale that I told you the sale was about coming off, and that I insisted you should go.

Ans. I think I do now.

Int. Can you fix the date.

Ans. It must have been sometime after the inventory. I cannot fix the date.

Int. See if you can recollect anything that I said by which you knew that the inventory had been taken what of your best impression.

Ans. I think I called when I was on my way to New York.

Int. When you saw the goods what was done.

Q 79

Condition
 Q. They were piled up around the Combs
 in different places
 A. Now had they been stored,
 A. Not in very good order.
 Q. What was the condition of the goods then
 as compared with their condition when
 you saw them put up at Albany
 objected to by J. Smith for C. & S.
 Sustained.

Q. You saw them there when they were taken
 A. Yes

Q. What was their condition when you last saw
 them as when compared with that?
 A. Well Sir they looked as if they had been
 handled a good deal and not very well taken
 care of I cannot say they were damaged in any par-
 ticular way

Q. You have been a merchant. State whether these
 goods were not mangled up and jumbled over?
 A. I do not think they were injured by any damp-
 ing.

Q. You do not think they were misused or soiled
 A. No Sir the goods looked as though people had
 been in & looked at them & had handled them over.

Cross Examination Resumed.

Q. Who was Mr. Kennedy the customer upon these

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now you delivered to Hudon & Singely;
Ans. Reuben B. Kennedy;

Int. Was he lived in Saratoga?
Ans. He was President of the Saratoga Bank
Int. Was he not President of a Bank that afterwards bust?
Ans. Not that I know of.

Int. Is not that your understanding?

Ans. No Sir I wound up

Int. Was it not the Farmers Bank of Saratoga?

Ans. Yes Sir

Int. Did not that Bank bust up?

Ans. No Sir

Int. What is the difference between winding up and busting up?

Ans. Well they paid their liabilities

Int. In what state did he claim to be a creditor of one R. B. Rich?

Ans. He claimed that Dr. Rich owed largely for the
goods he had sold him

Int. Did he say how much?

Ans. I think he said something over \$10,000

Int. What did you pay for the Michigan land you
say you paid \$1000.

Ans. I purchased other lands at the same time
I think I paid \$1000 ^{in cash} & some \$4000 in bonds.

Int. But what did you pay for the Michigan land you
let Ayer have.

Ans. I think I paid \$1000 in cash

Int. How many acres there?

Ans. I don't know but that it was 160 acres I

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Q. Was it 80 or 100 acres. I was thinking it was 80
acres before, but it may have been 100 acres.

Q. Did you ever know how much there was of it.
A. Yes sir

Q. How did it grow that I'm now now

A. I had several thousand acres of land there
but I have now been working two miles of it.

A. Yes sir

Q. Before you purchased it.

A. Yes sir

Q. You did not go to it;

A. No sir

Q. You gave a \$1000 for it.

A. Yes we had.

Q. Did you pay \$1000 in money or currency for that land

A. I suppose I paid it in cash. There was other lands
I purchased at the same time.

Q. Did you pay cash for that other land?

A. No I gave a bond.

Q. You paid for that large quantity of land a Rice
Road Bond and \$1000 in cash.

A. Yes sir

Q. Was it not all one transaction was it not all one
deal for \$1000. acres of land.

A. Yes sir I think it was.

Q. On one day was it not.

A. I think it took several days.

Q. Next resumed.

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Int. you have stated that you took Mrs. Landow
the advice of other people without seeing it on the
examination of other persons. who was the other person
the gentleman at Stalamazon a Lawyer.

Int. who was he his name was not Smith was it?
Ans I don't not. I don't "whispering Smith" was him
Int. you I'm on the man yourself;

Ans I do very well.

Int. How long have you known him?
Ans For some years

The Plaintiff by his Counsel then recalled,
Samuel Blau, called on behalf of the Plaintiff
and examined by J. St. Stales

Int. Were you present at the Shupps Sale of these goods?
Ans I was.

Int. How long after the taking of your inventory was it
that the Sale was made. Do you know?

Ans Well Sir I cannot tell how long it was. I did
not place it in my memory at all.

Int. What do you know in regard to the manner
in which the goods were put up and the oppor-
tunity afforded to customers purchasers to examine
them at the time of the sale.

Int. Well all I observed. I was on duty probably
three or four times during each day of the sale.
I would go in & stay a few minutes. I noticed the
Room was not very large.

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Int. Permute the Room to the way & the means of
access to the goods.

Ans. There was a counter placed across a part of
the store & the space between that & the door I did not measure.
Int. Well with reference to this room.

Ans. Well I think that it was about 80 ft square, ex-
cept a large platform was there to spread the
goods ~~on~~ on. to unravel them and spread the cloth on
which extended almost to the door. That was
in the center of the Room. I saw some body in
there almost every time I passed sometimes I should
think there were 20 or 30 some times more I
never saw it very much crowded not so but
what I could always get in.

Int. How many days was the sale going on
Ans. I cannot tell the reason I know. I was in
every day & that I went that way to take my
meals. & I called as I passed.

Int. How long did you stay at any one time?
Ans. I should think half an hour.

Int. Was the bidding pretty sharp when you were there?

Ans. No it did not appear to be very sharp
Int. Was there much competition?

Ans. I did not see as much as there usually is.

