

14616

No. _____

Supreme Court of Illinois

Claycomb

vs.

Butler

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 92

J. W. Middleton & Co., Stationers, 196 Lake St.

Clayton

1864

1864

In the Supreme Court
of the State of Illinois
Third Grand Division

Samuel Delaney
as
William C. Butler } Error to Peoria County
Circuit Court.

The Clerk of said Court will
please issue Scire facias to the Sheriff
of Warren County to execute and also
make publication for the said defen-
dant as a non-resident according
to the rules of said Court; affidavit
of non-residence being herewith filed
and much oblige

To S. Leland Esq } Yours Truly
Clerk of said Court } McCulloch Taggart
Attys for Peoria Error

Dated Peoria Jan 15. 1864

Summit Claycomb
no

William C. Butler

Receipts

Filed Jan'y. 19. 1864
L. Seland
Clk.

State of Illinois
Warren County ss.

Samuel Claycomb }
vs }
William C. Butler }
In the Supreme
Court. 3 Grand
Division, To Appear
Term A.D. 1863

Samuel Claycomb the above named
Plaintiff being first duly sworn on
his oath says that the above
named ~~Defendant~~ Defendant William C.
Butter is a non-resident
of the State of Illinois and
beyond the reach of the process
of the said Court & further
saith not.

Subscribed & Sworn to Samuel Claycomb
before me this 19th day
of November, A.D. 1863

J. E. Chubb

Notary Public W. Co. Ill.



92

Samuel L. Laycomb
vs
William C. Butler

Affidavit of non-residence

Filed Jan 7. 19. 1864.
L. Leland
Clerk.



SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

SAM'L CLAYCOMB }
vs. }
WM. C. BUTLER. }

POINTS & AUTHORITIES FOR DEFENDANT IN ERROR.

BY H. M. WEAD.

The award was bad for the following reasons:

1st. The arbitrators exceeded their authority.

10 Cushing, 39.
17 Vt Rep. 9.
Watson on Awards, p. 54.

2d. The arbitrators were not together when the award was made or signed.

Henderson vs Bulkley - 14 B. Monroe, 292.
Wade vs Dowling - 32 82 English Common Law, 444 (44)
Peterson vs Ayre - 30 English Law & Equity Rep. 535.

2 1/2 The arbitrators were not sworn as the statute requires
Per Laws of 1845. Page 56. Sec 1 & 4

Under a similar statute in Missouri it was held the arbitrators must
be sworn *Toler vs Hayden* 18. Missouri 399

So in *New Jersey Combs vs Little* 3 Green Chy Rep 310

2

3d. Because the award was made and signed on Sunday.

3 Gilman Rep. 384.
8 Cowen, 27.

4th. Because the deposition of James Means should have been excluded.

5th. Because Claycomb tampered with the arbitrators, and by false representations induced them to sign the award.

19 Ill. 415.

H. M. WEAD,
For Defendant in Error.

⁹²
Samuel C. Baycomb

^{1/2}
William C. Butler

Defendants Points

Given April 26. 1844

J. Selman MR

STATE OF ILLINOIS, }
LA SALLE COUNTY.

STATE OF ILLINOIS, Supreme Court.—Within and for the Third Grand Division of said State.
Samuel Claycomb vs. William C. Butler—error to Peoria.

Whereas, the said Samuel Claycomb has sued out a writ of error from said Supreme Court to reverse a judgment obtained by said William C. Butler against said Samuel Claycomb in the Circuit Court of Peoria county, which said Writ of Error is now pending in said Supreme Court, and whereas, a Writ of Scire Facias has been duly issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, according to law; and whereas, also, it appears by affidavit, on file in the Clerk's office of said Supreme Court, that the said William C. Butler is a non resident of the State of Illinois, and without the reach of the process of said Supreme Court.

Now therefore, you, the said William C. Butler, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the justices of said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings brought into said Supreme Court on return of said Writ of Error and the errors assigned, if you shall see fit, and further do and receive what said Court shall order in this behalf.

Dated this twenty-third day of January, A. D. 1864.

L. J. LAND, Clerk.

WILLIAM C. BUTLER, Plaintiff's Attorney.

This Certifies, That the annexed Notice in *Claycomb vs Butler in Sup. Court,* was inserted *four* weeks successively in the OTTAWA FREE TRADER, a weekly newspaper published at Ottawa, La Salle County, Illinois, commencing with the number of said paper dated *January 23d* A. D. 1864, and ending with the number dated *February 13th* A. D. 1864

PRINTER'S FEE \$ 5.00 —

Paid by Taggart & Co

Mr. Osman Publisher.



State of Illinois }
Warren County } p

Samuel Claycomb

William C. Butler

STATE OF ILLINOIS, SUPREME COURT.—Within and for the Third Grand Division of said State.
Samuel Claycomb vs. William C. Butler—error to Peoria.

Whereas, the said Samuel Claycomb has sued out a writ of error from said Supreme Court to reverse a judgment obtained by said William C. Butler against said Samuel Claycomb in the Circuit Court of Peoria county, which said Writ of Error is now pending in said Supreme Court, and whereas, a Writ of Scire Facias has been duly issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, according to law; and whereas, also, it appears by affidavit, on file in the Clerk's office of said Supreme Court, that the said William C. Butler is a non resident of the State of Illinois, and without the reach of the process of said Supreme Court.

Now therefore, you, the said William C. Butler, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the justices of said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings brought into said Supreme Court on return of said Writ of Error, and the errors assigned, if you shall see fit, and further do and receive what said Court shall order in this behalf.

Dated this twenty-third day of January, A. D. 1864.
L. LELAND, Clerk.
McCULLOCK AND TAGGART, Plaintiff's Attorney.

Samuel Claycomb the above named plaintiff being first duly sworn doth depose and say that on the 29th day of January A.D. 1864 he inclosed in an envelope a copy of the notice hereto attached cut from the "Ottawa Free Trader" the date of the publication of which was the 23^d day of January A.D. 1864. that he addressed the same to the said William C. Butler the said defendant at Americus in the County of _____ and State of Kansas which place is the usual post-office of the said defendant, and after attaching the requisite amount of postage stamps to the same placed said envelope & contents in the United States Mail at Moundville in the County of Warren & State of Illinois to be conveyed thence to the post office of said Butler and that such notice was so distinctly marked as to _____



Subscribed & sworn
14.

State of Illinois }
Warren County } p

Samuel Claycomb } In the Supreme Court
10 } 3^d Grand Division
William C. Butler } Error to Peoria County

Samuel Claycomb the above named plaintiff being first duly sworn doth depose and say that on the 29th day of January A.D. 1864 he inclosed in an envelope a copy of the notice hereto attached cut from the "Ottawa Free Trader" the date of the publication of which was the 23^d day of January A.D. 1864. that he addressed the same to ~~the said~~ William C. Butler the said defendant at Americus in the County of _____ and State of Kansas which place is the usual post-office of the said defendant, and after attaching the requisite amount of postage stamps to the same placed said envelope & contents in the United States Mail at Mounds in the County of Warren & State of Illinois to be conveyed thence to the post office of said Butler and that such notice was so distinctly marked as to

Subscribed & sworn
14

him. Upon which she had the angel
out, and had a Devil engraved at
tom, and he drank it just the san
his coat, she again asked him the reason.
severe. "Why," replied he, "because
he first let the devil have a drop."
youth. Let me
and you California raisins are the latest
They are equal to the best import
don't cost so much. But few have
ed in the Atlantic States, but in th
of time they will drive all forei
The was
The oc
ly lady,
aved in
can guerrillas. Mighty poor sam
Napoleon is going to smother out

92

Claycomb
vs
Butler

Publication

Filed Apr. 20. 1864
S. Seland
Clk.



SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1864.

SAM'L. CLAYCOMB }
vs. }
WM. C. BUTLER. }

POINTS & AUTHORITIES FOR DEFENDANT IN ERROR.

BY H. M. WEAD.

The award was bad for the following reasons:

1st. The arbitrators exceeded their authority.

10 Cushing, 39.
17 Vt Rep. 9.
Watson on Awards, p. 54.

2d. The arbitrators were not together when the award was made or signed.

Henderson vs Buckley — 14 B. Monroe, 292.
Wade vs Dowling — 52 ~~82~~ English Common Law, 464 (44)
Peterson vs Ayre — 30 English Law & Equity Rep. 535.

2nd - The arbitrators were not sworn as the statute requires.
Revised Laws 1845, Page 56, Sec 1 & 4

Under a similar statute in Missouri it was held the arbitrators must be sworn *Toler vs. Hayden* 18 Missouri 399.

So in New Jersey 3 Green's Chy Rep 310. *Cumbr vs Little*

2

3d. Because the award was made and signed on Sunday.

3 Gilman Rep. 384.
8 Cowen, 27.

4th. Because the deposition of James Means should have been excluded.

5th. Because Claycomb tampered with the arbitrators, and by false representations induced them to sign the award.

19 Ill. 415.

H. M. WEAD,
For Defendant in Error.

92-78
Samuel Leleycomb

^{or}
Wm C Butler

Left Point

Given April 26, 1864

J. Leveycomb

ABSTRACT.

IN THE SUPREME COURT OF THE STATE OF ILLINOIS,

Third Grand Division,

April Term, A. D. 1864.

SAMUEL CLAYCOMB, *Pl'ff. in Error.*

vs.

WILLIAM C. BUTLER, *Deft. in Error.*

ERROR TO THE CIRCUIT COURT OF
PEORIA COUNTY.

Page of
Record.

5

This was a bill in Chancery, brought to the March Term of the Warren Circuit Court, and afterwards taken by change of venue to Peoria County.

The bill alleges that there is pending in the Circuit Court of Warren County, a suit at law in debt, wherein Samuel Claycomb is plaintiff, and William C. Butler is defendant, upon a bond under which was made an award of Abner C. Harding, Ivory Quinby, and Eleazer A. Paine, which award is made part of the bill, a copy of which is attached as an exhibit, as follows :

"We, A. C. Harding, Ivory Quinby, and E. A. Paine, the arbitrators chosen by Samuel Claycomb and William C. Butler, to whom was submitted all matters, differences, and dealings, where the said Butler and Claycomb, and one James Means, have been partners in business of any kind or nature," after hearing the allegations of the parties and examining their accounts respectively filed, do award as follows, to wit :

We find and allow the account of said Claycomb against said Butler as follows :

Amount paid N. A. Rankin,.....	\$ 468 66
Book Account,.....	56 32
Cash by Dixon,.....	40 00

Balance on Oysters,.....	55 50
Amount due from Butler and Means, 1st year,	135 52
Interest on last item,.....	30 00
Collected on beef account $\frac{1}{3}$,.....	27 07
Note and interest,.....	23 33
Judgment in favor of Despaine and costs,.....	125 60
Judgment in favor of A. C. Harding,.....	227 00
Paid Moses Jones,.....	27 33
Paid James Means,.....	273 75
	1,490 58

And we find and allow to said Butler as against said Claycomb, as follows:

Money put in by Butler and Means in slaughtering,.....	\$ 609 91
$\frac{2}{3}$ of M's share of profits,.....	294 54
Account,.....	43 07
	947 52
Share of item premium on hogs,.....	3 46
	950 98

We the arbitrators therefore find and award as follows: That the said William C. Butler pay to the said Samuel Claycomb the sum of five hundred and thirty-nine dollars and sixty cents.

1,490 58
950 98
539 60

Given under our hands and seals this the 10th day of May, A. D. 1854.

A. C. HARDING, [SEAL.]

IVORY QUINBY, [SEAL.]

E. A. PAINE, [SEAL.]

5 The bill then avers that the said suit is brought to recover the amount of said
6 award, which award was found by said arbitrators, professedly acting under and by
virtue of a submission made by Butler and Claycomb, a copy of which submission is
attached as an exhibit as follows:

15 I, William C. Butler, am held and firmly bound unto Samuel Claycomb, in the
sum of fifteen hundred dollars, for the payment of which well and truly to be made,
I hereby bind myself, my heirs, executors and administrators, if default be made in
the condition which follows to wit:

The condition of the above obligation is such, that whereas, this day the said
William C. Butler, and the said Samuel Claycomb, have this day agreed to submit to
Hon. A. C. Harding, Hon. I. Quinby, and E. A. Paine, as arbitrators, all the
matters, differences, and dealings, where the said Butler, and said Samuel Claycomb,
and one James Means, have been partners in business of any kind or nature, hereby
agreeing to abide the finding of said arbitrators, and acknowledge that the award
which may be found against me if any, shall be entered a judgment confessed in any
court of record in the State of Illinois, and I further agree and bind myself to pay

said award, if any, against me, and so doing this obligation to be void; otherwise to be and remain in full force and virtue.

Given under my hand and seal this 6th day of May, A. D. 1854.

WM. C. BUTLER, [SEAL.]

Witness—ABSLOM VANDEVEER.

7 The bill then alleges that the credits allowed Claycomb, except the following, to wit:

Book account,-----	\$ 40 60
Collected on beef account,-----	27 07
Amount due from Butler and Means, 1st year,-----	135 52
Interest on last item,-----	30 00

were and are in no way connected with the matters submitted, to wit: "*The matters, differences, and dealings, where the said Butler, and Claycomb, and one James Means have been partners in business of any kind or nature,*" and were not submitted to the arbitrators by Butler, and are not properly chargeable to him; that he is not indebted to Claycomb, but that he believes that Claycomb is indebted to him in the sum of \$600; that if Claycomb is allowed to prosecute his said suit, great wrong and injury will be done Butler, and that it is contrary to equity and good conscience that said award should be allowed to be enforced.

The bill further alleges that the award is fraudulent and void, because the arbitrators allowed items against Butler that were not connected with the matters submitted, and that upon a fair settlement between plaintiff and defendant, Claycomb would be found indebted to Butler in a sum not less than \$600.

The bill then prays that the award be set aside; that Claycomb be perpetually enjoined from further prosecuting the suit on the award or upon the bond, and from further setting up the same in any court for any purpose whatever, and for general relief. The oath of the defendant was waived.

19 This bill was sworn to, and preliminary injunction granted March 26, 1858.

21 Bond filed and writ of injunction issued March 27, 1858.

2 March 30, 1858: Motion made to dissolve injunction and withdrawn upon complainant amending his bill and filing new bond.

25 Sept. 29, 1858: Claycomb answered the said bill admitting the pendency of the suit on the bond of submission, averring that the credits allowed by the arbitrators to him "were by agreement and consent of all the parties interested submitted to the said arbitrators as matters, differences, and dealings, wherein the said Butler, Claycomb and Means, had been partners in business, and were justly so considered by them, and thus properly passed upon and allowed by the said arbitrators, and properly chargeable to said Claycomb, denying his indebtedness to Butler and averring that Butler is indebted to him in a large sum, to wit:—\$1,000.

The answer denies that it is contrary to equity to allow the award to be enforced, and that the award is fraudulent or void, and avers that all the items and matters of account allowed against Butler were proper items for the adjudication of the arbitrators and were properly allowed by them.

27 To this answer a general replication was filed Sept. 30, 1858.

28 Oct. 2, 1858, Cause referred to master to take testimony.

2 April 9, 1860, Venue changed to Peoria county.

9 Complainant filed amendments to bill to March term, A. D. 1861, in which he alleges that said arbitrators before proceeding to hear testimony in the cause were not sworn, faithfully to hear, examine, and determine the cause according to the principles of equity and justice, and to make a just and true award according to the best of their understanding, nor were they sworn at all; that they made no copy of their award and delivered it, or caused it to be delivered to Butler within a reasonable time after the award was made, nor at any other time; that suit mentioned in the original bill was commenced before Butler had any notice of the award; that the arbitrators made and signed their award on Sunday; that they were not together when the award was agreed upon or signed; that the award was drawn up by one of the arbitrators without consultation with the others, either separately or when they were together, and when so drawn it was taken by Claycomb to each of the arbitrators separately for their signatures, and they separately signed the same; that they signed the award before fully hearing the evidence; that when they adjourned the last time after hearing part of the evidence, expected to meet again to hear more evidence, and that Claycomb, in order to prevent the hearing of any more testimony in said cause, and for the purpose of defrauding Butler, falsely represented to the arbitrators that Butler was about to leave the State, and urged them to make said award immediately, so that he could sue on said award before Butler left the State, and the arbitrators were induced by Claycomb's representations and solicitations to make the award without any further hearing of the cause; and that the arbitrators greatly misbehaved in so making the award, and that said conduct is reprehensible and a fraud upon complainant.

These amendments were not sworn to.

11 Claycomb answered the amendments by denying their truth, and averring the truth of his former answer to which he referred.

99 March 25, 1861. Replication to answer to amended bill.

EVIDENCE ON BEHALF OF DEFT. IN ERROR.

Andrew Claycomb testified as follows:—Am brother to defendant. ("There is now shown witness a paper marked exhibit "A," as follows:)

On or before the first day of January next, we or either of us promise to pay Andrew Claycomb the sum of one hundred and fifty-five dollars for value received, this the 27th of August, 1852.

BUTLER & MEANS,
SAML. CLAYCOMB.

March the 1st, 1853, Received on the within note five dollars.

August 6th, 1853, Received on the within forty dollars.

For value received I assign this note to William Despaine.

ANDREW CLAYCOMB.

This note was given me for a two-horse carriage sold to Butler and Means, and which I delivered to them. Defendant, Claycomb signed the said note as security.

Butler, Claycomb, and Means, were in partnership during the year 1851. I think in the fall of 1851, and the winter of 1851 and 1852. They were engaged in the business of butchering in the slaughter house.

I sold the said note to William Despaine.