Int. At auction sales

Ans. Yes, sir.

Int. What was the condition of the goods at the
time you took the inventory?

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Ans. I could not judge because the pieces were not in my sight except so as the pieces were thrown upon the counter.

Int. So that you had no examination of them.

Ans. Not during the sale.

Int. Did you see the manner in which the goods were taken care of by the deputies or custodians at the time you took the inventory of them.

Ans. There was some goods that was considerably messed up of a heap such as felt lace caps which I noticed at the time I spoke of them as it would be a pity they should be messed in that way I also spoke of some light colored goods that were getting soiled that is the most perfectly

Int. Did you see persons in the store looking at the goods & handling them over

Ans. Yes Sir

Int. Who were they.

Ans. I did not know who they were but they were in there during the time I was taking the inventory some body looking over the goods both men & women.

Int. What were they doing.

Ans. Examining the goods.

Int. How were the goods situated.

Ans. The boxes were open, and there were boards laid upon the top of the boxes they were spread out

Int. Do you know Mr Eddy?

Ans. Yes Sir

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Int. What had he to do with them.

Ans. He said that he was custodian

Int. What did he do.

Ans. He seemed to be looking around.

Int. Did he examine the goods

Ans. He was looking around & seemed to be & some acquainted with the parties who were in.

Crop examination

Int. you used to step in at meal times when the sale was going on.

Ans. I did occasionally

Int. It was at meal times you were in

Ans. It was the first day.

Int. I understand you to say that you stopped when you went to your meals.

Ans. Yes Sir

Int. How you went in at that time

Ans. No Sir

Int. Well you went to your meals at meal times

Ans. Yes Sir

Int. What is your business when you are not in the Court House.

Ans. I am in the business of purchasing Cavalry horses for my brother.

Int. your brother has a general order to purchase Cavalry horses

Ans. He has a contract

Int. Are you in his employment

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Q. Yes sir

A. Have you any general employment at this day

Q. Yes sir

A. What is that?

Q. It is that as long as he is in it

A. How long have you been in it

Q. About 2 months

A. What were you doing before?

Q. I was working for Capt Knight.

A. What as?

Q. As night watchman of the American Express Co.

A. How long were you at that?

Q. About 2 weeks

A. What was you doing immediately before that?

Q. I do not recollect now.

A. These goods were in a store on Randolph street.

Q. Yes sir

A. What is the number?

Q. I think it is 89. or some thing of that sort.

A. Between what & street?

Q. Between Pearson & State

A. Which side of Randolph?

Q. The south side.

A. It was one of these ordinary cheap stores;

Q. Well I think the store is not there now;

A. What do you mean by saying it was only 90 ft square.

Q. I said I thought it was 90 ft square. I said between the corner and the door.

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Int Did it seem that they had put the counter pretty near the door to keep the people out.

Ans I do not know

Int was not the counter placed in that position in the shop, & that they could stand in the walkway & bid so that a great crowd could get around them

Ans yes sir

Int you saw some lace caps there

Ans yes sir

Int What lace were they?

Ans Black.

Int. I thought you said light colored?

Ans I said there were some light goods.

Int What kind of light goods?

Ans muslins & some light prints

Int. These lace caps were they modern goods or some old relics

Ans. I think they were fashionable goods.

Int. When had they been fashionable?

Ans I seen some down Lake Street like them

Int When in the winter (not answered)

The Plaintiff has asked.

Rebutting testimony on behalf of the Defs.

Connect. for Defendants. We now offer the answer to Int. no. 9 of Mr. H. Shattucks deposition

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on the ground that the testimony of factum
shows that Isaac Smith acted as an agent under
a promise of reward & therefore the acts and ad-
missions of Smith in purchasing that arrange-
ment are competent in this case
Answer to Int' No 9 of W & H Shallows deposition
refused admission. If which ruling the Coun-
sel for the defendants then and there excepted.

William B Rogers called on behalf of the
defendants. Sworn & examined by Sidney Smith.
Int. Where do you reside

Ans Int Chicago

Int. How long have you resided here;

Ans Since 1838. I have been about for a time but
this has been my home

Int. Were you acquainted with the Value of La
Crosse Rail Road Bonds in the fall & winter of 1858.
Ans What class of bonds;

Int Take for instance Land grant bonds

Ans If you mean from the fall I was acquaint-
ed with them & kept the run of these things

Int. How did they run during the fall of 1858.

Ans My impression is --

W & H States I object to the form of the question

Int. Give their market value;

Ans Well we know the market value by the New
York quotations generally that govern us in a

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transactions here. These bonds ~~run~~ run from 24
to 28. cents at that time that is my impression
but 24. to 28. cents on the dollar.

Ques yes sir

Int. Now with La Ciof Farm Mortgage bonds at
that time?

Ans They varied so much. that I could not give
you a definite answer. Some were worth
more than others. It depended upon the location
and the improvements on the land. Well they
were not. Cash matters they were like pet dollars
some were mild land swamp lands in fact
but how did they range in price

Ans I cannot answer that satisfactorily?

Crop Examination

By J H Hales

Int. Do you mean to say there were some swamp lands here.

Ans No I did not say that.

Int I understood you to say that some of these
farm mortgage bonds were issued on swamp lands.

Ans yes but I never saw the lands.

Direct examination

Int. It depended upon the location & value of the land.