32 CROSS EXAMINATION.—Defendant's name was signed to said note because I would not take it without security, as I did not consider Butler & Means good without security. Butler & Means were present when I got the note. I went to them and got it. They signed the note and contended that defendant owed them enough to pay the note out of the partnership business when that was settled. Butler said he considered that Claycomb would be owing them that amount, to wit: The amount of the said note, and that he would be safe in signing the said note as security for that reason. At the time of negotiating said note, plaintiff said defendant owed them on a settlement of their business more than enough to pay for said carriage. At the time the note was made, Butler, Claycomb & Means were acting as partners. Means said that Sam, (defendant) owed a plenty or more when a settlement was made of their partnership concerns to pay the amount of the said note. The partnership alluded to was the partnership of Claycomb, Butler & Means. Defendant knew of the representations made by Butler & Means, as above, before he signed the note.

WILLIAM D. LOOK testified as follows:—From the fall of 1852 until the fall of 1853, I was in Samuel Claycomb's employ, assisting him in selling goods at Monmouth, Illinois. Defendant was keeping grocery in Monmouth in company with James Means. As clerk of Claycomb, I sold to Butler, for the firm of Butler & Means, a lot of oysters, amounting I think to about \$96. I cannot tell the exact amount without seeing the books of defendant. Butler paid me money at three different times to apply on the amount due defendant for the said oysters. I was acting as agent for defendant at the time of the sale of the oysters. There was no contract at that time about the application of them upon any general partnership dealing wherein the defendant Means and plaintiff were partners. I know of no other lot of oysters sold to plaintiff by defendant while I was in his employ.

James Means was in the habit of buying goods at the store of defendant, and the goods so bought were charged on the book of defendant to said Means. Whilst I was in the store the goods were sold to Means by Frank Hascall and myself. I think I sold more than half of them. I do not know of any contract or agreement at the time of the sale of said goods, about the application of them upon any general partnership dealings wherein plaintiff Means and defendant were partners.

40 This witness subsequently testified as follows:—I have seen the books of Samuel Claycomb in which he kept his account with and against James Means.

I don't know that I recollect distinctly any of the items of the said account, except one or two. There was an entry dated some time in the month of January, 1852, charging James Means with a judgment of some party whose name I do not now recollect. The amount I believe was one hundred and fourteen dollars and

some cents. My impression is that the said entry was in the hand writing of the defendant. I think I recollect of a credit on the said books to said Means of three dollars costs.

CROSS EXAMINATION.—I think I saw that item some ten days ago. I do not think I should have recollected it if I had not seen it some ten days ago. I do not think I should have recollected the charge if I had not examined the books. Independent of the books I should not have recollected anything about it.

RE-EXAMINATION.—The said charge was in the same book in which the store account of said defendant was kept. It was posted up in the store account against James Means in the ledger.

CROSS EXAMINATION.—I do not make the above statements independent of my examination of the books. I do not recollect that I footed the said book account.

Franklin Hascall and myself, and sometimes the defendant, were all the persons that sold goods in said store while I was there. The goods I sold Means were charged to James Means. I think others beside myself as clerks sold goods to Means while I was there.

42 a The master here reports that plaintiff presented a notice served on defendant to produce certain books which was refused.

46 This notice appears served on the 6th of April, and was to produce on the 7th of April, before the master, "your Day-books, and Ledgers, in which you kept your accounts in the years 1850, 1851, 1852, and 1853; also all books in which you have kept any account with or against James Means during said years.

WILLIAM D. LOOK being again called, testified as follows:—While I was in the employ of defendant, I did hear defendant talk about selling goods to James Means. Means had a large account with defendant. I said to defendant that I thought it was doubtful if the account would ever be paid by Means. Defendant said he thought that Means would pay it. I don't recollect that I ever heard defendant say anything about the individual account of said Means being settled or accounted for in the settlement of the matters and dealings of Butler, Means & Co.

I commenced in the employ of defendant about the 1st of Nov., 1852, and quit about the 1st of Sept., 1853. Franklin Hascall and myself were in the habit of charging the goods sold by each of us on the day-book. Hascall did most of the posting to the ledger. Sometimes the defendant made entries on the day-book.

37 MOSES R. JONES testified:—I do not consider that I had any dealings with the firm composed of Butler, Means & Claycomb, in regard to the payment of \$27,33. Claycomb never paid me any money for said firm.

38 ANDREW DICKSON testified:—I was acquainted with James Means in the spring and summer of 1852. He and the plaintiff were in partnership in the grocery business in Monmouth, Illinois. Means, and plaintiff, and defendant, were in partnership in the slaughtering business in Monmouth, in the year 1851, as near as I can recollect. I think the name of the firm was Butler, Means & Co.

As near as I can recollect the said Butler & Means were engaged in the grocery business in Monmouth, by the name of Butler & Means, at the same time that the firm of Butler, Means & Co. were doing business.

Means came to me with an order from the defendant for money to the amount of forty dollars. The order was directed to me to call on defendant's wife and she would give the amount of money to me to deliver to Means. This was in April or March, 1852. I got the money from defendant's wife and gave it to said Means. Claycomb, the defendant, told me that Butler & Means had borrowed the said forty dollars and were to return it to him. He told me the above some time afterwards. I never did at any other time than the one above spoken of, pay the sum of \$40 in money or in any other way to the said Butler & Means or either of them for the defendant.

44 FRANKLIN HASCALL testified :—In the fall of 1852 and the year of 1853, I was clerking in the store of the defendant. Mr. Look and myself sold the goods and I kept the books, or at least the most of them. We both of us charged on the day-book and I posted on the ledger. There were goods at that time sold to James Means. I do not recollect of hearing defendant stating to me or any other of his clerks in his store, in my presence and hearing, anything about how he was to receive his pay for the goods sold to Means, or about the plaintiff being in any way liable for the goods sold to James Means.

47 LEWIS N. C. BUTLER testified :—The plaintiff and defendant in the latter part of the year 1851, and the fore part of 1852, were engaged in the business of slaughtering hogs and rendering lard. My understanding was that Samuel Claycomb, William C. Butler, and James Means, were in partnership in said business. All I can say about the firm name, is that I had charges on my book by the name of S. Claycomb & Co. They quit slaughtering between the 4th day of Dec. 1851, and Feb. 23, 1852, according to my charge on my books. The firm was dissolved by Butler & Means selling out to Claycomb.

JAMES MEANS testified :—Claycomb was to pay Butler and myself for our interest in the establishment two-thirds of the net profits of that winter's work, and the money back we had advanced. We had advanced between \$400 and \$600. I don't know how much the two-thirds of the net profits of that winter's work amounted to, nor do I know the whole amount of that winter's work. We had a settlement with N. A. Rankin. I don't know what all was considered in the settlement. I think the gross settlement was about \$2,260, for everything that was considered in the settlement during the whole time we were in company, that we had anything to do with said Rankin. We commenced rendering lard for said Rankin sometime in the last of November or first of December, and continued to do so until sometime in February. The said settlement was not made until sometime after we quit rendering for him.

Quest.—Was this settlement a settlement of yours, and Butler's, and Claycomb's work in the said slaughtering house during said winter ?

Ans.—That was a part of the settlement. I do not know but that there were other things considered in the settlement.

I cannot recollect whether or not said \$2,260 was the gross amount of the business of Butler, Means & Co.'s work in said establishment during said winter.

I have no recollection of Samuel Claycomb's ever having paid a judgment against me for the sum of about \$114. The first year Butler, Means & Claycomb were in partnership, they were engaged in slaughtering cattle and sheep. I don't know whether or not, at the time of the award, Butler and myself owed Claycomb anything on account of the first year's partnership. I don't know whether or not we owed him as large a sum as \$135.

IVORY QUINBY testified :—

Quest. 1.—Are you acquainted with the parties to this suit, and if so how long?

Ans.—I have known both parties to this suit for twenty years.

Quest.—State whether you ever served as an arbitrator between the said parties along with E. A. Paine, and A. C. Harding? If so, state when and where.

Ans.—I did. In Monmouth, in the year 1854 or 1855.

Quest.—State whether the arbitrators were sworn or not at that time before making their award?

Ans.—My recollection as to that fact is not distinct. But my impression is that they were not sworn.

Quest.—State whether or not the said arbitrators met for the examination of witnesses, and if so, did the arbitrators conclude the examination?

Ans.—Said arbitrators met for the purpose of examining witnesses as to certain disputed matters of account between said parties, and at the time of the arbitration the statements of the parties themselves were made and taken as to some items, and my recollection is that the arbitrators did not fully conclude their investigation as to some matters in dispute.

Quest.—State how the award came to be signed before a full investigation of the matters in dispute took place?

Ans.—On Sunday morning, shortly after the day the arbitrators had met, said Claycomb came to my house and stated that said Butler, as he believed, was about to abscond from the State—that he was informed that said Butler was at Rock Island, or on his way to Rock Island—that there was danger of said Claycomb losing any claim he might have against Butler unless the arbitrators would then conclude their award, and desired that an award should be made in order that he might commence a suit upon it. He then, I think, presented to me an award already drawn up and signed by said Harding, or Paine, or both, and desired me to sign the same as arbitrator, which I first objected to do, for the reason that some items of the account in favor of said Claycomb I did not consider sufficiently established, but under the circumstances I finally concluded to sign the award. I did so.

Quest.—State whether you would have signed the award at the time had it not been for the said representations of said Claycomb?

Ans.—I cannot say whether I would or not. In answer to the last interrogatory, I have stated fully the inducements that led me to sign it as well as I can now recollect.

Quest.—Did you or did you not, according to your best recollection, sign said award on Sunday?

Ans.—I did.

Quest.—State whether any of the witnesses examined before you as arbiters were sworn or not?

Ans.—I do not recollect.

Quest.—State whether in making said award you were confined to the bond of submission or not?

Ans.—My recollection as to that is not distinct.

Quest.—Under the circumstances in which said award was made, did you or did you not consider the same to be conclusive against the said Butler? or did you look upon the award as a kind of farce?

Ans.—I was not satisfied that the award as made was just, for the reason that there were some items in favor of Claycomb which formed a part of the award that I did not consider sufficiently proven. But I did not draw any conclusion as to the validity of the award so made.

Quest.—Did you or did you not, have any consultation with other arbiters before signing said award?

Ans.—I do not recollect that I did.

CROSS EXAMINATION.—*Quest.*—Was any person present when you signed the award?

Ans.—I do not recollect whether there was or not, except said Claycomb.

Quest.—When and where did you sign it?

Ans.—My recollection is that I signed it on Sunday, but I do not recollect the day of the month, or the month, and I do not recollect the place where it was signed.

Quest.—Was there any date to said award, and in whose hand writing was said award?

Ans.—I do not remember whether it was then dated or not, nor in whose hand writing it was.

Quest.—Can you state whether the other arbiters had signed said award before or after you signed it?

Ans.—I cannot.

Quest.—Will you state who made the original draft of the finding of the said arbiters?

Ans.—I distinctly recollect that I made at the time of said arbitration a full memorandum of the account between said parties then proved or proposed to be proved, and it is very probable that the award when made, was based upon said memorandum made by me, but as to whether that was the fact or not I do not positively know. But there were some items upon said memorandum which I did not then consider as fully established.

Quest.—Do you know where that original memorandum is, and would you recognize it if placed in your hands?

Ans.—I do not know where it is, but think I should recognize it. (*Here memorandum shown to witness and marked proof No. one, signed J. G. Madden.*) This is a memorandum which I made on that occasion. But I do not know that this was all the memorandum which I made.

Quest.—At the time of making said memorandum had you determined as one of the said arbitrators, that the items therein should be allowed to each party respectively?

Ans.—I expected that further proof would be made as to some of the items.

Quest.—State which items?

Ans.—I cannot tell. My recollection as to the whole transaction is quite indistinct. But at the time, and ever since, I have had a distinct impression that some of the items of Claycomb's account were not well established. And at the time of said arbitration I expected more full proof would be adduced in support of them before the award was made. But I cannot now tell what said items were.

Quest.—Have you any recollection who signed the said award first, and would you known if you could see it?

Ans.—I have no recollection who signed it first. (*The award shown to witness.*) From the examination of the award it appears that I signed the award before A. C. Harding signed it.

Quest.—Have you ever been sworn in this suit before?

Ans.—I have no positive recollection that I have been.

RE-EXAMINATION.—*Quest.*—Does the date of the award appear to be altered since it was signed?

Ans.—The date appears originally to be the 10th day of May, 1854. It appears that an attempt has been made to alter it to the day of May, 1854.

Quest.—Who produced the said award before you this evening, and in whose possession was it?

Ans.—Said award was presented to me before the Master in Chancery by E. A. Paine, attorney for Claycomb?

Quest.—Did you or did you not, this evening, hear the attorney of said Butler ask said Claycomb and his attorney, E. A. Paine, for permission to attach said award to your deposition, and did they or did they not refuse?

Ans.—I heard such a request made, which was refused by both said Paine and Claycomb, for the reason that they desired the custody of the same for fear it might be lost.

Quest.—Did you or did you not ever sign any but one award between said parties?

Ans.—I did not. I think Mr. Butler never was furnished with a copy of the award.

58 ABNER C. HARDING testified:—Some years ago I was associated with Ivory Quinby and E. A. Paine as arbitrators between the parties to this suit. All of us were then practicing lawyers. We met in the office of Harding and Quinby, and at the time of meeting no papers of submission were drawn as well as I can remember. After we met, an instrument of submission was drawn, and I think it was done at the instance of Paine, but I will not be positive. My impression that considerable discussion was had as to the propriety of it. One portion thinking it would amount to nothing, unless there was an obligation that would bind the parties to comply, and others expressing the view that it was intended as an advisory proceeding, to enable

the parties to settle without legal proceedings. It was in that view that I acted. The instrument was signed I think. We proceeded to hear the parties. We heard Mr. Claycomb's statement, and his accounts were produced. Mr. Butler made his statements which were adverse to Mr. Claycomb's. They conflicted a good deal. Mr. Means made a statement as a witness, and whether there were other witnesses or not, I don't recollect. Whether Mr. Means was sworn or not, I don't recollect. I have no recollection that the arbitrators were sworn. My impression is they were not. Mr. Claycomb brought in one account against James Means to be allowed in the arbitration. My recollection is that Butler & Means had been in partnership, and had sold out to Claycomb. Mr. Claycomb claimed that that account should be charged against Butler, and he proved by Mr. Means that he had got the account out of the store of Claycomb, and had promised to have it applied to the debt Claycomb owed Butler & Means. Claycomb also contended that the store account of Means should be applied to pay the claims which Butler brought against him. Mr. Butler denied it, and objected to the statements of Means because that they tended to prove that his (Means) own debt was paid. I don't recollect of any adjournments. This was sometime during the week, in two or three days after, perhaps the next day, my impression is that Mr. Claycomb called on me, in this I may be mistaken. But under the impression that Mr. Butler was about going away, an award was made out and signed. Mr. Butler was then considered insolvent, and proceedings were somewhat hurried by the consideration that he was going away—that is my impression. What the finding was I do not remember. We found for Mr. Claycomb in some amount. I signed the award. We charged Mr. Butler in making up the award with the account of Means. We allowed Mr. Claycomb in the neighborhood of \$200, a note which he had given with them to me, on which there was then, or has been since, a judgment in the Circuit Court.

61 I do not positively remember on what day of the week I signed the award. I have an impression that something with reference to the matter was done on Sunday. It might have been that a suit about the matter was brought on Sunday. My impression is that Mr. Claycomb called on me about that matter on Sunday. My recollection is not sufficient to swear one way or the other, whether it was about the award or a suit.

I recollect that we did not make up our opinions on that day, and I think that some further examination of the accounts was proposed, or calculations to be made. I have forgotten what followed afterwards. I have an impression, but not sufficiently distinct to state under oath. I am positive that I was dissatisfied in my own mind with the just state of accounts between the parties as being in accordance with the award. I distinctly recollect that I wanted to meet the other parties and have the matter between them settled, more in the character of a friendly advisory proceeding than with a view to any legal result.

I do not recollect that it was proposed to examine more witnesses, or that it was not. My impression is that the award was hurried by the impression that Butler was about to leave the State. But I don't think the award was made in violation of an agreement to hear more witnesses. I, of course thought the award approximated

a fair adjustment of the accounts between them. I think it was made without reference to the bond of submission.

63 *(There is now shown witness a note dated January 31, 1852, payable 1st of June,*
 then next to A. C. Harding for \$200. Signed Butler & Means, Samuel Claycomb.)
 67 That is the note we allowed Claycomb against Butler. It was then or afterwards
 reduced to a judgment against Claycomb, and perhaps Butler, in the Circuit Court
 63 of Warren County, and perhaps Means. Neither the judgment nor the note were
 fully paid to me at the time of arbitration, if anything had been paid, but it was
 considered that Claycomb would have to pay it, and it was allowed him as against
 Butler in making up that award, and Claycomb has since settled or paid it. The
 note was given me by Butler & Means upon a sale by me to them of a house and lot
 in Monmouth. They obtained the signature of Mr. Claycomb to the note and handed
 it to me. I took it in lieu of cash promised me as hard money on the said sale.

The proceedings were not in conformity with the rules of Court in this respect, that I think the arbitrators were not sworn. I do not recollect that the witnesses were. The interested parties, plaintiff and defendant, made statements and read their accounts without formal proof, and accounts which were not matters strictly between Claycomb & Butler, were taken into consideration and allowed, as in the case of a note debt of \$200 against Butler & Means. I have stated repeatedly, that in making up the award we did not refer to the bond of submission. I did not, at least, and I do not now know whether the said bond referred to matters in dispute between Claycomb, Butler & Means, or between Claycomb & Butler only.