J H Hales. I object to the prof here till there is
some proof as to the kind of land this bond was upon.

Witness I will say this that I know one piece of
land that is worth 100 cents on the dollar.

J H Hales

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Int. What is the value of these land grant bonds
since that time

Ans Very much higher. The Road has been cross located
& changed.

Int. Do you not know that that change was spoken
of about 1858.

Ans Well I do not know the fact. but I heard it
talked about.

The Defendants by their Counsel
then read in evidence as rebutting testimony the
Deposition of William J. Fryer.

Int. What is your ^{name} age, occupation place of residence

Ans to 1st Int. My name is William J. Fryer my
age is forty three my occupation is Real estate
Broker. and my place of residence is the City of Albany

Int. 2^d. Do you know the parties plaintiffs and
defendants in the Caption to these interrogatories
mentioned and either and which of them and
how long have you known them respectively?

Ans to 2^d Int. I do not know the parties plaintiffs
and defendants in the Caption to these interrogatories
mentioned or either of them except that I have seen John

Int 3^d. Did you see P. L. Jackson. and Samuel J.
St John in or about the street of Orville Smith in
Albany New York in the months of September
October and November 1858?

Ans to 3^d Int. I saw P. L. Jackson and Samuel
St John in the street of Orville Smith in

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Albany New York. within the months of September
October and November 1858.

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Q^u 4th Int. State when you first saw said Jackson
and St John in the store of said Jewell in Albany
in the fall of 1858. and when they left the City of Albany that year
Aⁿ 4th Int. I don't know when I first saw
said Jackson and St John in the store of said
Jewell in Albany in the fall of 1858. or when they
left the City of Albany that year

Q^u 5th Int. How often you saw Jackson and
St John or either of them in the store of said
Orville Jewell in October November & December
1858. also state when and what part of the
time you saw them or either of them and
who was with them or either of them?

Aⁿ 5th Int. I saw Jackson and St John in
the store of said Orville Jewell in October &
November & December 1858. two or three times
I saw them in the day time and also in the
evening at said store Mr Orville Jewell and also
the clerks in the store were with them I think

Q^u 6th Int. How often you saw them or either
of them with said Orville Jewell in the office
of Heat & Snigley and what month & day of
the month as nearly as you can state?

Aⁿ 6th Int. I don't remember of ever seeing
Orville Jewell with said St John and Jackson
in the office of Heat & Snigley together

Int 7th Hale whether you purchased any goods of said Smith about that time and how many and of what value. with the dates of the purchase. Ans to 7th Int. I purchased of Orville Smith goods of the value of about Ten Thousand dollars in fall 1858. I purchased the said goods at one sale about the middle of November 1858.

Int 8th Hale what became of the goods after you made the purchase wherein the goods were put in the upper part of the store and then taken into the cellar. and state also when the same were packed and by whom. :

Ans to 8th Int. The goods after I made the said purchase were taken up into the upper part of the store. They were then taken into the packing room in the cellar and removed where I got a place to put down in. They were packed by the clerks of the store and myself. Shortly after the purchase of them by me.

Int 9th Hale how long Jackson and St John were engaged with said Smith & Weed or Weed & Emigley in arranging for the goods and whether the goods were packed in the night and every thing so arranged as not to excite suspicion any one outside?

Ans to 9th Int. I do not know how long Jackson & St John were engaged with said Smith and Weed or Weed & Emigley in arranging for the

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for the goods I think the goods were packed in the evening and they were engaged quite late at night. I don't know whether any thing was so arranged as not to excite suspicion in any one outside.

But state whether it is not the fact, that Amiel Jackson & St John so arranged the matter as to keep the Public from suspecting any change in the store so that Jackson could get the goods away without exciting suspicion in any one.

Ans to 11th But it is not to my knowledge a fact that Amiel Jackson & St John so arranged the matter as to keep the Public from suspecting any change in the store so that Jackson could get the goods away without exciting suspicion in any one. But 11th state what amount of goods Amiel sent off to the Village of Lebanon or elsewhere and what arrangement was made by Amiel Jackson & Weed in relation to the Division of the goods? Ans to 11th But I don't know any thing about what amount of goods Amiel sent off to the Village of Lebanon or elsewhere or what arrangement was made by Amiel Jackson & Weed in relation to the Division of the goods.

But 12th state what you know of any thing in relation to orville Amiel and Jackson knowing of the purchase of goods by one Stratton and the sum of said Amiel and what you know of the understanding that the goods purchased

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in all or part. should be transferred to Jackson by said
Hutch.

Ans to 12th Int. I know nothing in relation to Erville
Hutch and Jackson. I know of the purchase of goods
by one Shallen as the agent of said Hutch or of the
understanding that the goods so purchased in all or
part should be transferred to Jackson by said Hutch.
Int 13th Ask of you I know of any other matter or
thing which may tend to the benefit of the defendants
in this suit and state the same as fully and par-
ticularly as though you were specially interrogated there
to.

Ans to 13th Int. I do not know of any other matter
or thing which may tend to the benefit of the defend-
ants in this suit.

Wm J. Ayer.

Defendants by their Counsel then read in
evidence as rebutting testimony the deposition
of William G. Wed. as follows.

Int 1st What is your name age, occupation and
place of residence?

Ans to 1st Int. My name is William G. Wed. my
age is thirty six, occupation lawyer, residence
the City of Albany.

Int 2^d. Do you know the parties Plaintiff and
Defendant in the Caption to these interrogatories

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mentioned or either and which of them and how long have you known them respectively?
 Ans. to 3^d Int. I do not know the Party Plaintiff I have seen St John. But I know the Defendants.
 Int 3^d. Do you know C. B. Jackson and if you state when & where you first became acquainted with him.
 Ans. to 3^d Int. I do know C. B. Jackson. I first became acquainted with him at the City of New York some time in the Summer of 1858.

Int 4th. Did you purchase any property for orville Louch when & where & real prior to December 1858, and if you state what and the Consideration paid therefor & by whom the same was paid & what it consisted of?

Ans. to 4th. But I did not purchase any property for Orville Louch prior to December 1858, except I acted as his attorney in the negotiation of some real estate he purchased.

Int 5th. Were you at any time prior to the 7th day of December A.D. 1858, present at any conversation between C. B. Jackson or St. John and any other person or persons in which any claim was said as to the purchase of goods by Orville Louch on Credit as to any indebtedness of said Louch and if you state who were present at such conversation and what was said fully and particularly?

Ans. to 5th Int. I was not present at any &

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conversations prior to the 7th day of December 1858. between D. L. Jackson. or J. D. St John. and any person in which anything was said as to the purchase of goods by Orville Litch or as to any indebtedness of said Litch to my collection about the time Litch sold out to Jackson. I had repeated conversations with Litch & Jackson in relation to the indebtedness of Litch which Ward & Ingolsby were liable for. I was present on such sale. Alfred & Norton was present at some of the conversations. I do not recollect the particulars of such conversations or of any one.

Jury 6th Pym know the fact that Jackson & St John or either of them had knowledge of the pecuniary condition of Orville Litch prior to the 7th day of December 1858 or of the purchase of goods by him on credit and the purposes for which they were purchased, of year state fully and particularly all the circumstances relating thereto. I state when D. L. Jackson and the Plaintiffs or either of them first appeared in Albany in the fall of 1858. and how long they remained there and what they did and said in relation to the purchase of goods by Litch to either of them and the object of their staying in Albany and what knowledge said Jackson & Plaintiffs had of

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purchase of goods by Litch:
 due to 6th Int I do not know the fact that Jackson
 and St John, or either of them had knowledge
 of the pecuniary condition of Orville Litch prior
 to the seventh day of December 1858, or of the
 purchase of goods by him on Credit and the pur-
 poses for which they were purchased. except
 that I informed Jackson that Ward & Kingsley
 were liable for Litch to about six thousand
 Dollars which must be secured. I cannot state
 the precise time when Jackson or the Plaintiffs
 first appeared in Albany in the fall of 1858,
 I do not recollect. Jackson was there sometime
 before St John the Plaintiff. I cannot state
 precisely how long they remained. I cannot
 state what they did in relation to the purchase
 of goods by Litch to either of them. I know
 that Litch sold a stock of goods to Jackson
 and that from the proceeds of that sale Litch
 secured Ward & Kingsley for their liabilities for
 him. That is the substance of what was done.
 It is impossible for me now to state in detail
 what was said and done. I do not know
 what knowledge Jackson or the Plaintiffs had
 of the purchase of goods by Litch except
 as I have before stated. I do not know the
 object of their stay in Albany except from
 what was done & that I have stated.

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and 7th Boynton & any other matter or thing
which may tend to the benefit of the defendants.
I give leave all such matters and things as
though you had been specially interrogated thereof.

And to 7th Inst. I do not now recollect of any other
matter or thing which may tend to the benefit
of the defendants.

W. G. Reed

The testimony here closed. The counsel
for the Plaintiffs here stated to the Court
and Jury that under the testimony heard
not claim a recovery against Andrew Binn
and Philip Conley two of the Defendants.

Whereupon the arguments on the case
having been concluded the Plaintiff
by his counsel requested the Court to give
the following instructions.

1st
If the Jury believe from the evidence that the
Plaintiff St John purchased the goods in
question of D. C. Jackson. (In good faith) for a valuable consideration paid or deemed
to be paid by him for the same. and that the

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Ginn

goods were delivered to him by Jackson, (and a delivery to the Rail road Company to be consigned to the consignee and directed to the Plaintiffs was a delivery to the Plaintiffs) They will find for the Plaintiffs the Value of the goods at the time they were taken by the Defendants with six per cent. interest on that amount since the time of taking, unless the Jury further believe from the evidence that St John made such purchase with the purpose of assisting Jackson & Herich in defrauding Lumbering or delaying the Creditors of Lumber.