At the time I did not look into the bond to see what was submitted to us, as I thought that unless the parties would voluntarily agree to the award, that it was not finally binding, at least, that was my opinion. We took into consideration matters between Claycomb, Butler & Means; also, between Claycomb & Butler individually, and between Claycomb & Means. We charged Butler with all the accounts. We did not exclude the accounts because of the difference of parties. If Butler was liable in any capacity with Means, or individually, we brought them in in that proceeding. We did not take into consideration whether they were against Butler alone, or against Butler & Means.

I know that we did not consider whether the matters and accounts presented to the arbitrators, and upon which they made up their award, were or were not matters, differences, and dealings, wherein said Claycomb, Butler & Means were partners in business together of any kind or nature.

CROSS-EXAMINATION.—I do not recollect the amount of the award; at the time I believed the award approximated to a fair statement between the parties. I do not recollect whether the parties witnesses and all other persons, except the arbitrators, left the room where the arbitration was held. I have no distinct recollection as to whether it was agreed among the arbitrators at that time, after the testimony was heard, that said arbitrator, Quinby, should make the calculations and findings in writing as then agreed, and upon which the award was made. I have an impression that there was a difference of opinion between myself and Mr. Quinby about what the award should be. My impression is that it was on a subsequent day.

I don't recollect where I was when I signed the award.

The note heretofore spoken of was given for a part of lot 2, in block 10, in the city of Monmouth, on which Gardiner now has a drug store. I would not have been willing to sign an award that was merely advisory that would have been injurious to either party. I thought it good advice. Means at that time had no visible means of support, except himself and family. He was reputed insolvent.

EVIDENCE FOR PLAINTIFF IN ERROR.

69 JAMES MEANS testified:—I was a member of a firm of which the parties to this suit were also members. I cannot recollect the year exactly. The business of the firm was slaughtering hogs and cattle, and rendering lard. The name of the firm was Butler, Means & Co. I sold Claycomb the interest of Butler & Means in the slaughter house. I made an agreement at the time with said Claycomb that my individual store bill in his store, and the store bill of Butler & Means in his store should be taken as payment in settling up the partnership business. Also Butler's individual store bill was to be settled the same way. We expected Claycomb to make more payments, and they were all to be counted in, and all that said Claycomb might pay for the firm of Butler & Means were to be received into the settlement and be considered a part of the partnership business.

Butler knew of the sale of the slaughtering establishment as mentioned above, and of the arrangements I had made with said Claycomb as stated in my answer to question 3d and agreed to the same. We expected Claycomb would be indebted to us, and if he paid claims on it they would be good as in money, and when the final settlement was to be made they would all be reckoned in as above stated.

75 *Quest.*—Did you know or did you not know afterwards of an arbitration held by A. C. Harding, Ivory Quinby and E. A. Paine, as arbitrators between the parties to this suit, and if so, state * whether all of their matters, and differences, and dealings, as before agreed upon, were to be considered and submitted to said arbitrators as partnership business?

Question objected to.

[NOTE.—At the * there is a misplacement in the original deposition. See record.]

Ans.—I was present at an arbitration as stated above, and was a witness before the said arbitrators. My understanding was that all those matters, differences, and dealings, between the parties were to be considered for the purpose of evading a lawsuit, and were submitted to said arbitrators.

75 *CROSS-EXAMINATION.*—I think the firm of Butler, Means & Co. was dissolved in the winter of 1851 or 1852. I think it had existed about two years. I considered that the said firm was dissolved at the time said trade was made.

Quest 4.—Did the plaintiff at any time agree that your personal accounts and
*71 store bills should * be taken into the arrangement you made with Claycomb.

Ans.—I told said plaintiff that I had told Claycomb that I would purchase as many goods as I needed out of his store to assist him in making the payment for the said slaughter house, &c., and would get Butler to do the same, to which arrangement plaintiff agreed.

I made the above statement to Butler after the said arrangement was made with Claycomb. I don't remember his language in answer, but he said enough to consent the trade. I don't know that it was particularly agreed on by Butler at that time, that my individual accounts and store bills should come into said arrangement. But I told him of the trade and he agreed to it. The arrangements referred to accounts that were made at time in the store and such as might be made thereafter. There was no limit as to time or the amount of the account that might be made in the store by me, and which was to be included in said arrangement.

Quest 10.—How do you know that these matters, differences, and dealings, between the parties as stated by you in your answer to question fifth were submitted to said arbitrators.

Ans.—I heard it talked over, and I heard a bond read over, and I think it was so in the bond, and the parties signed the same.

I was examined as a witness before said arbitrators but don't recollect whether I was sworn or not. I have an idea that I was not sworn, but don't recollect. I do not recollect whether the item marked in the award "Amount paid James Means, \$273.75" was an individual account of mine or not. The amount of my store bill made before and after the said trade was about the amount stated above to amount to \$273.75. I consider the account paid as follows: What I owed before said trade was paid in the said trade. What I made afterwards I took in payment of what Claycomb was owing in the trade for the slaughter house.

*77 *Quest 15.*—Has Claycomb ever paid you the sum * of \$273.75, or any other sum except the store account which was taken into that arbitration?

Ans.—He has not paid me the above or any other sum. I don't know whether the above account was allowed in the arbitration or not. I have collected from Claycomb at different times means for the firm of Butler & Means. I know of nothing I had of Claycomb in that deal individually, except the store goods.

(Motion before master to exclude all of Means testimony on the grounds of interest.)

E. A. PAINE testified:—I was one of the arbitrators. I was solicited to act by both parties.

Quest 4.—State what the complainant in this suit said to you to induce you to act as such? (Question objected to.)

Ans.—Some four weeks before the said arbitrators sat, the complainant met me at the court house door, and said to me that he and defendant had trouble about settling, that they had talked of arbitrating it and wished me, with Harding and Quinby, to act as arbitrators. I told him that Claycomb had spoken to me, and that I utterly refused to act. He said their business was much mixed up or a good deal mixed up, I don't recollect which, and was afraid they could not settle without a suit and would much rather arbitrate. He said that we, (I suppose meaning himself and defendant), thought best, or agreed, I don't recollect, to leave the whole matter to their lawyers and have them decide it. I was in a hurry and told him I would not act, and left him. Some ten days or two weeks afterwards I met complainant, and he spoke to me again on the said subject. He said they could make no settlement, (I supposed he meant Claycomb and himself,) and that he and Means thought

that Claycomb was owing them quite an amount, and that Claycomb would not settle unless his account, and Means' account, and the account of Butler & Means in his store should be reckoned in. That there should be a general settlement of all their business. That they had been in company, all three of them, in slaughtering hogs, and that Butler & Means had sold out all the slaughtering establishment to Claycomb, that Means was drinking pretty hard, and was running through everything he had. That Means owed him, and by getting a settlement with Claycomb, he would get what was coming from Claycomb to Means in his own hands, and save what he had advanced him through Means' hands in their business. He said that he and Claycomb would arbitrate the whole matter if I would consent to act as one of the arbitrators, that they would reckon in all of the business as partnership matters and have it settled. The above statements induced me to act as arbitrator in the case.

Quest 5.—Were each and all of the items passed upon and allowed by you as arbitrators in your award submitted to you by the parties to this suit, and agreed to be so submitted by them at the time of said arbitration? (*Question objected to.*)

Ans.—All the items were submitted by either one or the other of the parties to the arbitration, and been passed upon and allowed as they are set out in the award. There were some items about which the parties contended. One party insisting on being allowed and the opposite party objecting, but from the proof before the arbitrators that all the items allowed were to be considered in the scope of the general partnership business, if the fact that the item was true and correct, was allowed.

There were a few items which were offered which were rejected by the arbitrators. Those that are reported in the award as allowed, were allowed on the proof being made to the arbitrators that they were to be reckoned in the partnership business of Butler, Means & Claycomb, in order to get a settlement, and avoid a law-suit. (*Answer objected to.*)

Proof was made before the arbitrators that the parties had agreed that the items allowed in said award should be considered as the partnership business of Butler, Means & Claycomb, and as such should be decided upon in order to avoid a law-suit. (*Answer objected to.*)

CROSS-EXAMINATION.—My recollection is that the item \$273.75 was an individual account of James Means. James Means, Moses R. Jones, and I think one other testified before the arbitrators. It was proven to the arbitrators that the matters submitted were to be considered as part of the partnership business of the parties recited in the bond, and they were governed by it.

This witness subsequently testified as follows: I was one of the arbitrators and acted in the utmost good faith, as I believe the others did. Harding & Quinby were the attorneys of Butler, and I attorney for Claycomb. Our desire was to investigate the matter submitted to us, and to make a final settlement between them. It was not advisory, much less a farce.

Both parties were present with their witnesses, books and papers, and the items allowed in the award of the accounts of the parties respectively were established by competent proof, and allowed by the arbitrators as coming within the scope of their authority. There were some items which were offered and proved that were

rejected, because they did not come within their authority. One of those items amounted to \$200 or more, presented by defendant as proper to be submitted and passed to his credit, it being for a span of horses sold by the defendant to one James Means, who had formerly been a partner with these parties, and by said Means sold to said complainant, and by him taken out of the State, as said Means had not paid for said horses, said defendant claimed that he should be allowed their value in the award which we were to make up, the arbitrators refused to allow it. Another item was a note of two hundred dollars or more which defendant had paid, given to Harding for money loaned to said Means, and signed by said defendant as security, who took the same to St. Louis, and expended it for groceries, which were shipped to come to Monmouth, Ill., but before they arrived, they were seized by the creditors of Butler & Means, and sold to pay the demands of that firm—said defendant having paid said note, claimed that it should be allowed him by said arbitrators as a demand against said complainant—the arbitrators rejected it. (*Answer objected to.*)

Quest 6.—Was or not, said arbitration had only to arrange a compromise between the parties, or was it or not, for determining the balance between them on a settlement, and to find the amount which was to be paid, and that to be binding upon the parties? (*Objected to.*)

Ans.—It was not to arrange a compromise, it was to find the amount due from one party to the other on examination of partnership accounts, where the parties and one James Means had been partners, and some accounts against James Means individually, and some against the firm of Butler & Means which the parties agreed to reckon in as part of the co-partnership transactions.

Quest 7.—What was the agreement of the complainant to this suit as to the account of James Means, and how was said account to be acted upon?—(*Objected to.*)

Ans.—I have answered this in my former deposition. Complainant told me that Means, who was his partner at the time in the grocery business, was drinking very badly, and that he could not settle with him until the old partnership business of Claycomb, Butler & Means was settled up, that Claycomb would not settle unless they reckoned in an individual account he had against Means, and an account he had against Butler & Means; and to effect said settlement he agreed that all those matters should be considered as a part of the partnership transaction.

The best of my recollection is that Judge Quinby swore Mr. Harding and myself as arbitrators. I was a justice of the peace at the time, and swore Quinby as arbitrator. The parties presented their demands respectively. Witnesses were called by each party respectively and sworn by Judge Quinby. After an examination of the testimony and listening to the statements of the parties—all other persons left the room in which we were sitting, which was the office of Harding & Quinby, and we consulted for some time as to the award—before commencing the arbitration, each party gave the other his bond to abide the finding of the arbitrators. Before the arbitrators separated, Judge Quinby made a statement of those items which could readily be reduced and the amounts fixed. I was then to draw the award and fill it out with those items, leaving a space for Quinby to fill in the items when he had figured them up—that we met on Thursday following in the office of Harding &

Quinby, when the blank space in the award which I presented were filled out by Judge Quinby with the items which he was to figure up—that Judge Quinby signed the award first, then I signed it, and A. C. Harding wrote his name nearly over Judge Quinby's. The date that I put on the award I drew, was changed to agree with that date. There was no adjournment for the purpose of taking further testimony. We only separated as stated in the preceding answer, and when we met it was for the purpose of signing the award.

CROSS-EXAMINATION.

97 *Quest. 1*—Do you mean by anything contained in this deposition to vary, alter, or contradict any part of your former deposition given in this case?

Ans.—I do, if it does vary, alter or contradict it.

Quest. 2—If this deposition contradicts any part of your former deposition, which is true?

Ans.—If it does, this is true.

Quest.—Was the agreement spoken of by you in answer to the 7th interrogatory, in chief of the complainant to allow in the arbitration the account of Butler & Means, and of James Means, made before or after the bonds were signed?

Ans.—I acted as arbitrator on statement of complainant made to me before the bonds were signed. When the arbitrators met and the bonds were about to be drawn, the matters were talked over before and at the time the bonds were drawn. The agreements were all made before and at the time the bonds were being drawn, and before the bonds were signed.

85 A. C. HARDING testified:—By agreement of the parties in an arbitration referred to in his deposition taken in this case, that said James Means was introduced as a witness, and by his evidence it was proved that an individual account which said Claycomb had against said Means, should be included as one of the items to be allowed said Claycomb, as against said Butler, and upon said testimony, the arbitrators allowed said account, and it is my recollection now that a suit was commenced on said award on Sunday, and that said award was not signed on Sunday. My recollection is not distinct.

87 N. A. RANKIN testified:—In 1851 and 1852, the parties to this suit and James Means were engaged in carrying on a slaughter house in Monmouth. I paid Butler & Means in February, 1852, four hundred and six and some odd dollars for said Claycomb. I don't recollect for what purpose. Plaintiff, defendant and Means were in partnership. My recollection is that they dissolved in February, 1852. I don't recollect whether it was before or after I paid the money.

CROSS-EXAMINATION.—Butler & Means were engaged in the slaughtering business with Claycomb, and I think they had a grocery in the city of Monmouth.

88 WILLIAM DESPAINE testified:—I obtained judgment against Claycomb & Means in Warren Circuit Court, April 14, 1854, for \$120.60, and the same has been paid by defendant. The judgment was on a joint and several note, given by Butler & Means, and signed by defendant as security. The reason judgment was not obtained

against Butler was that he was out of the State at the time, and no service was had upon him.

104 JAMES MEANS again testified :— *Witness objected to on account of interest.* If I
am interested in the event of this suit I don't know it. (*Paper containing items*
103 *allowed Claycomb in the award, numbered in their order, here shown witness.*)

I know the first item to N. A. Rankin to be right, \$468.80. The 2d is right, \$56.32. The 3d item is right. I got the money for Butler & Means, \$40, paid by Dixon. The 4th item I suppose to be right. Butler told me he bought the oysters of Claycomb, and brought them over to our grocery, and Butler & Means sold them for \$55.50.

Item 5th was submitted to the arbitrators by agreement of those parties as being an item properly chargeable against Butler. I did not know the amount due Claycomb \$135.62.

The 6th, I know nothing about the interest, this was an item for the arbitrators \$30.

Item 7th, I suppose and believe to be right, \$27.07.

Item 8th is right, it was a note that Butler & Means gave Claycomb, \$23.83.

Item 9th is right, and was properly chargeable to Butler, \$125.60.

Item 10th is right, and properly chargeable to Butler, \$227.00.

Item 11th, paid Moses Jones, is right, and properly chargeable against Butler, \$27.33.

Item 12th, paid James Means \$273.75, is right, and properly chargeable to Butler. The complainant and defendant agreed that all the items mentioned in said award should be submitted to arbitrators. I heard conversation between complainant and defendant, after the award was made. The complainant was not willing to pay the whole of the award and did not feel able to do so—he spoke of having a piece of land and a gold watch, and my recollection is that he was willing to pay that much upon the award, and spoke of this land and gold watch as being all he had to turn out.

CROSS-EXAMINATION.—Complainant and myself were in partnership in this place. I don't know as I can state when it commenced or when it ended. It commenced somewhere in the year 1848, 1849 or 1850, and ended in 1853, 1854 or 1855. What was due Claycomb was due from us as parties, all except the last item (12) which was due to Claycomb from me for goods taken out of his store, and to be accounted for by Butler & Means in the trade of the slaughter house.

The way I know the items in the award are the same as those agreed to be submitted is, I was there at the arbitration, the items were brought up one at a time, those that were objected to were urged as being true, and took testimony on both sides and left it to the arbitrators.

Just before my examination commenced to-day, defendant and I talked about the award and he showed me the award which did refresh my memory as to some of the items. I don't recollect of having any conversation in relation to other matters connected with my testimony, there might have been something said but I do not recollect of any now. I asked Claycomb for the award, for the purpose of refreshing my memory of the items in the award. We might have spoken about it, but I cannot tell.

Claycomb was present during my examination in chief, and I asked him about a certain note mentioned in the award. I asked who the note was given to, and I then recollected it. I then asked him about the beef account, and he said it was money that we collected, and that he should have had one-third of it, which is the amount mentioned in exhibit "A." I do not recollect of being present when complainant and defendant agreed to submit their accounts to arbitrators. The way I know it, is—I was present at the arbitration and heard it talked over between plaintiff and defendant. I don't recollect that they referred to any particular items. It appears to me that Butler claimed that the store bill against Means was not chargeable to Butler & Means. I sold the interest of Butler & Means in a slaughter house, which belonged to Butler, Means & Claycomb, to defendant, provided Butler was willing
 112 to the trade, and I told Claycomb in order to get him to trade with me, that money was hard, and I agreed that we, (Butler & Means) would take what goods we needed in place of requiring all money in payment, and I went in and told Butler the trade I had made with Claycomb, and all the talk as far as I recollected it at the time. Butler raised no objection to the trade. I considered that any goods that Butler or me, or the firm of Butler & Means, that should be taken, was payment on Claycomb's side, as far as they went on the purchase of the slaughter house. I never heard Butler agree that said item should be charged to Butler & Means only in the way above stated.

After the sale of the slaughter house, Butler and myself remained in partnership 12 to 18 months. I think the whole of said store bill was made during the existence of said partnership.

In the conversation spoken of, Butler spoke of having a piece of land and a gold watch—he pulled the watch out in his hand. I am satisfied he would have given the watch and land to have got rid of the award. I don't know that he made any direct offer to that effect. If he said anything in that conversation about the arbitrators having awarded upon matters not properly chargeable to the firm of Butler & Means, and not contemplated in the bond, I do not recollect it. There was something said in that conversation by complainant about a small note that he complainant said he had neglected to present to the arbitrators, that he should have been allowed.

I don't consider that I should be liable to Claycomb for the debts due him from the firm of Butler & Means, let the suit go as it will—I should try not to be. I don't know what you would call a release—he never receipted to me—I have never asked him for it—I did not consider I owed him anything.

If my store bill should be decided not to be chargeable to Butler & Means, I don't think I would be liable to Claycomb for the same. Claycomb has never agreed with me that he would not hold me liable for the same. If it would be to my interest to have Butler pay all the debts due Claycomb upon the firm of Butler & Means, I don't know it. If I am liable for the same I will make Butler pay them if he is worth it. I consider I am released already by law, for the reason that Butler and myself were in partnership, and when we dissolved, Butler agreed to pay the debts. Butler was perfectly solvent. Claycomb sued Butler instead of suing Butler & Means, and delayed time until Butler became insolvent and thereby cut me out of my chance to make it out of Butler. I don't know that it makes any difference with me at all to have

said award sustained. If I am liable to Claycomb it might relieve me from such liability. If I am liable to Claycomb for my store bill it might be to my interest to have the award sustained, but I don't believe I am myself liable at all, let the suit go as it will. I don't think it would make any difference with me to have the award sustained. I think Claycomb took his chance of three ways to make his money—he could have sued Butler & Means, or he could have sued Butler or Means.

118 IVORY QUINBY again testified: (*Papers marked 1, 2 and 3, shown witness.*)
The 1st is a bond from Butler to . 2d the award. 3d is a memorandum of account between Claycomb and Butler made by me at the time of arbitration.

I have examined papers marked 4 and 5, and recollect that there were submitted to said arbitrators items of account of the same character as set out in said papers, and my impression is that papers 4 and 5 were before the arbitrators at the time of arbitration.

127 Exhibit 1, is the bond of submission.

125 Exhibit 2, is the award.

124 Exhibit 3, is a statement of account the same as in the award.

122 Exhibit 4, Account of S. Claycomb,

To BUTLER & MEANS,

showing items to the amount of \$609.91.

121 Exhibit 5, is an account,

BUTLER & MEANS,

To SAMUEL CLAYCOMB,

showing items to the amount of \$1,748.97.

Same as in the award, with some variation as to amounts, with the addition of a judgment in favor of C. Harding, \$212.50.

129 J. G. MADDEN testified:—Identifies papers marked 1, 2, 3, 4 and 5. No. 4, is in the hand writing of complainant. No. 5, is partly in the hand writing of defendant, and partly in the hand writing of E. A. Paine. In the fall before the arbitration, complainant and defendant, and James Means, came into my office and requested me to make for them some calculations about their partnership business for that year. They gave me the items from which to calculate and I made the calculation for them. They all continued in the office until the calculation was ended. I have a memorandum of said calculation before me, made at the time in my hand writing, which I used to refresh my memory as to items and amounts, and according to the statements of the parties made at that time, each party was to put an equal amount of capital into the business, and receive an equal amount of the proceeds, according to their statements to me at that time, Claycomb had put into the firm the amount of \$374.83 more than his share of capital, which should be paid to said Claycomb, by Butler & Means, to make them equal, and Butler & Means the sum of \$162.28 $\frac{3}{4}$ more than their share of the proceeds, which they should have paid to Claycomb, to make the proceeds and profits equal. I do not know whether or not, the item \$161, referred in the interrogatory as having been reduced by said arbitrators to the sum of \$135.52, is the same item that I found to be due in making the computation between Butler, Means & Claycomb, aforesaid, from Butler & Means to Claycomb, to make their shares of

the proceeds and profits equal. At the time I made the calculation referred to, my recollection is that all the parties expressed themselves as being satisfied with the result of my calculation between them as above referred to.

Upon this evidence the court rendered a decree setting aside the award, and perpetually restraining and enjoining said Claycomb, his agents and attorneys, from the prosecution of the said suit at law, or any suit at law founded upon said award, and that complainant recover costs and have execution therefor.

ASSIGNMENT OF ERRORS.

1. The Court erred in rendering decree for defendant in error, when the same should have been for plaintiff in error.
2. The Court erred in not rendering decree in favor of plaintiff in error.
3. The Court erred in setting aside the award.
4. The Court erred in making the injunction perpetual.
5. The Court erred in enjoining the prosecution of any other suit on the award.
6. The Court erred in rendering decree for costs.
7. The Court erred in awarding execution for costs.
8. The Court erred in receiving improper, illegal and incompetent testimony on part of defendant in error.
9. The Court erred in rejecting proper, legal and competent testimony on behalf of plaintiff in error.
10. The Court erred in not rendering decree that defendant in error should pay the amount justly and equitably due from defendant in error to plaintiff in error, as a condition to the setting aside of said award.
11. The Court erred in not dismissing the bill.
12. The Court erred in not dismissing the bill at costs of defendant in error.

McCULLOCH & TAGGART,

Attorneys for plaintiff in Error.

Brief of Plaintiff's Attorneys.

SAMUEL CLAYCOMB, *Plff.*, }
 vs. } ERROR TO PEORIA.
WILLIAM C. BUTLER, *Deft.* }

I. This is not such a case as to entitle a party to relief in a court of equity. There is neither such fraud, partiality, misconduct, or mistake shown, as to entitle the party to relief.

2d Story's Eq. pp. 676, § 1452.

2. Parsons on Cont. 213.

6. Met. 169.

Van Cortland *vs.* Underhill, 2 Johns ch. 339.

The points made in the Bill are as follows :

I. *Departure from the submission.* The question is whether the items contained in the award were to be considered as connected with the partnership concerns of Butler, Means & Co.

These items were all included in the contract of dissolution of that firm, and agreed to by Butler. (Abstr. pp. 15 and 16.)

They were likewise agreed to be considered such for the purpose of effecting a settlement. (Abstr. pp. 15, 16 and 18.)

It was proven to the arbitrators that the parties had agreed to consider all the items as part of the partnership business. (Abstr. pp. 15 and 18.)

The award was based upon the contract of dissolution, allowing Butler the capital invested, two-thirds the profits, and some minor items.

They acted upon the evidence before them. In this there was neither *accident, mistake, fraud, or misconduct*. In the absence of these the Court cannot inquire into errors of judgment either as to law or fact.

2 Story Eq. pp. 677, § 1454.

Boston Water Power Co. *vs.* Gray, 6 Met. 131.

McKinstry *vs.* Solomons, 2 Johns, 57.

Solomons *vs.* McKinstry, 13 Johns, 27.

Root *vs.* Renwick, 15 Ill., 461.

Ross *vs.* Watt, 16 Ill., 99.

Hayward *vs.* Harmver, 17 Ill., 477.

Nor will the Court inquire into the legality of the evidence on the hearing before the arbitrators.

Caldwell on Arb., 126.

Fuller *vs.* Wheelock, 10 Vt., 135.

Hollingworth *vs.* Super, 1 Dallas, 161.

Leamed *vs.* Bellows, 8 Vt., 79.

2. *That the arbitrators were not sworn.* This is only necessary in the statutory proceeding where judgment is sought to be entered on the award.

Scates Stat., 209.

Cole *vs.* Chapman, 1 Scam., 35.

Low *vs.* Nolte, 15 Ill., 368, 16 Ill., 475.

Smith *vs.* Douglas, 16 Ill., 34.

The oath not being required at common law. 4 Blackf., 44.

The award was good independent of the statute.

Merritt *vs.* Merritt, 11 Ill., 565.

Smith *vs.* Douglas, 16 *Supra.*

Foster *vs.* Durant, 2 Cush., 544.

But the allegation is not proven. Two of the arbitrators are uncertain, whilst the third swears positively that they were sworn. (Abstr. pp. 8, 11 and 16.)

3. *That no copy of the award was delivered.* This was unnecessary. The award was signed and published in the presence of the defendant. (See authorities under last point.)

4. *That the award was signed on Sunday.* This allegation is not proven. Quinby thinks the award was signed on Sunday. (Abstr. p. 8.) Harding thinks it was not. (Abstr. p. 17.) Whilst Paine is positive it was signed on Thursday. (Abstr. p. 17.)

Supposing the evidence equally balanced the presumption is in favor of the legality of the award.

Root *vs.* Renwick, *Supra.*

2 Parsons on Contr.

5. *That the arbitrators were not together when the award was signed.*
6. *That the award was drawn by one of the arbitrators without consultation with the others.*
7. *That the award was signed before all the evidence was heard.*

The only evidence on all these points is that of Quinby, whose recollection was confessed to be very indistinct. Paine swears positively that the arbitrators were together, that he drew the award, and submitted it to the others after the evidence was all heard. (Abstr. p. 17.)

8. *That the award was procured through the misrepresentations of Claycomb.* This allegation is not sustained by the proof. All the evidence on this point is that of Quinby, who thinks that he signed the award upon the representations that Butler was about leaving the State. Harding, his partner in business, thinks it was the attachment suit that was commenced on Sunday, upon the same representations, whilst Paine swears positively that the whole transaction was consummated with the utmost fairness. (Abstr. p. 15.)

I. The decree of the Court is not sustained by *legal* evidence.

The only evidence of misconduct on the part of the arbitrators, or of Claycomb, is that of Quinby, who is an incompetent witness for that purpose.

Ellmaker vs. Buckley, 16 Serg. & Rawle, 72.

Wilstan vs. Fisher, 28. Ill., 43.

II. The award was clearly good in part. The only item over which there could be any controversy, was the store bill of James Means. The Court therefore should only have set aside that portion which was bad, upon the payment of the balance.

2 Pars. Cont., 202.

2 Saund. Pt., 2. pp. 292.

13 Johns., 264.

McDonald vs. Arnout, 14 Ill., 58.

III. The defendant acquiesced in and ratified the award at the time, and after it was made. (Abstr. p. 19.) He is therefore estopped from controverting its validity.

Perkins vs. Meig., 10 Johns, 143.

Culver vs. Ashley, 19 Pick., 300.

Frothingham vs. Haley, 3 Mass., 68.

Caivus vs. Bleeker, 12 Johns, 300.

McCULLOCH & TAGGART,

Attorneys for Plaintiff in Error.

In the Supreme Court,

APRIL TERM, A. D., 1864.

SAMUEL CLAYCOMB, *Plaintiff in Error*,

vs.

WILLIAM C. BUTLER, *Defendant in Error*.

ABSTRACT AND ASSIGNMENT OF ERRORS,

AND

BRIEF OF ^{Plaintiff's} ~~DEFENDANT'S~~ ATTORNEY.

Emery & Andrews, Printers and Blank Book Manufacturers, Peoria, Ill.

Filed April 19, 1864
J. L. Leland C.M.R.

1
Pleas before the circuit court, within
and for the county of Peoria and state
of Illinois, on the twentieth day of June
in the year of our Lord one thousand eight
hundred and sixty-three.

Be it Remembered that heretofore to
wit - on the fourteenth day of May A.D.
1860, there was filed in the office of the cl
of the circuit court of said county a
Transcript of the proceedings of the circuit
court of Warren County in said state, togeth
er with the accompanying papers, in words
figures following, to wit: -

Transcript

State of Illinois 3
Warren County 3

Pleas before the Honorable
John S. Thompson, Judge of the tenth Judicial
circuit of the state of Illinois. At a circuit
court began and held at the court house
in Mounmouth within and for the county
of Warren and state of Illinois, on the third
Monday in the month of March in the year
of our Lord one thousand eight hundred
and fifty-eight. It being the fifteenth day
of said month. Present - Hon. John S. Thomp-
son, Judge. James W. Stewart, states attorney
Wm. Lafferty, Clerk: Charles M. Miles, sheriff.

2

William C. Butter }
vs } Injunction
Samuel Claycomb }

"And afterwards to wit on the
30th day of March AD 1858, the following
order was made in the above entitled
cause:

William C. Butter }
vs } Injunction
Samuel Claycomb }

This day came the defendant
by his attorney and moves the court to
dissolve the Injunction herein. Thereupon
by the agreement of parties said motion
is withdrawn. And the said complainant
amends his bill and files a new bond
which bond is approved in open court.
Thereupon it is ordered by the court that
this cause be continued until the next
term of this court.

And afterwards to wit on the 9th day
of April AD 1860 the following order
was made in the foregoing case to wit:

William C. Butter }
vs } Injunction
Samuel Claycomb }

By agreement of parties
herein it is ordered by the court that the

3.

venue of this cause be changed to Peoria County in the state of Illinois. And that the clerk of this Court make out and transmit to the clerk of the circuit court of Peoria County Illinois a copy of the record herein together with all the papers filed in this cause. And it is further ordered by the court that the special Master herein file his report of evidence herein within ten days from this date.

State of Illinois }
Warren County } ss.

I, Wm. Laferty, Clerk of circuit court in and for said county hereby certify that the foregoing is a full and correct transcript of all the orders and decrees entered of record in the foregoing case. And that accompanying papers numbered from one to 18 are all the papers on file in this cause.

In testimony whereof I have hereunto set my hand and affixed the seal of our said circuit court at my office in Monmouth, this 30th day of April AD 1860.

Wm. Laferty, Clerk

5. The State of Illinois } Circuit Court
Warren County } March Term 1888

Bill
To the Honorable John S. Thompson,
sen. Judge of the Circuit Court of the tenth
Judicial District for the State of Illinois, - In
Chancery sitting;

Your Orator William C. Butt
humbly complaining, shews unto your Honor
that there is now pending in the Circuit Court
Warren County Illinois a suit at law, in debt,
wherein Samuel Maycomb is plaintiff and your
orator's defendant which is now standing as
number 13 on the Common law docket of said
~~Circuit~~ Court, which said suit is brought in
upon bond, under which was made an award
of Abner C. Harding, Ivory Quinby and Eleazer
A. Paine, a copy of which said award is hereto
attached, and marked Exhibit "A" and which
your Orator prays may be taken as part of
this bill; as will more fully appear by the re-
ords and files of said Court in said case, to
which reference is had for greater certainty, and
which your Orator prays may be taken as part
of this Bill..

And Complainant avers that the
said suit at law is brought for the recovery
by the plaintiff of the amount of said last -

mentioned award as damages in said case

Your complainant further states that said award was found by said Arbitrators professedly acting under and by virtue of a submission made to them by your complainant and one Samuel Blaycomb (whom your Orator prays may be made defendant hereto) of which said submission a copy is hereto attached and marked - "Exhibit B." and prayed to be made part of hereof which said submission is the bond above referred to on which said suit at law was brought,

Your complainant further says that said Arbitrators found said award by allowing to the said Samuel Blaycomb the following pretended charges and credits and accounts to wit: -

Amount paid N. A. Rankin	\$468.66
Book account	56.32
Cash of Dixon	40.00
Balance on Oysters	55.80
Amount due from Butler & Means 1st quar.	135.55
Interest on last item	30.00
Collected on beef a/c 1/3	27.07
Note paid Int.	23.83
Judge in favor of Herpain & Co	125.60
" " " " A. C. Harding	227.00
Paid Moses Jones	27.33

James Means

273.75
1490.58

Your Complainant further states that said items, charges, matters of account and indebtedness included in and incorporated with said award and allowed said Claycomb except, to wit: - Book Account \$40.60; Collected on Beef a/c 2707; Amount due from Butler and Means 1st Year 135.52, & on last item \$30.00. None and are in no way connected with the matters submitted to said Arbitrators to wit: - "the matters, differences and dealings wherein the said Butler and Samuel Claycomb and one James Means have been part in business of any kind or nature; and men not in any way submitted to the decision of said Arbitrators by your complainant.

Your Complainant further states; that the said items and matters of account described in said award as allowed said Claycomb against your complainant were not and are not in any way properly chargeable to your complainant by said Arbitrators.

Your Complainant further states that he is not in any way indebted to said Claycomb upon a settlement of all matters between them, but that said Claycomb is as your complainant verily believes indebted

to your Complainant ^{in the sum} of at least Six hundred dollars.

Your Complainant further states that if said Samuel Claycomb is allowed to prosecute his suit upon said ^{award} ~~notes~~ ~~an~~ ~~an~~ ~~award~~ and against this Complainant without ^{the} intervention of a Court of Chancery, great wrong and injustice ^{will} ~~may~~ be done to your Complainant. And that it is contrary to justice and equity, that said award should be allowed to be enforced.

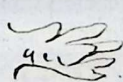
Your Complainant further states that ~~the~~ said award is fraudulent and void as to him, because said Arbitrators had not considered in making the same, and allowed ^{your Complainant} ~~in the~~ against ~~your Complainant~~ the said ~~d~~ and matters of account which were not properly chargeable to your Complainant and were not in any way connected with the matters, differences and dealings "Submitted to said ^{Arbitrators} ~~Arbitrators~~ by said submitter and your Complainant further ~~states~~ ^{adjustment} that upon a fair settlement and ~~adjustment~~ ^{matters} of the differences & dealings where said ~~Claycomb~~ ^{Claycomb} Butler & said ~~John~~ ^{James} Means have been partners in business together of any kind or nature the said Samuel Claycomb would be found indebted to your Complainant

9
in a sum not less than six hundred ~~and~~
dollars

 [Brackets]

William C. Butler }
vs. } In the Peoria County
Samuel Maycomb } Circuit Court

March Term A.D. 1866
In Chancery

Amendments to the Original Bill in the abo-
vinted cause, to be inserted on paper
marked with a hand ~~drawn~~  & brackets
[Brackets]

Your Complainant further states that
said Arbitrators before proceeding to hear
the testimony in the cause were not sworn
faithfully and fairly to hear, examine and de-
- termine the cause according to the principles of
Equity & justice; and to make a just and
true award according to the best of their
understanding, nor were they sworn at all
in said cause.