2nd

Ginn

The Jury are instructed that fraud is not presumed to exist but it must be proved, and unless the Jury believe from the evidence that Jackson made the purchase of the goods in question with intent to hinder delay or defraud the Creditors of Lumber and that Plaintiffs knew such intent on the part of Jackson and assisted or intended to assist in effecting that purpose, they will find for the Plaintiffs the Value of the goods at the time of taking them by the Defendants with six per cent. interest on the same. (This is so if Plaintiffs purchased the goods in good faith for a valuable consideration)

300

3rd

The Jury are instructed that a man has a right to pay one of his creditors in full to the exclusion of his other creditors and if the Jury believe from the evidence that Jackson made the purchase of the goods in question solely to secure a bona fide indebtedness due himself and not for the purpose of hindering, delaying or defrauding the creditors of Finch they will find for the Plaintiff the value of the goods as stated in the preceding instructions notwithstanding Finch was solvent at the time of said purchase (By Jackson of Finch)

4th

If the Jury believe from the evidence, that Jackson was a creditor of Orville Finch at the time he purchased these goods, and that his sole object in making such purchase was to secure himself, and in good faith obtain his pay from Finch then the fact that he may have known of Finch's indebtedness or even insolvency of Finch was the case at that time, does not constitute a valid fraudulent sale of the goods from Finch to Jackson.

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do

The jury are instructed that any fraud or
 circumstances of fraud on the part of Jones
 in the sale of the goods in question cannot defeat
 the title of the Plaintiff in this suit unless
 the Jury shall find that said Plaintiff had
 knowledge of such fraudulent intent on the
 part of Jones and intended to assist and did
 assist Jones in executing such fraudulent intent

do

If the Jury find that the Defendants took the
 goods in manner and form as set forth in the
 Plaintiff's declaration they shall be at liberty
 in arriving at the value of the goods at the time
 of the taking by the Defendants as compared with
 the amount the goods sold for at the Sheriff's
 sale, to take into consideration, all the circum-
 stances of the taking and storing of the goods the
 length of time they were detained before sale
 the season of the year and all the circumstances
 of sale at auction by the Plaintiff and they are
 not bound by the amount the goods brought at
 such sale unless they believe that was the true
 value of the goods at the time (of
 the taking of the goods by the Sheriff)

And the Court at the request of said Plaintiff

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Comrie gave the foregoing instructions to each and all of which, and to the giving of the same, the Defendants by their Counsel drew there excepted.

Instructions asked by Defendants.

The Defendants then asked the Court to give the following instructions to the Jury.

For Defendant. 1st

If the Jury find from the evidence that the goods conveyed by the Sheriff were sold or transferred by Smith to Jackson, and by Jackson to St John, (with a view) to induce a delay the Creditors of Smith in any manner to defeat the Creditors of Smith, and that Jackson and St John knowingly aided and assisted in inducing delaying and frauding said Creditors the sales and transfers were void and conveyed no title as against the Creditors of Smith and the Jury should find for the Defendant. (This instruction is given subject to the qualification contained in the next instruction marked as drawn given "By the Court") as follows:

~~The Court gave the following instruction of its own motion which was read in connection with other instructions as given before them. To the giving of which the Defendants by their Counsel~~

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~~then and due excepted.~~

"Instruction drawn and given by the Court."
 A conveyance of property made in good faith
 & pay an honest debt is not fraudulent though
 the debtor is insolvent and the creditor knows
 at the time that it will have the effect of de-
 feating the collection of other debts to avoid
 the conveyance. There must be real design on
 the part of the debtor to prevent the application
 of his property in whole or in part to the satis-
 faction of his debts as condition violates no
 rule of law. When he takes payment or security
 for his demand, though others are thereby
 deprived of all means of attaining satis-
 faction of their own equally meritorious claims.
 10 Cal. 277, 19 Lf. 46, 4 Sand Sup. 252, 2 Cal.
 495, 6 B Monr 608, 11 B Monr 102.

2nd

If the jury find from the evidence from Jackson
 bought the goods of Finch and paid a fair
 price for them this he acquired no title to,
 the goods as against the creditors of Finch if
 he bought with a design to aid Finch in
 defrauding his creditors and if St John bought
 the goods of Jackson with a knowledge of all
 the facts his purchase renders him in the
 same footing as against the creditors of Finch
 and in acquiring of the possession of fraud the

Revised

3rd

Jury will take into consideration all the facts and circumstances proved in the case.

3^d
If the Jury believe from the evidence that Finch obtained a quantity of goods in Boston and New York on Credit and that Jackson and St John bought these goods or a portion of them, ^{and a strong belief that Jackson was in a position to aid in the intent} and with the intent a design to defraud the Creditors, / Finch or to aid said Finch in defrauding said Creditors, then such purchase is void as against such Creditors and the Shuff is not liable in any action, even though there was no openly expressed intention to defraud and only a secret purpose intent.

Givins

4th
If the Jury believe from the evidence that Finch and Isaac Smith conspired to gether to obtain goods of New York & Boston Merchants without paying for them, and that Jackson & St John bought the goods so obtained in order to aid in carrying out the conspiracy and with the knowledge that the goods were so obtained then such purchase by Jackson and St John was void as against said Merchants and Jackson & St John obtained no goods till even though they paid the full value of the goods.

Givins

5th
If the Jury believe from the evidence in the case

3rd

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Gives

that Orville Finch sold the goods in controversy to Cannon & Jackson with the intent or purpose to hinder delay or defraud his creditors and that said Jackson did not purchase said goods in good faith and for a valuable consideration then such sale was fraudulent and void to the creditors of said Finch.