Complainant further avers
that ~~the~~ said Arbitrators made no copy of
said award & delivered it to a ~~court~~
caused it to be delivered to your Complainant
within a reasonable time after said award

was made, nor at any time since said award was made. And that said suit at law against your complainant referred to in the original bill in this cause was commenced before your complainant had notice that said award had been made.

Your complainant further states that said Arbitrators made & signed said Award on the first day of the week, commonly called Sunday, which act by said Arbitrators is in violation of the laws of the State of Illinois.

Your Complainant further states and avers that said Arbitrators were not together when said award was agreed on nor when it was signed by them: - that said award was drawn up by one of the Arbitrators without consultation with the rest either separately or when they were altogether, and when so drawn up was taken by Samuel Hayscomb defendant, to each of the Arbitrators separately for their signatures to the same, and they separately signed the same, all of which is contrary to law, equity and good conscience.

And your Complainant further states, that said Arbitrators made & signed said award before fully hearing the evidence in said cause: that said Arbitrators when they adjourned the last time, after hearing

// a part of the evidence expected to meet again
to hear ~~what~~^{more} evidence in said cause, And
your Complainant charges that said defendants
Claycomb, in order to prevent the hearing of any
more testimony in said cause, and for the pur-
pose of defrauding your Complainant, falsely
represented to said Arbitrators that your Com-
plainant was about to leave the State, and
urged them to make said award immediat-
ly so that he could sue on said award before
your Complainant left the state, and said
Arbitrators were induced by said defendant
through his representations & solicitations to make
said award without any further hearing of the
case. And your Complainant charges that
said Arbitrators greatly misbehaved in so
making their award, and that said conduct of
said defendant is reprehensible and a fraud
upon your Complainant.

Wm. C. Butler

by H. M. Ulead

Complainant's Solicitor

And said defendants come for answer to the
amended bill say that the matters & things in
said amended bill are not true & say that the

12

Dec March
25-1861
G. P. Sloan
CPS-

Matters and things contained in his original
answer are true & hereby refers to the same
Manning & Merriman
for left.

13 Your Complainant therefore prays that inasmuch as your Complainant's grievances are only remedial in a Court of Chancery where such matters are properly cognizable. To the end therefore that the said Samuel Claycomb may make full and perfect answer (but not under oath, his oath to said answer being expressly waived) to all and singular the matters before stated and charged as if the same were particularly repeated & he specially interrogated hereon, and that not only to the best of his knowledge but also to the best of his information and belief, ~~and~~ ^{heresay} ~~heresay~~, and more especially that he may answer and set forth as to each of said items & matters of account alleged in said demand & inquire by said Arbitrators what said items are & how they are claimed to have been incurred by your Complainant and all things connected therewith.

And your orator prays that the said award may be set aside & cancelled by the decree of this Court & for nought held & that said Samuel Claycomb & all those acting as agents or claiming under him may be perpetually enjoined from further prosecuting your orator on said award or upon said bond or from further setting up the same in any Court for any purpose whatever & that your Honor may grant

Such other and further relief in the premises as may to your Honor seem meet,

May it please your Honor to grant to your Orator not only the most gracious writ or writs of Injunction of the State of Illinois issuing out of & under the seal of this Honorable Court to be directed to the said Samuel Claycomb and any and all of his Attorneys & Solicitors to restrain him and them from proceeding at law against your Orator touching any of the matters in question and particularly in said suit now pending in said Court, but also the most gracious writ of Subpoena of the said State of Illinois to be directed to the said Samuel Claycomb therein commanding him at a certain day and under a certain pain therein to be specified, personally to be and appear before your Honor in this Honorable Court and then and there to answer ^{but not on oath, his oath to said answer being expressly waived} all and singular the premises, and to stand to, perform and abide such order and decree there as to your Honor shall seem agreeable to equity and good conscience, and your Orator shall ever pray . —

Wm. C. Butler

Comptis Salr

15- Wm. C. Butler being duly sworn, says that the matters and things ~~set forth~~ in said bill above set forth are true in substance & in fact.

Wm. C. Butler

Sworn to & subscribed
before me this 19th day of
March A.D. 1858

Wm. Safferty -
clerk.

Sworn & subscribed before
me this 30th day of March A.D. 1858.

Wm. Safferty clerk,

"Exhibit "B"

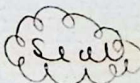
Copy of Arbitration

Bond referred to in Bill, J. William C. Butler
am held and firmly bound unto Samuel May-
comb in the sum of Fifteen hundred dollars
for the payment of which well and truly to be
made, I hereby bind myself, my heirs, executors
and administrators if default be made in the
conditions which follows to wit; -

The Conditions of the above obligations
is such, that whereas; This day the said William
C. Butler and the said Samuel Maycomb have
This day agreed to submit to Hon. A.C. Harding

Men, ~~Timothy~~ J. Trimby and E. A. Paine as Arbitrators all the matters, differences and dealings where the said Butter and said Samuel Delapomb and one James Means have been ~~partners~~ in business of any kind or nature, hereby agreeing to abide the finding of said Arbitrators and acknowledge that the award which may be found against me, if any, shall be entered as judgment confessed in any Court of Record in the state of Illinois; and I further agree and bind myself to pay said award if any against me, and so doing this obligation to be void; otherwise to be and remain in full force and virtue.

Given under my hand and seal
this 6th day of May A.D. 1854

Wm. C. Butter 

Witness

Absalom Vandever

"Exhibit A"

Copy of Award,

Ue A. O. Harding,

17. Ivory Gimby and E. A. Paine, the Arbitrators chosen by Samuel Claycomb and William C. Butler, to whom was submitted "all matters" differences and dealings where the said Butler and Claycomb and one James Means have been partners in business of any kind or nature" after hearing the allegations of the parties and examining their accounts respectively find do award as follows. To wit:-

We find and allow the account of said Claycomb against said Butler as follows:

Amount paid N. A. Rankin	\$468.66
Book Account	56.32
Lease by Dixon	40.00
Balance on Oysters	55.50
Amount due from Butler + Means 1 st year	135.52
Interest on last item	30.00
Collected on beef acct '93	27.07
Note + Int.	23.33
Judgt in favor of Messrs Means	125.60
" " " " A. O. Harding	227.00
Paid Moses Jones	27.33
Paid James Means	273.50
	<u>1490.58</u>

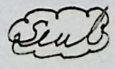
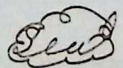
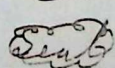
And we find and allow to said Butler as
against said Claycomb as follows,

Money put in by Butler + Means	
in Slaughtering	\$ 609.91
1/3 of M. share of profits	294.54
Account	43.07
	947.52
Share of item premiums on hogs	3.46
	950.98

We the Arbitrators therefore find
and award as follows: that the said Wil-
liam L. Butler ~~pay~~ pay to the said Samuel
Claycomb the sum of five hundred and thirty
nine dollars and sixty cents,

1490.58
~~950.98~~
\$ 539.60

Given under our hands and seals this the 10th
day of May A.D. 1854

A. C. Harding 
Jury Quimby 
E. A. Paine 

State of Illinois
Warren County fs.

The Clerk of the Circuit Court will issue Injunction in the foregoing case in accordance with the prayer of the foregoing Bill, upon Complainant entering into bond with John M. Butler as security in the penal sum of Fourteen Hundred dollars, to be approved by said Clerk,

John S. Thompson

March 26, 1858

Bond filed

March 27, 1858

Wm. Lafayette,
Clerk

Know all men by these presents that Mr. William C. Butler as Principal and John M. Butler as ^{surety} ~~security~~ are held and firmly bound unto Samuel Blaycomb in the penal sum of Fourteen Hundred dollars to be paid to said Samuel Blaycomb his heirs, assigns and administrators, for which payment well and truly to be made, we, the said William C. Butler and John M. Butler bind ourselves, our heirs, executors and administrators firmly by these presents. — Sealed with our seals and dated this 27th day of March A.D. 1858

Whereas, the said William C. Butler has exhibited his bill of complaint in Equity in the Circuit Court of the County

of Warren and State of Illinois against said Samuel Blaycomb, praying among other things for an injunction to restrain him from further prosecuting a certain suit at law in an action of debt wherein the said Blaycomb is plaintiff + said Butler defendant in said Circuit Court for said County of Warren on an award of A. C. Harding, E. A. Paine + J. Quincy as Arbitrators or from further prosecuting him on said award ~~and~~ from further sitting up the same in any Court for any purpose whatever.

And where as, the Honorable John S. Thompson Judge of the Circuit Court for the tenth Judicial Circuit for the State of Illinois has allowed ~~and~~ injunction for that purpose according to the prayer of said bill upon the said Complainant giving security as required by law in such cases.

Now therefore, the condition of this obligation is such, that if the above bounden William B. Butler shall well and truly pay to the said Samuel Blaycomb his heirs assigns and administrators all money and costs due or to be due to the plaintiff in the said action at law on said award, and also all such costs and damages as shall be awarded against the Complainant by said Circuit Court on the dismissal of said bill or dissolving of

21

Said Supplication then the above obligation to
be void, otherwise to remain in full force
and virtue

Wm. C. Butler Seal

John M. Butler Seal

Approved by me this 27th
day of March 1858

Wm. Saffery Clerk

Writ, filed State of Illinois } ss
March 27, 1858 Warren County }

Wm. Saffery, clerk

The People of the State of
Illinois. - To the Sheriff of Warren County
Greeting. - Whereas, William C. Butler
has this day filed in the Office of the Clerk
of the Warren County Circuit Court on the
Chancery side thereof, a bill requiring Samuel
Blaycomb from further prosecuting a certain
suit at law in an action of debt in said Cir-
cuit Court for said County of Warren, wherein
the said Samuel Blaycomb is plaintiff and
said Butler is defendant on an award of
A. C. Harding, E. A. Paine and J. Quinby as
Arbitrators or from further prosecuting him
on said award or from further prosecuting
him on said award or from further setting up
the same in any Court for any purpose
whatsoever. - And whereas the Honorable
John S. Thompson Judge of the Circuit Court

of the tenth Judicial Circuit for the State of Illinois has granted an injunction as prayed for in said Bill,

We therefore command you that you command the said Samuel Claycomb to refrain from further prosecuting said suit at law ~~or~~ on said award or from in any way further prosecuting said William C. Butler on said award or from further setting up the same in any Court for any purpose whatsoever until by the final order of the said Circuit Court the said injunction shall be dissolved.

And hereof make return as the law directs. — Given under my hand and seal of Office at Menomonee this 27th day of March A.D. 1858.

Wm. Safford, Clerk of Circuit Court of M. Co

I did on this day serve the within by reading the same to Samuel Claycomb and delivered a true copy of the within to Samuel Claycomb.

March 27th 1858

C. M. Mills, Shff.

By W. W. Clements, Dep.

Bond, filed

March 30, 1858

Wm. LaPorte, clerk

Know all men by these presents that we William C. Butler as principal and John M. Butler as surety are held and firmly bound unto Samuel Hayscomb in the penal sum of fourteen hundred dollars to be paid to said Samuel Hayscomb his heirs, assigns and administrators, for which payment well and truly to be made we the said William C. Butler and John M. Butler bind ourselves our heirs, executors and administrators firmly by these presents. —

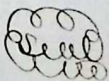
Sealed with our seals and dated
This 30th day of March A.D. 1858.

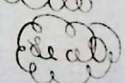
Whereas the said William C. Butler has exhibited his Bill of Complaint in Equity in the Circuit Court of the County of Warren and State of Illinois against said Samuel Hayscomb praying among other things for an injunction to restrain the said Samuel Hayscomb from further prosecuting a certain suit at law in an action of debt now pending in the Circuit Court of said Warren County, Illinois wherein said Samuel Hayscomb is plaintiff and said William C. Butler is defendant, and said suit is brought on an Arbitration Bond

And from further prosecuting him on said award or from further setting up the same in any Court for any purpose whatever.

And whereas the Honorable John S. Thompson, Judge of the Circuit Court for the ~~Third Judicial Circuit~~ ^{District} Court for the State of Illinois has allowed an injunction for that purpose according to the prayer of said Bill upon the complainants giving security as required by law in such cases,

Now therefore the condition of this obligation is such, that if the above named William C. Butler shall well and truly pay to the said Samuel Maycomb, his heirs, assigns, and administrators all money and costs due or to ~~become~~ due to the plaintiff in the said action at law on said Bond, and also all such costs and damages as shall be awarded against the complainant by said Circuit Court on the dismissal of said Bill or dissolving of said injunction or on the hearing of said suit, then the above obligation to be void, otherwise to remain in full force and virtue,

Wm. C. Butler 

Approved March 30, 1858 John M. Butler 
in open Court

Wm. Safety Clerk

257.

Answer, State of Illinois } ss. Circuit Court
 filed, Sept. 29th 1858. } Warren County } September Term 1858
 Wm. Lafayette clerk } Chancery Sitting

William C. Butler }
 vs } Defendants Answer
 Samuel Maycomb }

The said defendant Samuel Maycomb, now and at all times reserving to himself all benefits that might or may accrue to himself on account of exceptions to mistakes or imperfections in said Orators Bill contained. Answers the same as follows, - This Defendant acknowledges that there is a suit at law in his favor brought to recover on an award against said Orator Wm. C. Butler. -

And this defendant avers that all the matters, items of account and differences that were allowed by said Arbitrators to this defendant were by agreement and consent of all the parties interested submitted to the said Arbiters as matters, differences & dealings wherein the said Orator and this defendant and one James Means had been partners in business and were justly so considered by said Arbiters and thus properly passed upon and allowed by the said Arbiters.

And this defendant avers that the

items passed upon by said Arbiters in favor of him were properly chargeable to your Orator by said Arbiters,

And this defendant denies that he is indebted to your Orator; and avers that your Orator is indebted to him in a very large sum of money, to wit:— One thousand dollars,

This defendant denies that it is contrary to equity to enforce the collection of said award in a Court of law.

And this defendant also denies that said award is fraudulent or void as to said orator on any account,

And this defendant avers that all the items & matters of account allowed against said Orator were proper items for their adjudication and were properly allowed against said Orator,

And this defendant prays your Honorable Court that he may be dismissed herefrom with his costs & charges in this behalf most wrongfully sustained, and that he may be allowed to proceed in his said suit at law,

Samuel Maycomb

27.

Replication

Sept 30, 1858

Wm. Lefebvre, Clerk

State of Illinois }
Warren County }In his said Court
September Term A.D. 1858

William C. Butler

vs

Samuel Braycomb

Chancery

The Replication of Wil-

liam C. Butler to said Respondents answer, -

This Replicant, saving and reserving to himself all and all manner of advantage except-
tion which may be had and taken to the manifold
errors, uncertainties and insufficiencies of the an-
swer of ^{the} said defendant for replication thereto, -
saith that he doth and will aver, maintain, and
prove his said bill to be true, certain and suf-
ficient in the law to be answered unto by the de-
fendant, and that the answer of the said defendant
is very, uncertain, evasive and insufficient in
the law to be replied unto by this replicant; with-
out that, that any other matter or thing in the
said answer contained material or effectual
in the law to be replied unto and not herein
and hereby well and sufficiently replied unto,
confessed or avoided, traversed or denied is
true; all which matters and things this repli-
cant is ready to aver, maintain and prove as
this Honorable Court shall direct, and humbly
prays as in and by his said Bill he has already prayd

Harding & Reed

Solicitor General

State of Illinois } In Circuit Court, 5th Term
Warren County } 1st Term A.D. 1858.

Order of Court

filed, Oct. 2, 1858

Wm. Laferty, clk

William C. Butler }
vs. }
Samuel Maycomb }

And now at this term this cause coming on to be heard and the Court having examined the Bill and answer of the defendant to the same and the plaintiffs Replication thereto. And the Court do hereby order that this cause be referred to the Master in Chancery of this Court to take the testimony and report his proceedings herein to the next term of the Court.

John S. Thompson

~~~~~

The State of Illinois } In Circuit Court  
Warren County } of Warren County  
Continued from September  
Term A.D. 1858

Notice to take

Depositions

William C. Butler }  
vs. }  
Samuel Maycomb }

In Chancery  
Injunction



29

To Messrs Paine & Burroughs, Attorneys for  
the said defendant

You are hereby notified  
that on the 8th day of November A.D. 1858 I  
shall proceed to take the depositions of Nathan  
iel A. Rankin, James Means, Abner C. Hardins  
Andrew Hiscow, Moses R. Jones, Andrew Clay  
comb, William D. Sear witnesses for the plain-  
tiff to be read in his behalf on the trial of the  
above cause in evidence before James G. Madden  
Master in Chancery for said County of Warren  
at his office in the City of Monmouth in said  
County between the hours of 8 o'clock A.M.,  
and 9 o'clock P.M., of said day and to  
continue from day to day if necessary  
until the same shall be completed,

Dated this 24th day of <sup>3</sup> William L. Butler  
October 1858 <sup>3</sup> Plaintiff in the above  
~~case~~ cause by Reed &  
McLarny his Attorneys,

We acknowledge  
service of a copy of the within notice this  
24th day of September A.D. 1858

Paine & Burroughs  
Attys for Rept



## Escheat "A"

Depositions

On or before the first of January next me or either of us promise to pay Andrew Claycomb the sum of one hundred and fifty five dollars for value rec'd. This the 27th of August 1852

Butler &amp; Means

Saml. Claycomb

"March the 1st 1853. received on the within note five dollars,"

"August 6th 1853. Received on the within forty dollars."

For value received I assign this note to William Despain,

Andrew Claycomb

William G. Butler

vs.

Samuel Claycomb

} Warren Circuit Court  
 } March Term 1859  
 Chancery,

Report of James G. Madden Master in Chancery to whom said Cause was referred to take testimony.

November 15, 1858 parties meet at my Office in Monmouth when the following



31  
testimony was taken, to wit:-

Andrew Delaney being first duly sworn by me on the part of the plaintiff, testified as follows, to wit:-

1 ques

Are you acquainted with the parties to this suit. If so, how long have you been acquainted with them?

Ans 2

I am acquainted with the parties to this suit. I have known plaintiff about 13 years, & defendant is my brother.

Ques. 3

Will you look at this paper (Paper here given to witness, a copy which is herewith attached to this deposition & marked Exhibit "A") and state whether you have seen the paper before, and if so whether you know what was the consideration given for it?

Ans 3d

I have seen this paper before, The said note was given to me for a two horse carriage,

Ques 3

To whom was said Carriage sold and which of the parties to the note had the said carriage?

Ans 3

The said Carriage was sold to Butler & Means, and said Butler & Means had the said Carriage. I delivered it to them.

Ques 4

State if you know whether the said defendant Delaney signed the said note as principal or security.

Ans 4

Said Delaney signed the said note as security.



Ques 5- State whether you were acquainted with the parties to this suit & one James Means during the year 1851, and also if you know whether they were doing business together as partners at that time,

Ans 5- I know the parties to this suit & said James Means at the time mentioned. I know the said parties & the said Means were in partnership about that time. I think in the fall of 1851 and the winter of 1851 & 1852. They were engaged in the business of butchering in the Slaughter house

Ques 6 What did you do with the said note marked Exhibit "A"?

Ans 6 I sold the said note to William Despain & assigned the same to him,

Cross Examination by Dep't.

Ques 1 Why was the defendants name signed to the said note,

Ans Because I would not take the note without security, as I did not consider the said Butler & Means good without security

Ques 2 What did plaintiff say at the time you got said note about their partnership business

Ans Said plaintiff & Means were present when I got the note. I went to them to get the note. They signed the note & contended that said

\* de



33 \* Defendant owed them enough to pay the note out of the partnership business when that was settled.

Ques 3 What did plaintiff say as to defendants being indemnified in signing said note by said balance which they claimed would be their due on said settlement?

Ans He said he considered that Claycomb would be owing them that amount, to wit: - the amount of the said note, and that he would be safe in signing the said note as security for that reason.

Ques 4 At the time of negotiating said note did you or did you not understand from said plaintiff that if defendant had to pay said note that said defendant should get his pay for the same in the final settlement of their partnership business?

Ans He said defendant owed them on a settlement of their business more than enough to pay<sup>for</sup> the said carriage.

Ques 5 Were Butler and one James Means whose names are signed to the said note by the name of Butler & Means, acting as partners at the time said note was made?

Ans. They were.

Ques 6 What did said Means say when negotia



33 \* Defendant owed them enough to pay the note out of the partnership business when that was settled.

Ques 3 What did plaintiff say as to defendants being indemnified in signing said note by said balance which they claimed would be their due on said settlement?

Ans He said he considered that Claycomb would be owing them that amount, to wit: - the amount of the said note, and that he would be safe in signing the said note as security for that reason.

Ques 4 At the time of negotiating said note did you or did you not understand from said plaintiff that if defendant had to pay said note that said defendant should get his pay for the same in the final settlement of their partnership business?

Ans He said defendant owed them on a settlement of their business more than enough to pay<sup>for</sup> the said carriage.

Ques 5 Were Butler and one James Means whose names are signed to the said note by the name of Butler & Means, acting as partners at the time said note was made?

Ans. They were.

Ques 6 What did said Means say when negotia



ting said note in the presence of said plaintiff and with his assent relative to defendants getting his pay if defendant should be compelled to pay said note ?

Ans 6

He said that Sam (defendant) owed a plenty or more when a settlement was made



35-

of their partnership ~~concerns~~ concerns to pay the amount of the said note. The partnership alluded to was the Partnership of Blaycomb, Butler & Means,

Ques 7

Did defendant know of the representation made as above by Butler & Means before he signed the said note,

Ans.

He did,

William D. Seok being first duly sworn by me testified as follows, to wit:-

Ques 1

Are you acquainted with the parties to this suit & if so how long?

Ans

I know the parties to this suit. Have known them some 15 years,

Ques 2

In whose employ were you in the fall of 1852 & until the fall of 1853?

Ans.

In Samuel Blaycomb's employ.

Ques 3

~~What~~ What was the business of defendant at the time that you assisted him?

Ans

Selling goods at Monmouth, Illinois

Ques 4

What was the business of plaintiff at that time?

Ans.

Defendant was keeping a grocery in the city of Monmouth in company with one James Means.

Ques 5

State what you know about a lot of Oysters sold by the defendant to Butler & Means



Ans

I sold as the clerk of Mr. Claycomb the defendant to said plaintiff for the firm of Butler & Means a lot of Oysters amounting, I think to about \$96. I cannot tell the exact amount without seeing the Books of the said defendant. Butler the plaintiff paid me money at 2 or 3 different times to apply on the amount due defendant for the said Oysters.

Ques 6

At the time of the sale of the said Oysters were you acting as the agent of said defendant?

Ans.

I considered that I was the agent of the said defendant at that time.

Ques 8

State if you know whether at the time of the sale of the said Oysters there was any contract about the application of them upon any general partnership dealing wherein the plaintiff Means & the defendant were partners.

Ans.

There was no such contract.

Ques 9

Do you know of the sale of any other lot of Oysters to the plaintiff by the defendant during the time you were in the employ of said defendant?

Ans.

I do not.

Ques 10

State whether, during the time you were acting as the clerk of the said Claycomb as above mentioned, said Means was in the habit of buying goods at the store of said defendant



37

and if so whether the goods he purchased were charged on the Books of the said defendant & if charged were they charged to James Means or to Butler & Means?

Ans

Said James Means was in the habit of buying goods at the store of said defendant and the goods so bought were charged on the book of said defendant to said Means.

Ques 11

State if you know who usually sold the goods mentioned above to the said Means?

Ans.

Whilst I was in the store they were sold by Frank Nascale & myself. I think I sold more than half of them

Ques 12

State if you know whether at the time of the sale of the said goods to said Means there was any contract or agreement about the application of them upon any general partnership dealings wherein the plaintiff Means & the defendant were partners?

Ans.

I do not know of contract or agreement of that kind.

Moses R. Jones, being by me first duly sworn testifies as follows, to wit:-

Ques 1

Are you acquainted with the parties to this suit. If so how long have you known them?



Ans.

I am acquainted with the parties to this suit & have known them some 10 or 12 y.

Ques 2

State whether you had any business transactions about the year 1852 or 1853 with the firm composed of William C. Butler, James Means & Samuel Lelaycomb by which the sum of twenty seven &  $\frac{33}{100}$  dollars was paid to you by said Samuel Lelaycomb for said firm?

Ans.

I do not consider that I had any dealing with the said firm, in regard to the payment of the above sum of money. said Lelaycomb never paid me any money for the said firm.

Andrew Dickson being by me first duly sworn testified as follows, to wit:—

Ques 1

Are you acquainted with the parties to this suit. If so how long have you known them?

Ans

I know the parties to this suit. I have known them some 10 or 12 years

Ques 2

Were you acquainted with one James Means during the spring & summer of 1852. If so state whether said Means and the plaintiff were in partnership in any business at that time & if so where was their place of business & in what business were they engaged as partners?

Ans

I was acquainted with the said James



39

Means in the spring + summer of 1852. The said Means and the plaintiff were in business as partners in Monmouth Illinois in the grocery business.

Ques 3

State, if ~~you~~ whether you know if the said Means and the plaintiff and defendants in this suit being in partnership in any business during or about the year 1851, and if so, state what was their business as such partners + what <sup>was</sup> the name of their Partnership firm?

Ans

The said Means + the plaintiff + defendants were in partnership in the slaughtering business in Monmouth in the year 1851 as near as I can recollect. I think the name of the firm was "Butler, Means & Co."

Ques 4

At the time the firm of Butler, Means & Co. were carrying on the slaughtering business as above spoken of by you, was the said plaintiff and Means engaged in any other business as partners, separate and apart from the said slaughtering business of Butler, Means & Co., + if so what was their business and what was the name of their partnership firm.

Ans.

As near as I can recollect the said Butler + Means were engaged in the Grocery business in Monmouth by the name of Butler + Means at the same time that the firm of Butler, Means + Co. were doing business.



Ques 5-

State what you know about the giving of money by yourself to Butler & Means ~~for~~ for the defendant sometime about the year 1852. If any such money was paid, how much was it and when did you give said money to said Butler & Means, and how did you come to give said money to said Butler & Means? State all you know about it,

Ans

Means came to me with an order from the defendant for money to the amount of forty dollars. The order was directed to me to call on defendants wife and she would give the amount of money to me to deliver to Means. This was in April or March 1852. I got the money from defendants wife & gave it to said Means. I say that the defendant told me that Butler & Means had borrowed the said forty dollars & were to return it to him. He told me the above some time afterwards,

Ques 6,

Did you ever at any other time than the one above spoken of pay the sum of forty dollars in money or in any other way to the said Butler & Means or to either of them for the said defendant? If so state when, where & what amount

Ans.

I never did,

Wm. D. Cook being first duly sworn testified



411

as follows, to wit:—

Quest 1

Have you ever seen the Books of Samuel Playcomb in which he kept his accounts with and against James Means?

Ans

I have.

Quest 2

Will you specify the items which were contained in said account or as many as you recollect of them and the dates of each item.

Ans.

I don't know that I recollect distinctly any of the items of the said account except one or two. There was an entry dated some time in the month of January 1882 charging James Means with a Judgment of some party—whose name I do not now recollect. The amount I believe <sup>was</sup> one hundred and fourteen dollars <sup>some</sup> ~~and~~ cents. My impression is that the said entry was in the hand writing of the defendant. I think I recollect of a credit on the ~~side~~ said books to said Means of three dollars, Cent.

Cross Interrogations by Defendants Counsel

Quest 1

How long since you have examined said Books?

Ans

I think I saw that item some ten days ago.

Quest 2

Would you have recollected it if you had not seen it some ten days ago.

Ans

I do not think I should.

\*



X

9 1/2

### Seer Continued

Ques 3

Would you have recalled the charge if you had not examined the Book?

Ans

I do not think I should. Independent of the Books I should not have recalled anything about it.

Examination in chief resumed.

Ques

Was that charge in the store account against James Means.

Ans.

The said charge was in the same Book in which the store account of said defendant was kept. It was posted up in the store account against James Means in the Ledger. - I think it was.

### Cross Interrogation by Defendant Counsel

Ques 1

Do you make the above statements independent of your examination of the Book?

Ans.

I do not.

Ques. 2

Did you feel the said Book a/c yourself?

Ans

I do not recollect that I did.



Quest 6

State the name of all the persons who were employed as clerks by the said defendant in selling goods in his said store whilst you were in his employ as aforesaid?

Ans.

Franklin Haswell and myself - sometimes the defendant sold himself.

Quest 7

State if you know, whether the goods sold by you in said defendants store to said Means were charged by you to said Means or to the firm of Butler & Means

Ans.

They were charged to said Means.

Cross Examination by Defendants Counsel,

Quest 1

Did any one else except yourself whilst you were so in the employ of the said defendant sell any goods to said Means as Clerk in the said store?

Ans

I think they did

Monmouth Ill.

April 7. 1859

The parties met at my office by their attorneys at about 8 o'clock P.M. - Plaintiff presented a notice which is hereto attached which had been served on the defendants to produce certain Book therein named which was ~~referred~~ <sup>refused</sup>.



Manumoth Ill.  
April 1. 1859

W. C. Butler

vs

Samuel Maycomb

William H. Seok being

first duly sworn in said cause testified as  
followed, to wit: -

Ques 1

Have you before testified in this  
case before J. H. Madden as Master in Chancery?

Ans

I have.

Ques 2

During the time you were in the employ of  
the defendant as stated by you in your former  
deposition, did you hear said defendant say  
anything about selling goods to James Means,  
and how he was to get his pay from Means for the  
goods so sold? If so state what he said.

Ans.

I did hear defendant talk about  
selling goods to James Means. Means had a  
large account with defendant, I said to defend  
ant that I thought it was doubtful if the account  
would ever be paid by Means. Defendant said  
he thought <sup>that</sup> Means would pay it.

Ques 3

At the time of the conversation above  
referred to <sup>by you</sup> in your last answer, or at any other  
time whilst you were acting as Clerk for the  
defendant as referred to in your former depo-  
sition did you hear the defendant at any time



Say anything about the individual account of said Means at the defendants store being set off or accounted for in the settlement of the matters and dealings of Butler. Means tho? if he state what it was,

Ans

I dont recollect that I ever did.

Quest

State when you went into the employ of the said defendant as clerk in his store, and when you quit?

Ans,

I commenced about the 1st day of November 1852 and quit about the 1st day of September 1853 and during that time I was in defendants employ.

Quest

State if you know who keeps the Books of account of the defendants during the time you were in his employ.

Ans,

Franklin Hascall and myself were in the habit of charging the goods sold by each of us on the day-book. Said Hascall did the most of the posting to the ledger. Sometimes the defendant made entries on the day-book.

X

Franklin Hascall being by me first duly sworn testified as follows to wit:—

Quest 1

Are you acquainted with the parties to this suit and James Means?



Ans.  
Ques 2

45

I am,

What business were you in in the fall of 1852 and the year 1853 and in whose employ were you?

Ans.

I was clerk in the store of the defendant.

Ques 3

State, if you know who were the salesman in the said defendant's store at that time and who kept the Books?

Ans.

Mr. Soak and myself sold the goods + I kept the Books or at least the most of them, We both of us charged on the day-book and I posted on the Ledger.

Ques 4

State if you know whether any goods were sold at that time to James Means?

Ans.

I think there was.

Ques 5

What is your recollection about the defendant stating to you or any other of his Clerks in his store in your presence and hearing anything about how he was to receive his pay for the goods sold to said James Means, and what he at any time said to you or in your presence and hearing about the plaintiff being in any way liable for the goods sold to James Means?

Ans.

I cannot say positively about that. I do not recollect of hearing any such statement



To Samuel Playcomb

Sir

You will take notice that I shall require you to furnish before the Master in Chancery on the 7th day of April A.D. 1859 at his Office in Mountbatten in Warren County Illinois at the hour of 7 1/2 P.M. of said day your Day-books & Sedgers in which you kept your accounts in the years 1850, 1851, 1852 & 1853, also all Books in which you have kept any account with or against James Means during said years. And that I intend using the same as testimony of in the case of William Butler vs. Samuel Playcomb in Chancery pending in the Warren Circuit Court.

William Butler,

per Kirkpatrick

his atty

I acknowledge the receipt of a copy of the above notice this 6th day of April A.D. 1859

Samuel Playcomb



11

Sworn N. C. Butler being first duly sworn testified as follows, to wit:—

Quest 1      Are you acquainted with the parties to this suit?

Ans.              I am

Int 2      How long have you been acquainted with them?

Ans.              I have known them about twenty years.

Int 3      State, if you <sup>know</sup> what business the plaintiff and defendant were engaged in during the year 1851 and the fore part of 1852 and who was in partnership with them in said business?

Ans.              The plaintiff and defendant in the latter part of 1851 and the fore part of 1852 were engaged in the business of slaughtering hogs and rendering lard. My understanding was that Samuel Blaycomb, Wm. C. Butler + James Means were in partnership in the said business.

Int              State if you know what the firm name of said firm was?

Ans              All I can say about it is that I had charged on my Book against the said men by the name of S. Blaycomb & Co.

Int              State if you know when the said parties quit slaughtering hogs &c?

Ans              They quit some-time between the 4th



day of December 1851 and February 23<sup>d</sup> 1852.

Int. What means have you of knowing when the said parties quit business as associates as partners?

Ans. They dissolved some days before the 23<sup>d</sup> day of February, <sup>1852</sup> according to my charges on my books.

Int State, if you know in what way the said firm was dissolved?

Ans The said firm was dissolved by Butler and Means selling out their interest to said Maycomb.

Int State, if you know, how much said Maycomb was to pay Butler + Means for their interest in said firm business?

Ans I cannot remember,

James Means being first duly sworn testified as follows - to wit:

Int 1 Are you the same witness that testified in this case before?