Gives

If the Jury believe from the evidence in the case that at the time of the sale of the goods in controversy by Orville Finch to Cannon & Jackson said Finch was insolvent, that such sale was hurriedly or privately made, that it was not a whole sale character and unshipped goods but then recently purchased these facts would be explained justifying the presumption that the purpose and intent of said Finch in making ^{said} sale was to hinder delay & defraud his creditors (This instruction is given subject to the qualification contained in the instruction marked as "drawn and given by the Court. should be annexed") as follows:

The Court gave the following instruction of its own motion which was read in connection with other instructions as given before the jury. To the giving of which the defendants by their Counsel then and there excepted.

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"Instruction drawn and given by the Court."

A conveyance of property made in good faith to pay an honest debt is not fraudulent though the debtor be insolvent and the creditor be aware at the time that it will have the effect of defeating the collection of other debts to avoid the concurrence on the part of the debtor must be real design on the part of the debtor to prevent the application of his property in whole or in part to the satisfaction of his debt. A creditor violates no rule of law when he takes payment or security for his demand though others are thereby deprived of all means of obtaining satisfaction of their own equally numerous claims. 10 Cal. 277. 17 J. 44 and Sup. 252, 21 Penn. 405, 1 P. Monro. 108. 11 P. Monro. 107

7

If the jury believe from the evidence in the case that Orville Smith sold & disposed of the goods in controversy to Daniel Jackson with the purpose and intent to hinder delay or defraud his creditor and that at the time of such sale to and purchase by Jackson he said Jackson had knowledge of such purpose or intent (or designed said Smith in perpetrating a fraud) then such sale is fraudulent and void as to the creditor of said Smith

Adverse

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Ginn

8.
 If the Jury believe from the evidence in the case that Larius C. Jackson at the time of the purchase by him of the goods in controversy had knowledge of the existence of such facts & circumstances as show that said Jones made such sale with the intent or purpose to hinder delay or defraud his creditor, then he is not a purchaser in good faith. (This is given subject to the qualification contained in the instruction marked as "drawn & given by the Court" & which annexed) as follows.

The Court gave the following instruction of its own motion which was read in connection with other instructions as heretofore shown. To the giving of which the Defendants by their Counsel then and there objected.

"Instruction drawn and given by the Court."

A conveyance of property made in good faith to pay an honest debt is not fraudulent though the debtor be insolvent and the creditor be aware at the time that it will have the effect of defeating the collection of other debts. To avoid the conveyance thus made to a real design on the part of the debtor to prevent the application of his property in whole or in part to the satisfaction of his debts a ^{Creditor} ~~creditor~~ violates a rule of law when he takes payment or security for his demand though others are thereby defrauded.

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of all means of attaining satisfaction of their
own equally ruinous claims.

10 Cal. 277. 19 2f. 46. 4 Land Sup. 252, 21 Plun.
495. 6 B Monroe 608. 11. B. Modice. 102

9.

The Jury are instructed as matter of law. that
knowledge by the purchaser of property. of facts
& circumstances (if there are such in the case)
which show that the sale was made to him
with the intent & for the purpose on the part
of the person from whom the sale was made
directly to hinder delay or defraud his creditors in
violation of his faith in such purchaser.

10.

The Jury are instructed as matter of law. that know-
ledge by the purchaser of property of those facts and
circumstances which show a fraudulent intent
or purpose in the person from whom such pur-
chase is made is sufficient proof of knowledge
of the purpose itself. (This instruction is given
subject to the qualifications contained in the instructions
marked as "Caution & Given by the Court & here to
annexed) as follows

The Court gave the follow-
ing instruction of its own motion which was read
in connection with other instructions as heretofore
shown. To the giving of which the Defendants
by their Counsel then and there excepted.

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"Instruction drawn and given by the Court"

A conveyance of property made in good faith to pay an honest debt is not fraudulent, though the debtor be insolvent and the creditor be aware at the time that it will have the effect of defeating the collection of other debts. To avoid the conveyance, there must be a real design on the part of the debtor, to prevent the application of his property in whole or in part, to the satisfaction of his debts. A ^{Creditor} condition violates no rule of law, when he takes payment or security for his demand though others are thereby deprived of all means of obtaining satisfaction of their own equally meritorious claims.

10 Cal. 277, 19 If. 46, 4. Land Sup 252, 21 Penn. 495. C. B. Minor. 608. 11 B. Minor. 102.
"

The jury are instructed as matter of law, that it is entirely immaterial to the issue involved in this case, whether any of the goods, seized and taken by the defendant Grey on the attachments in his hands were sold to Orville Finch by the Plaintiffs, on said attachments.

Of the foregoing instructions the Court gave the 2^d, 3^d, 4th, 5th, and 11th, and refused the other instructions as asked but gave the 1st, 6th, 8th, & 10th, as modified by the last clause

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attached to each of said Instructions and the instruction marked "Drawn & given by the Court" read in connection with ^{each} said Instructions and gave instruction N^o 7 with the addition of the words near the close (& designed to aid such in perpetrating a fraud.) And the Defendants by their Counsel then and there objected to the refusal of the Court to give said Instructions and each of said Instructions as asked and to the modification of said Instructions made by the Court and to the giving of said Instruction marked "Drawn & given by the Court" in connection with said instruction.

The Court gave the following instruction of its own motion which was read in connection with other instructions as herein before shown. To the giving of which the Defendants by their Counsel then and there objected.