Ans I am,

Int. You stated in your former testimony that yourself + Butler sold out your interest in the slaughtering establishment to Samuel Maycomb, please state if you now remember how much



Claycomb was to pay you and Butler for your interest in said establishment? (Objected to)

Ans.

If I recollect me mere to have two thirds of the net profits of that winters work & the money back we had advanced in getting up the concern.

Int

State if you how much money you and Butler advanced to get up the said concern?

Ans

I cannot now recollect. It was between four hundred dollars and six hundred dollars.

Quest

State how much the two thirds of the net profits of that winters <sup>work</sup> amounted to?

Ans

I do not know

Quest.

State if you know what the whole amount of that winters work in said establishment amounted to in gross.

Ans

I do not know. We had a settlement with N. A. Rankin. I do not know what all was considered in the settlement. I think the gross settlement was about twenty two hundred and sixty dollars, for everything that was considered in the settlement during the whole time we were in company that we had <sup>any</sup> ~~every~~ thing to do with said Rankin. We commenced rendering land for said Rankin sometime in the last of November or first of December and continued to do so until some time in February. The said settlement was not made until sometime



after me quit rendering for him.

Ques

Was this settlement a settlement of you & Butters and Helaycomb work in the said slaughtering House during said winter?

Ans

That was a part of the settlement, I do not know but that there were other things considered in the settlement.

Question

According to your recollection was the said twenty two hundred and sixty dollars the gross amount of yours & Butters & Helaycomb work in said establishment during said winter?

Ans

I cannot recollect.

Ques

Has Samuel Helaycomb ever paid a judgment against you for the sum of about one hundred and fourteen dollars?

Ans

I have no recollection of it.

Ques.

What did Butters, Means and Helaycomb do the first year they were in partnership?

Ans

They slaughtered Cattle & Sheep.

Ques

At the time of the award of the said Arbitrators did you and Butters owe said Helaycomb any thing on account of said first years partnership business, & if so state how much?

Ans.

I don't know.

Ques.

Did you and Butters owe said Helaycomb as large a sum as one hundred and thirty five dollars on account of said first years partnership business?

Ans.

I do not know.



April 11th 1859

William B. Butler

vs.

Samuel Delacomb

} March Term April 1859 of  
the Warren County Circuit

Court,

Every Quinby being first duly  
sworn testified as follows, to wit,

Ques 1 Are you acquainted with the parties to  
this suit & if so how long?

Ans I have known both parties to the suit  
for twenty years

Ques. State whether you ever served as an  
Arbitrator between the said parties along with  
E. A. Paine & A. C. Harding? If so, state when &  
where.

Ans I did, in November in the year 1854 or  
1855,

Ques. State whether the Arbitrators were sworn  
or not at that time before making their award.

Ans. My recollection as to that fact is not dis-  
tinct. But my impression is that they were not  
sworn.

Ques. State whether or not the said Arbitrators  
met for the examination of witnesses & if so did  
the Arbitrators conclude the examination?

Ans. Said arbitrators met for the purpose of  
examining witnesses as to certain disputed matter



of account between said parties, and at the time of the arbitration the statements of the said parties themselves were made and taken as to some items, and my best recollection is that the arbitrators did not fully conclude their investigation as to some of the matters in dispute,

Ques

State how the award came to be signed before a full investigation of the matters in dispute took place?

Ans

On Sunday morning shortly after the day the arbitrators had met, said Claycomb came to my house and stated that said Butler as he believed was about to abscond from the State, - that he was informed that said Butler was at Rock Island or on his way to Rock Island. That there was danger of said Claycomb losing any claim he might have against said Butler unless the arbitrators would then conclude their award, and desired that an award should be made in order that he might commence a suit upon it. He then I think presented to me an award already drawn up and signed by said Harding or Paine or both and desired me to sign the same as arbitrator which I at first objected to do for the reason that some items ~~of~~ the account in favor of said Claycomb I did not consider sufficiently established, but under the circumstances I finally concluded to sign the



award. I did so.

Quest

State whether you would have signed the award at the time had it not been for the said representations of said Claycomb?

Ans

I cannot say whether I would or not. In the answer to the last interrogatory I have stated fully the inducements that led me to sign it as well as I now can recollect.

Quest

Did you or did you not according to your best recollection sign said award on Sunday?

Ans

I did.

Quest

State whether any of the witnesses examined before you as Arbitrators were sworn or not?

Ans.

I do not recollect.

Quest

State whether in making said award you were confined to the Bond of Submission or not?

Ans.

Quest

My recollection as to that is not distinct. Under the circumstances in which said award was made, did you or did you not at the time consider the same to be conclusive against the said Butler? Or did you look upon the award as a kind of farce?

Ans.

I was not satisfied that the award as made was just for the reason that there were some items of account in favor of said Claycomb



which formed a part of the award that I did not consider sufficiently proven. But I did not draw any legal conclusion as to the validity of the award so made.

Quest Did you or did you not have any consultation with other Arbitrators before signing said award?

Ans I do not recollect that I did

### Cross Interrogations

Quest Was any person present when you signed the said award?

Ans I do not recollect whether there was or not except said Claycomb.

Quest When and where did you sign it?

Ans. My recollection is that I signed it on Sunday <sup>or the month</sup> But I do not recollect the day of the month, and I do not recollect the place where it was signed.

Quest. Was there any date to said award and in whose hand writing was said award?

Ans I do not remember whether it was <sup>then</sup> dated or not, nor in whose hand writing it was.

Quest. How Can you state whether the other Arbitrators had signed said award before or after you signed it?

Ans I cannot,

Quest. Will you state who made the original draft of the finding of the said Arbitrators?



Ans.

533

I distinctly recollect that I made at the time of said Arbitration a full memorandum of the account between said parties then proved or proposed to be proved, and it is very probable that the award when made was based upon said memorandum made by me. but as to whether that was the fact I do not positively know. But there were some items upon said memorandum which I did not then consider as fully established

Quest

Do you know where that original memorandum is, & would you recognize it if placed in your hands?

Ans.

I do not know where it is, but I think I should recognize it (Here memorandum shown to witness & marked Proof No. one, signed J. G. Madden) This is a memorandum which I made on that occasion. But I do not know that this was all the memorandum which I made.

Ques

At the time of making said memorandum had you determined as one of the said Arbitrators that the items therein should be allowed to each party respectively?

Ans.

I expected that further proof would be made as to some of the items,

Ques

State which items.

Ans

I cannot tell. My recollection as to the



Whole transaction is quite indistinct. But at the time and ever since I have had a distinct impression that some of the items of Clay Creek account were not well established, And at the time of the said Arbitration I expected more full proof would be adduced in support of them before the award was made. But I cannot now tell what said items were.

Just

Have you any recollection who signed <sup>the</sup> said award first, and would you know if you could see it?

Ans.

I have no recollection who signed it first (the award shown to witness) From the examination of the award it appears that I signed the award before A. C. Harding signed it.

Does

Have you ever been sworn in this suit before?

Ans

I have no positive recollection that I have been.

Re-Examined in Chief

Does the date of the award appear to ~~have been~~ <sup>be</sup> altered since it was signed?

Ans

The date appears originally to be the 10th day of May 1854. It appears that



57  
an attempt has been made to alter it to the  
6<sup>th</sup> day of May 1854,

Int

Who produced the said award  
before you this evening and in whose pos-  
session was it?

Ans

Said award was presented to me before  
the Master in Chancery by E. A. Paine atty  
for Claycomb.

Quest

Did you or did you not this evening  
hear the Attorney of said Butler ask said  
Claycomb & his atty E. A. Paine for permission  
to attach said award to your deposition &  
did they or did they not refuse?

Ans

I heard such a request made which  
was refused by both said Paine & Claycomb  
for the reason that they desired the custody  
of the same for fear it might be lost.

Quest.

Did you or did you not ever sign  
any but one award between said parties?

Ans

I did not, - I think Mr. Butler  
never was furnished with a copy of the  
award.



May 21, 1859

William C. Butler

vs

Samuel Helaycomb

The parties met by agreement at my office and agreed to take the deposition of A.C. Harding to be used in the above cause.

Ques. 1

What is your name, age and residence

Ans

My name is A.C. Harding, age, fifty one years, residence, Menomonee Ills.

2

Do you know the parties to this suit & if so how long have you known them

Ans.

Yes. I have known them 15 or 20

Com

years,

3.

State what you know in regard to <sup>an</sup> Arbitration <sup>between</sup> the parties in this suit?

Ans.

Some years ago I was associated with Irving Quimby & E.A. Paine as Arbitrator between the parties to this suit. All of us were then practicing lawyers. We met in the office of Harding & Quimby and at the time of meeting, no papers of submission were drawn, as well as I can remember, after we met an instrument of submission was drawn, and I think it was done at the instance of Mr. Paine, but I will not be positive. My impression that considerable



57 discussion was had as to the propriety of it, one person thinking it would amount to nothing unless there was an obligation that should bind the parties to comply, & others expressing the view that it was intended as an advisory proceeding to enable the parties to settle without legal proceeding. - It was in that view that I acted. The instrument was signed I think ~~before~~ before we proceeded to hear the parties. We heard Mr. Claycomb's statement and his accounts were produced. Mr. Butler made his statements which were to Mr. Claycomb's. They conflicted a good deal. Mr. Means made a statement as a witness. and whether there were other witnesses or not I don't recollect. Whether Mr. Means was known or not I can't recollect. I have no recollection that the arbitrators were known. My impression is that they were not. Mr. Claycomb brought in an account against James Means to be allowed in the arbitration. My recollection is that Butler & Means had been in partnership & had sold out to Claycomb. Mr. Claycomb claimed that that account should be charged against Butler, and he proved by Mr. Means that he had got the account out of the store of Claycomb and had



promised to have it applied to the debt ~~that~~  
 Claycomb owed Butler & Means. Claycomb  
 also contended that the store account of  
 Means should <sup>be</sup> applied to pay the claims which  
 Butler brought against him. Mr. Butler  
 denied it and objected to the statements of  
 Means because that they tended to prove that  
 his (Means) own debt was paid. I don't recollect  
 of any adjournments. This was some time  
 during the week, in two or three days after, per-  
 haps the next day. My impression is that Mr.  
 Claycomb called on me in this. I may be mis-  
 taken, But under the impression that Mr. But-  
 ler was about going away an award was made  
 out and signed. Mr. Butler was then con-  
 sidered insolvent and proceedings were  
 somewhat hurried by the consideration  
 that he was going away - that is my im-  
 pression. What the finding was I do not  
 remember. We found for Mr. Claycomb in  
 some amount. I signed the award. We  
 charged Mr. Butler in making up the award  
 with the account of Means. We allowed  
 Mr. Claycomb in the neighborhood of two  
 hundred dollars, a note which he had  
 given with them to me on which there  
 was then or has been since a judgment in  
 Circuit Court.



61 4th

On what day of the week did you sign the award?

Ans

I do not positively remember, I have ~~an~~<sup>an</sup> impression that something in reference to the matter was done on Sunday. It might have been that a suit about the matter was brought on Sunday. My impression is, that Mr. Blaycomb called on me about that matter on Sunday. My recollection is not sufficient to linear one way or the other, - whether it was about the award or a suit.

Q

At the time referred to when you took the statements of the parties and James Means had you concluded the examination in regard to the matters in controversy between the parties?

Ans

I recollect that we did not make up our opinions on that day, and I think that some further examination of the accounts was proposed or calculations to be made. I have forgotten what followed afterward. I have impression but not sufficiently distinct to state under oath. I am positive that I was dissatisfied in my own mind with the first state of accounts between the parties as being in accordance with the award. I distinctly recollect that I wanted to meet the other parties and have the matter between



them settled more in the character of a friendly advisory proceeding than with a view to any legal result.

Q. C. T.

In order to refresh your recollection, <sup>or was it</sup> was it ~~not~~ understood by the arbitrators and the parties that further testimony should be taken by the arbitrators in regard to the matters in controversy between said parties and did you or did you not sign said award before any further testimony was taken upon representations being made that Butler was leaving the State and removing his goods & property from the State and did you or did you not believe at the time that the account allowed Claycomb had been sufficiently proved?

Ans

I do not recollect that it was proposed to examine more witnesses or that it was not. My impression is, that the award was hurried by the impression that Butler was about to leave the State. But I don't think the award was made in violation of an agreement to hear more witnesses. I of course thought the award approximated a fair adjustment of the accounts between them. I think it was made without reference to the Bond of Submission.

7

Will you look at the paper here



63

show you, a copy of which is hereto attached  
(the original paper shown to witness) marked  
Exhibit 'A' (a. c. \$) and state whether it is the  
note which you allowed in favor of Clay-  
comb and against Butler in making up  
said award as paid by Claycomb to you  
as above referred to and state what was the  
consideration of said note, and in what ca-  
- pacity said Claycomb signed said notes.  
Ans, Yes, that's the note. It was <sup>then on</sup> afterwards  
reduced to a judgment against Claycomb  
& perhaps Butler in the Circuit Court of War-  
-ren County and perhaps Means, neither the  
judgment or the note were fully paid to me  
at the time of the arbitration if anything had  
been paid, but it was considered that Clay-  
-comb would have to pay it and it was  
allowed him as against Butler in making  
up that award, and Claycomb has since  
settled or paid it. The note was given me  
by Butler & Means upon a sale by me to them  
of a house & lot in Newmouth. They obtained  
the signature of Mr. Claycomb to the note  
and handed it to me. I took it in lieu  
of cash promised & me as hard money on  
the said sale.

8th

State whether the arbitration  
before you was such a proceeding in respect



- to the mode of taking the testimony and the character of the testimony received, and the time and <sup>given</sup> attention to the examination of the accounts between the parties and the making the award as you had believed the same to have been, a legal, binding and final adjudication of the matter between the parties?

Ans

The proceedings were not in conformity with the rules of Court. In this respect, I think the arbitrators were not error. I do not recollect that the witnesses were. The interested parties, plaintiff and defendant made statements and read their accounts - without formal proof. And accounts which were not matters strictly between Claycomb & Butler were taken into consideration and allowed, as in the case of a note debt of \$200, against Butler & Means. I have stated repeatedly that in making up the award I did not refer to Bond of submission. I did not at least and I do not <sup>now</sup> know whether the said Bond referred matters in dispute between Claycomb & Butler & Means or between Claycomb & Butler only. At the time of the I did not look into the Bond to see what was submitted to us as I thought that unless the parties would voluntarily agree to the award that it was



not finally binding: at least that was my opinion. We took into consideration matters between Claycomb, Butler & Means also, between Claycomb & Butler individually and between Claycomb & Means. We charged Butler with all the accounts. We did not exclude the accounts because of the difference of parties. If Butler was liable in any capacity with Means or individually we brought them in ~~in that capacity~~ in that proceedings. We did not take into consideration whether they were against Butler alone or against Butler & Means.

Qth

Did the said Arbitrators in finding their award determine or consider whether the matters and accounts presented to them and upon which they made up their award were or were not matters, differences and dealings wherein said Samuel Claycomb, Wm. C. Butler & James Means were partners in business together of any kind or nature?

Ans

Well I know that we did not consider whether they were or not

Cross Examined by defendant

1

Do you recollect the amount of the award signed by the Arbitrators?

Ans

I do not,

2

Was that finding illegal, unfair or unjust?



Ans At the time I believed the award approximated to a fair settlement between the parties.

3 State, if you recollect whether the parties & witnesses and all other persons except the arbitrators left the room where the arbitration was held, and the arbitrators remained alone to consider the award?

Ans I do not recollect whether they did or not.

4 Was it agreed among the Arbitrators at that time after the testimony was heard that said Arbitrator Shimby should make the calculations and findings in writing as then agreed on, upon which the award was made?

Ans I have no distinct recollection about the matter. I have an impression that there was a difference of opinion between myself & Mr Shimby about what the award should be. My impression is, that it was on a subsequent day.

Ques. 5 Where were you when you signed the award?

Ans I do not recollect.

6 Will you state the description of the property for which the said note was given heretofore mentioned by you in your testimony in chief by number of Lot & Block?

Ans It was given for part of Lot 1 in Block



67  
 Ten in the City of Mounmouth on which Gardner  
 now has a Drug Store.

7 Was you willing at the time the award  
 was signed, to sign an award that was merely  
 advisory, that would have been injurious  
 to either party?

Ans I would not, I thought it was  
 good advice,

8 What were the pecuniary means  
 of said James Means at that time,

Ans. He had no visible means of support  
 except himself and family. He was reputed  
 insolvent.

All which is respectfully submitted  
 James H. Madden

Fees \$20.

Master in Chancery

Paid by plaintiffs

Exhibit "A" (a. c. r.)

Mounmouth, Jan 31, 1852.

On or before the first day of June next  
 we or either of us promise to pay A. C.  
 Harding or order the sum of two hundred  
 dollars for value received of him.

Butler & Means

Samuel Claycomb



69

Deposition for the Recfence,  
State of Illinois }  
Warren County } ss.

March Term A.D. 1858  
of the Warren County

Circuit Court,  
William C. Butler

vs

Samuel Hayscomb

December 28, 1858

The taking of this deposition or evidence was  
by consent of the parties adjourned from the  
25th inst to this day,

1 O'clock P.M. parties present & their Attorneys  
James Means being first duly sworn by  
me, testified as follows, to wit: -

Quest 1

What is your name, age and place of  
residence & are you acquainted with the  
parties to this suit?