"Instruction drawn and given by the Court"
A conveyance of property made on good faith to pay an honest debt is not fraudulent though the debtor is insolvent and the creditor is aware at the time that it will have the effect of defeating the collection of other debts. To avoid the conveyance there must be real design on the part of the debtor to prevent the application of his property in whole or in part to the satisfaction

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of his debt a creditor violates no rule of law. when he takes payment or security for his demand. though others are thereby deprived of all means of obtaining satisfaction of their own equally meritorious claims.
10 Cal. 277. 19 Lf. 46. 4 L and Sup. 252. 24 Penn. 495; C B Monroe. 608 11. B. Monroe 102.

The Defendants by their Counsel asked the Court to give the following Instructions which the Court refused. And the Defendants then and there excepted to the ruling of the Court in refusing each & all of said Instructions.

12
If the Jury believe from the evidence that Jackson & St. John purchased the goods in question with the knowledge that Linch had not paid and was unable to pay for the same. this fact raises a strong presumption that the purchases were made to hinder & delay the creditors of Linch and that such purchases were void as against such creditors.

13
If the Jury find from the evidence that the stock of goods purchased by Jackson & Isaac Miller or Taylor was purchased without any examination by the purchasers that the purchases

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times. If I Smith & Isaac Smith & Smith
bought and sold said stock & goods in quick
succession without any apparent honest reason
for either buying or selling and if the jury
further find from the evidence that Isaac Smith
acting for himself & Jackson, exchanged the
notes of Harmon Smith and Finch for the
notes of Finch alone. when Finch was of
doubtful solvency these are circumstances
proper to be considered in the determining the
honesty or dishonesty of subsequent transactions
growing out of these sales

Respond

14.
If the jury find from the evidence that Finch
obtained a quantity of goods on credit by
means of false and fraudulent representations
that Isaac Smith and William & Chas. were
engaged in assisting Finch to obtain said
goods. knowing his real condition that Isaac
Smith had just been before the fact of
Jackson that he was acting for the benefit of
Jackson in getting goods into the hands of Finch
by means of which might pay notes held by
Jackson or for Jackson's benefit that William
& Chas. received from Jackson a quantity of
goods for no other known services rendered for
Jackson and that Jackson was the man for

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Page 7
where benefit the goods were obtained by Smith
these are facts tending to show that Jackson was
a party to the fraud in obtaining the goods
and also tending to show that he purchased the
goods of Smith as a further step in the carrying
out of the fraud. and that such purchase was
void as against the creditors of Smith

15.
If the Jury find from the evidence that he pur-
chased the goods & before he sold to St. John.
Jackson commenced packing and marking the
goods in St John's name. that he sold to St John.
in order to get the goods into the hands of a third
party that he continued to look after and take
charge of the goods after the sale to St John. that
the store was kept open and sale of goods continued
in order to conceal from the Public the fact
that the goods were being removed. that the
goods were taken from the shelves. or that during
absence would not be noticed that the goods
were packed in the cellar. that they were pack-
ed by night that the clerks were enjoined to
secrecy that the Cannon was directed to take
the goods to the depot. by an unusual route that
the goods were taken to the depot. at an unusual
early hour. that Jackson was holding secret
meetings with Smith & Qua. that
after his pretended sale to St John. Jackson

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told the clerk that they were at work for him
 that the goods were directed to St John at a place
 where he did not live & from whence they were
 to be shipped that Jackson looked after the goods
 on his way at Buffalo & Chicago these are badges
 of fraud to be considered by the jury in determining
 whether Jackson was attempting a fraud. a aiding
 or assisting any other person in committing a fraud
 upon the credit of Ames and of the Jury find
 from this or other evidence that Jackson was
 in his purchase attempting a aiding or assisting
 in such fraud. then such purchase was void
 as against said Creditors and Jackson acquired
 no good title to said goods. The "argument injected"
 being considered too lengthy. The enquiries of so called
 instructions ought to contain principles of Law. the
 Court has not time to examine arguments based
 upon the facts claimed to have been proved. 1 Black
 N. D. Rep. p 537. 1 Low v. Corp. 20 Ill. 65.

16.
 The Jury are instructed as matter of Law. that
 fraud may be proved by Circumstances as
 well as by positive proof. Where fraud is
 charged. express proof is not required. It may
 be inferred from the strong presumptive Cir-
 cumstances, and of the Jury believe from the
 evidence in this case that at the time the sale

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of the goods in controversy was made by Orville Finch to Parus & Jackson said Finch was insolvent and Jackson knew it that the sale was of Finches entire stock of goods. and that Jackson knew it that a large portion of the goods thus sold had been but recently recently purchased & were not paid for, and that Jackson had knowledge of this fact also that the sale from Finch to Jackson was hurriedly made. that the fact that the sale had been made was kept secret by both parties, that the goods after the sale had been made were hurriedly & secretly packed and shipped to a distant place then from such facts and circumstances they would be justified in inferring that such sale was made with the intention and purpose to hinder, delay or defraud creditors of said Finch & that Jackson participated therein.

Whereupon the said cause was submitted to the Jury who retired to consider thereof and after a short absence returned into Court with the following verdict to wit:

That the Jury find the defendant John Gray guilty and assess the damages \$8195.38,

Whereupon the said counsel for the Defendant moved the Court to set aside the

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verdict and for a new trial in this cause
for the following reasons. To Wit,

1st Because the Court erred in excluding portions
of the deposition of Wm Stutton taken in the suit
on the part of the defendants

2^d Because the Court erred in excluding portions
of the deposition of Orville Litch taken in this
cause for the Defendants

3^d Because the Court erred in the 1st & 2nd in-
structions to the jury on the part of the Plaintiffs
in this to Wit that the jury should allow
Six per cent. interest upon the damages found
as value of the property taken

4th Because the Court erred in giving the fifth
instruction asked by the Plaintiffs to the Jury

5th Because the Court erred in not giving instruction
1. asked by Thompson for Defendant without
the qualification attached thereto by the Court.

6th Because the Court erred in refusing to
give Instructions 5th 6th 7th 8th asked by Mr.
Thompson for Defendants (said Instructions
numbered in Bill of Exceptions 12, 13, 14. & 15)

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7th. Because the Court erred in not giving instructions n^o. 10, 11, 12, 13, & 14. asked by Mr. Store for Defendants, the allegations and qualifications made by the Court. (said Instructions numbered in Bill of Exceptions 6, 7, 8, 9, 10 & 11)

8th. Because the Court erred in not giving Instructions n^o. 11. asked by Mr. Store for Defendant

9th. Because the Court erred in giving as law to the Jury the Instruction marked or headed (Instruction Number 5 given by the Court.) and in making the same a part of, and a qualification of other instructions asked by the Defendants Counsel.

10th. Because the Court erred in admitting Evidence on the part of the Plaintiffs against the objection of the Counsel for the Defendants.

11th. Because the Verdict is against the law and the evidence in the case.

12th. Because the Court erred in giving improper instructions to the Jury other than as mentioned above.

13th. Because the Court erred in refusing to

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structure asked by the Defendants and modifying instructions so asked other than as above mentioned

14th The Court erred in admitting improper evidence for Plaintiffs and in excluding proper evidence offered by Defendants.

15th The Agent attending the Jury improperly interfered with them by verbal communications with them and otherwise

Which said action to set aside the said verdict and for a new trial was granted on the 9th day of January A.D. 1864. ruled by the Court to which ruling the said Defendants by their counsel then and there excepted. And judgment was thereupon entered in said case for Eight thousand nine hundred and seventy three ⁶³/₁₀₀ Dollars. In as much therefore as the foregoing do not appear of record, it is ordered by the Court pursuant to the Statute in such case made & provided that the Defendants said exceptions be signed, and sealed and made a part of the record herein which is done.

Paul H. Higgins Clerk
Judge

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State of Illinois }
County of Cook } ss

I Thomas B. Carter Clerk
of the Superior Court of Chicago notum and for
the County and State aforesaid do hereby
Certify that the above and foregoing to be a
true perfect and complete transcript of all
the papers now on file in my office, together
with all the orders and judgments made
and entered of record in said Court, in a
Custody Cause lately pending in said Court,
on the Common Law side thereof, wherein Samuel
J. St John was Plaintiff and John Gray Philip
Conley and Andrew Brown were Defendants.
In Witness Whereof I have hereunto set my hand
and affixed the Seal of said Court at Chicago
this twenty eighth day of Feb-
ruary A.D. 1864



Thomas B. Carter
Clerk

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State of Illinois }
Third Grand Division }

In Supreme Court
To April Term A.D. 1864

John Gray, Appellant

vs.
Samuel S. St John
Appellee

Assignment of
Errors.

And now the said John Gray
Appellant comes and says that
in the record and proceedings aforesaid
there is manifest error in this
Court:

- I The Court erred in excluding Interrogatories
Nos. 6, 7, 8, 9, 13 & 14 and answers of Deposition
of Orville Finch.
- II The Court erred in excluding the answer
to the 7th Interrogatory and the 4th Interrogatory
and answer of Deposition of William H. Stratton.
- III The Court erred in allowing questions to be
put to witness Jackson on Pages of Record
188, 189, 273, 4, 5-6. (Abstract 43, 44, 59, 60.)
- IV The Court erred in excluding answer
to Interrogatory 9 of Deposition of John
Stratton after testimony of D. C. Jackson.
- V The Court erred in giving the instructions
given on part of the plaintiff.

327 VI The Court erred in refusing the 1st, 6th, 7th, 8th, 9th, 10th Instructions asked asked on part of the Defendants, ~~asked~~, and in giving said Instructions as modified by the Court.

VII The Court erred in giving the Instruction marked "Drawn Given by the Court".

VIII The Court in refusing the 12th, 13th, 14th, 15th and 16th Instructions asked by Defendants.

IX The Court erred in overruling Defendants motion for a new trial.

X The verdict of the jury is manifestly against the evidence in the case.

XI The Court erred in rendering judgment for \$8973.63 upon a verdict for \$8695.38.

By reason whereof the Appellant prays that said judgment may be reversed, &c By

Thompson & Bishop
Attys for Appellant.

And now comes the said Appellee and says in nullo et materia, and that he is ready, &c &c

J. H. Kales atty for
Appellee

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John Gray
Appellant

vs
Samuel S. St. John
Appellee

Recd Wms & Jones

Filed April 20. 1864
L. Leland
Clerk

Dec. 3 \$70.55
Transpt.

Paid Wm. Leland
by Appellant's Atty

Clerk