My name is James Means, age forty  
five years, residence in Warren County, Illinois  
I am acquainted with the parties to this suit. -

Quest 2

Were you a partner of the parties to this  
suit, if so, state how and when & what was the  
business of the firm, and the name of said firm?

Ans.

I was a member of a firm of which the  
parties to this suit were also members, I cannot  
recollect the Year exactly, The business of the  
firm was slaughtering Hogs & cattle & rendering



lard, The name of said firm was "Butler, Means & Co".

Quest 3

Did you or did you not make an agreement with said Claycomb as to what matters, dealings and business should be considered partnership business, and as such settled by said parties and yourself as partners, —

Ans 3

I sold Claycomb the defendant the Interest of Butler & Means in the Slaughter House. I made an agreement at the time with said Claycomb, that my individual Store bill in his Store and the Store Bill of Butler & Means in his Store should be taken as payment in settling up the partnership business. Also Butlers individual Store bill was to be settled the same way, We expected Claycomb to make more payments & they were all to be counted in & all that said Claycomb might pay for the firm of Butler & Means were to be reckoned into the settlement and be considered a part of the partnership business,

Quest 4

If any agreement was so made ~~will~~ will you state if said Butler knew of the same and what he said and agreed to, and state why <sup>said</sup> ~~such~~ agreement was made

Ans.

Butler the said ~~Pl~~ Plaintiff knew of the sale of slaughtering as mentioned above, and of and of the arrangements



had made with said Claycomb as stated in my answer to question 3d and agreed to the same. We expected Claycomb would be indebted to us, and if he paid claims on it they would be good as in money, and when the final ~~subject~~ settlement was to be made, they would all be reckoned in as above stated.

Quest 5

# a copy has been made in the original. The balance of this sum from on p. 10, at 100 May 7.

Did you know or did you not know <sup>an</sup> afterwards of arbitrations held by A. C. Starding, Lucy Dwinby & E. A. Paine ~~as arbitrators~~ <sup>as arbitrators</sup> between the parties <sup>to this suit</sup> and if so state be taken into the arrangement you made with Claycomb

Ans

I told ~~you said~~ Claycomb said plaintiff that I had told Claycomb defendant that I would purchase as my goods as I needed out of his store to assist him in making the payment of the said ~~5 hundred & 25~~ <sup>and would get Butler to do the same,</sup> ~~5 hundred & 25~~ to which ~~a plaintiff~~ <sup>arrangement</sup> plaintiff agreed.

Quest

When did you make the above statement to said ~~Paster~~ Butler, was it before or after you made the said arrangement with said Claycomb?

Ans

I made the above statement to Butler after the said arrangement was made with Claycomb

Quest 6

What did Mr. Butler say in answer to



Your statement as above mentioned?

Ans

I don't know his language but he said enough to consent to the trade.

Q 7

Did Butler agree at that time that your individual <sup>acct</sup> ~~accounts~~ and store bills should come into said arrangement?

Ans

I don't know that that was particularly agreed on at that time. But I told him of the trade and he agreed to it.

Q 8

Did that arrangement refer to accounts already made, or accounts that were to be made thereafter?

Ans

The arrangements referred to accounts that were made at that time in the store & such as might be made thereafter.

Q 9

Was there any limits to the time & amount of the account that might be made in the store by you, and which was to be included in said arrangement?

Ans

Q 10

There was no limit as to time or amount

How do you know that these matters, differences and dealing between the parties as stated by you in your answer to question fifth were submitted to said Arbitrators?

Ans

I heard it talked to over, and I heard a Bond read over and I think it was soon the Bond, and the parties signed the same,



Quest 11 } Were you examined as a witness before  
said Arbitrators and if so were you sworn?

Ans

I was examined as a witness before  
said Arbitrators but don't recollect whether  
I was sworn or not. I have an idea that I  
was not sworn, but don't recollect,

Quest 12

Was the amount all owed on the award  
by the said Arbitrators, marked "Amount  
owed James Means \$273.75" an individual  
account of yours or not?

I do not recollect.

Quest 13

How <sup>large</sup> ~~long~~ a Bill did you make with said  
Claycomb in his store?

Ans

The amount of store bill made before  
and after the said Trade was about the amount  
stated above, to wit, - \$273.75 -

Quest 14

Did you ever pay the said account

Ans.

I consider it paid as follows, what I  
owed before said Trade was paid in the  
said Trade; what I made afterwards I took  
in payment of what Claycomb was owing  
in the Trade for the Slaughter House.

Quest 15 -

Has Claycomb ever paid you the  
sum?

#  
For balance of  
this question see  
p. 77. at top.



25 #71  
your p. 71

whether all of their matters and differences and dealings as before agreed upon were to be considered and submitted to said Arbitrators as partnership business

Ans (This question objected to by plaintiffs Counsel and defendants Counsel consented that the objection should be entered.)

Ans. I was present at an arbitration as stated above & was a witness before the said Arbitrators. My understanding was that all those matters, differences and dealings between the parties were to be considered for the purpose of avoiding a law-suit and were so submitted to said Arbitrators.

Cross Examined by Plaintiffs Counsel

1 Quest State if you know when the firm of Butler, Means & Co was dissolved?

Ans I think it was in the winter of 1851 & 1852

How long had said partnership existed

Ans I think about two years.

3d Quest. Was it before or after the said firm was dissolved that the arrangement you have stated was made with said Claycomb?

Ans. I considered that the said firm was dissolved at the time the said trade was made.



4 ques Did the plaintiff at any time agree that  
 your personal accounts + store bills  
 should<sup>#</sup>

# Balance of this question  
 to be found sub. 71 at #  
 in question 5.  
 Neg



77  
page p. 73. #  
of \$273.75 - or any other sum except the store  
~~acct~~  
~~account~~ which was taken into that Arbitra-  
tion.

Ans.

He has not paid me the above or any other sum, I don't know whether the above account was allowed in the arbitration or not, I have collected from Claycomb at different times means for the firm of Butler & Means, I know of nothing I had of Claycomb in that deal individually except the store goods (motion made by plaintiffs counsel to exclude all Means testimony on the grounds of his being interested in the suit, the defendants counsel consenting that the jury may be made.)

By consent of parties adjourned to meet at Maddens Office on Thursday Evening next at 6 o'clock

E. A. Paine

Thursday ~~Friday~~ Evening December 30, 1858  
Parties and Attorneys present,

E. A. Paine being first by me duly sworn testified as follows, to wit, -

Quest 1

Do you know the parties to this suit?

Ans

I am acquainted with the said parties & have known them some ten years,

Quest 2

Did you or did you not act as arbitrator together with A. C. Harding & S. Gimby in the spring of 1854 in a controversy between



the parties to this.

Ans

I did

Quest 3 By whom were you solicited to act as such arbitrator?

Ans

By both parties

Quest 4

State what the complainant in this suit paid to you to induce you to act as such



24

193 Arbitrator, (obeyed to by complainant's counsel and defendant's counsel consented that the objection might be entered)

Ans. Some four weeks before the said Arbitrator sat the Complainant met me at the Court House door and said to me, that he and defendant had trouble about settling, - that they had talked of arbitrating it and wished me with Harding & Dumbly to act as arbitrators. I told him that Claycomb had spoken to me and that I utterly refused to act. He said their business was much mixed up, or a good deal mixed up, I don't recollect which and was afraid they could not settle without a suit and would much rather Arbitrate. He said that me (I suppose meaning himself and defendant) thought best, or agreed - I don't recollect which to leave the whole matter to their lawyers and have them decide it. I was in a hurry and told him I would not act and left him. Some ten days or two weeks afterwards I met Complainant & he spoke to me again on the same subject. He said they could make no settlement (I suppose he meant Claycomb and himself) and that he and Means thought that Claycomb was owing them quite an amount, and that Claycomb would not settle unless his account and Means account and



the account of Butler & Means in his store —  
should be reckoned in, That there should be a  
general settlement of all their business. That they  
had been in Company all three of them in  
slaughtering hogs and that Butler & Means had  
paid out all the slaughtering establishment



81

to Claycomb that Means was drinking pretty hard and was running through with everything he had. That Means owed him and by getting a settlement with Claycomb he would get what was coming from Claycomb to Means in his own hands, and saved what ~~Means~~ <sup>he</sup> Means had advanced him through Means hands in their business. He said that he & Claycomb would arbitrate the whole matter if I would consent to act as one of the arbitrators, that they would recognize all the ~~matters~~ business as partnership matters and have it settled. The above statements induced me to act as arbitrator in the case.

Just Q

Were each and all of the items passed upon and allowed by you as arbitrators in your award submitted to you by the parties to this suit and agreed to be so submitted by them at the time of said Arbitration? (Objected to by counsel for the complainant and the <sup>entry</sup> ~~entry~~ made by consent of defendant Counsel).

Ans.

All the items were submitted by either one or the other of the parties to the arbitration and been passed upon and allowed as they are set out in the award. There were some items about which



the parties contended, one party insisting  
on being allowed, and the opposite party  
objecting, but for the proof before the  
arbitrators, that all the items were allowed  
were to be considered in the scope of the  
general partnership business. if the fact  
that the item was true and correct was  
~~proposed~~, proved

Ques 6

Did, or did not the said parties  
agree and consent that all the items -  
then and there allowed were within the  
scope of their ~~agreement~~ arbitration  
agreement,

Ans

There were a few items which  
were ~~objected to by~~, offered which were  
rejected by the arbitrators. These that are  
~~reported~~ <sup>reported</sup> in the award as allowed were  
allowed on the proof being made to the  
arbitrators that they were to be reckoned  
in the partnership business of Butler.  
Means delay came in order to get a  
settlement and avoid a law suit,  
(~~objected to by complainants Counsel~~)  
<sup>and objection entered & consent of defendants Counsel</sup>

Ques 7

were: which and all the items which  
were such and all the items which  
were allowed by said arbitrators within  
the scope of the arbitrators agreement  
of said parties to said Arbitrators?



Ans.  
83

Proof was made before ~~and~~ <sup>the</sup> Arbitrators that the parties had agreed that the item allowed in said award should be considered as the partnership business of Butler Means + Claycomb and as such should be decided upon in order to avoid a law suit;—

(Objected to by complainant's counsel, the objection sustained by agreement of defendant's counsel.)

Quest 8 Is the arbitration referred to by you the only one you have acted in between said parties?

Ans. Yes Sir

Cross Examination by Complainant,

Quest 1 Was the item allowed by <sup>the</sup> said Arbitrators as amount paid James Means \$273.75, the individual stone account of James Means in the stone of the defendant?

Ans. My recollection is that it was an ~~individual~~ <sup>individual</sup> ~~in defendant's~~ account.

Quest 2 Who testified before the Arbitrators as witnesses?

Ans James Means, Moses R. Jones and I think another

Quest 3 Were the arbitrators governed in



Making up their award by the terms  
of the Submission Bond between the par-  
ties, or by proofs of outside verbal con-  
-tracts?

Ans,

It was proved to the arbitrators  
that the matters submitted were to be  
considered as part of the partnership  
business of the parties recited in the  
bond and they were <sup>governed</sup> ~~guided~~ by it,  
all which is respectfully  
submitted

James. Y. Madden  
Master in Chancery  
W.C.

Fees \$100,  
paid by defendant.



85  
And afterwards to wit, on the 8<sup>th</sup> day of May A.D.  
1860, there was filed in the office of the clerk of  
the circuit court of Peoria county, the evidence  
of A. C. Harding, in words and figures following  
to wit:-

Wm. C. Butler } Peoria county circuit  
" } court, May Term 1860  
Samuel Claycomb } Chancery  
Change of venue from Warren  
Co. Ill.

Above C. Harding states as evidence  
in this case, that by agreement of the par-  
ties in an arbitration referred to in his  
deposition taken in this case that said  
James Means was introduced as a witness,  
and by his evidence it was proved that an  
individual account which said Claycomb  
had against said Means should be includ-  
ed as one of the items to be allowed said Clay-  
comb as against said Butler, and upon  
said testimony the arbitrators allowed said  
account. And it is my recollection now  
that a suit was commenced on said award  
on Sunday, and that said award was not  
signed on Sunday - my recollection is not  
distinct.

A. C. Harding

The following note is a copy of the  
one paid by said Claycomb to said Harding



as referred to in his testimony.

"Mounmouth Jan'y 31' 1852

On or before the first day of June next we or either of us promise to pay A. C. Harding or order, the sum of two hundred dollars for value received of him.

(Signed) Butler & Means

Samuel Claycomb "

It is agreed by P. E. Reed atty for Wm. C. Butler and C. A. Paine atty for Claycomb that the above statement of A. C. Harding and the above copy of the note may be read in evidence upon the hearing of said Chancery case.

P. E. Reed.

C. A. Paine

And afterwards to wit, on the 28<sup>th</sup> day of August, by general order of court there was opened and filed in this cause, a deposition in words and figures following to wit:-  
State of Illinois Peoria circuit court  
Peoria County vs AD 1860.

William C. Butler

Deposition of  
N. A. Rankin

Samuel Claycomb

Deposition of N. A. Rankin, witness taken before me Wm. B. Green, Notary Public in and for the city of Mounmouth, Warren



county, Illinois, at my office on the 3<sup>rd</sup> day of May A.D. 1860 - taken by agreement of parties to be read in evidence in a certain suit now pending in the Peoria county circuit court in the state of Illinois wherein William C. Butler is plaintiff and Samuel Claycomb is defendant:

N. A. Rankin produced and sworn of the part of the defendant.

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

Answer My name is N. A. Rankin age fifty years, occupation a merchant, and place of residence city of Monmouth, Warren county, Illinois.

Int. 2. Are you acquainted with the parties to this suit and if so how long have you known them.

Answer I am, and have known them about fourteen or fifteen years.

Int. 3. Do you or not recollect the business that the parties to this suit and one James Means were engaged in during the years 1851 & 1852, if so state what it was?

Answer I do, they were engaged in carrying on a slaughter house in the city of Monmouth.

Int. 4. Did you or not pay to the said Butler & Means for said Claycomb a sum of money about that time if so state the time the a



mount and what it was paid for?

Answer

I paid Butter & Means in February 1852, four hundred and six & some odd dollars for said Claycomb I do not recollect for what purpose it was paid.

Int. 5

Do you or not know that said parties to this suit and an James Means were in partnership in the slaughtering business and state when they dissolved if you know?

Answer

I do know that they were in partnership my recollection is that they dissolved in the month of February 1852. I do not recollect whether it was before or after I paid the money.

Cross Examination.

Int. 1

In what business was Butter & Means engaged when you paid them the money.

Answer

They were then engaged in Slaughtering business with said Claycomb, and I think they had a grocery in the city of Monmouth Illinois

N. A. Rankin

Deposition of  
Wm. Despain

Deposition of William Des Pain, witness taken on this 6<sup>th</sup> day of August A.D. 1860 at my office in the city of Monmouth Warren County, Illinois, before me, Willis B. Greer, Notary Public, taken by agreement of parties to be read in evidence in a certain suit now pending in the Circuit Court of Rionia County in the state of Illinois, wherein



William C. Butler is plaintiff and Samuel Claycomb is defendant.

William Despain, witness, produced and sworn upon part of said defendant:

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

Ans 1 My name is William Despain, residence Galesburg, Illinois, age thirty-six years occupation a farmer.

Int 2 Are you acquainted with the parties to this suit, and if so how long have you known them?

Ans 2, I am acquainted with the parties and have known them for about eighteen years.

Int 3 Do you<sup>or</sup> not know whether you obtained a judgment against the defendant in this suit and one James Means, in the Circuit Court of Warren County Illinois if so state the time said judgment was obtained the amount of the same, and whether it is paid or not, and if so who paid it?

Ans 3 I did obtain such a judgment in said Court against said parties on the 14<sup>th</sup> day of April A.D. 1854 for the sum of one hundred and twenty dollars and sixty cents and the same has been paid by the defendant in this suit.



Int 4

On what was said Judgment obtained?

Ans 4

On a joint and several note given by said Means & the plaintiff in this suit in the firm name which was Butler & Means and which was signed by the said defendant as security.

Int 5.

What was the reason that the judgment was not also against said Butler the plaintiff?

Ans 5

He was out of the state at the time and no service was had upon him.

William Despain

State of Illinois  
Warren County } ss

I, the subscriber, a notary public in and for the city of Mounds in the county of Warren, do certify that the above deposition was taken before me at my office at the times and places mentioned in the caption thereof - that the said witnesses were first duly sworn, and the deposition reduced to writing by me, and that the said depositions was first carefully read to the witnesses and signed by them and afterwards sworn to before me. Given under my hand and official seal this 25th day of August A.D. 1880.

Wm B. Green

Wm B. Green, Notary Public



We the attorneys in case of Butter vs Claycomb in Peoria Circuit Court, agree that the foregoing depositions may be read in evidence, waiving all in-formalities

Aug 24 1860

Philo C Reed, atty for plff

E. A. Paine, attorney for def.

And afterwards to wit - on the 10<sup>th</sup> day of December AD 1860, under general order of court, there was opened and filed in this cause, depositions in words and figures following to wit:-

State of Illinois,  
Peoria County }

William C. Butter

Depositor of  
E. A. Paine

Amuel Claycomb

Deposition of Eleazor A. Paine, taken upon the part of the defendant by agreement of plaintiffs counsel.

Eleazor A. Paine being first duly sworn according to law deposes and says

Int 1<sup>st</sup>

What is your name, age, occupation  
Place of residence.

Ans 1

My name is Eleazor A. Paine, age



forty five years, occupation Attorney at Law - Residence, Moundmouth, Warren County, Illinois.

Int 2

Are you acquainted with the parties to this suit and if so how long have you known them?

Ans 2

I am and have known them over ten years.

Int 3

Has your deposition been taken before in this case?

Ans 3

It has.

Int 4

Was<sup>or</sup> not you one of the arbitrators in the case between these parties and if so did said arbitrators act in good faith, or was it or not a farce, or at most only advisory to the parties?

Ans 4

I was one of the arbitrators and acted in the utmost good faith as I believe the others did, the other two arbitrators Messrs. Harding & Quincy were the attorneys for Butler and I was the attorney for Claycomb - our desire was to investigate the matter submitted to us and to make a final settlement between them; it was not advisory, much less a farce.

Int 5

Was or not the parties to the arbitration present, and did or not they



present all their accounts, books & papers to be passed upon by said arbitrators, & was there or not any accounts or claims thrown out and if so what were they?

Ans &

Both parties were present with their witnesses, books and papers, and the items allowed in the award of the accounts of the parties respectively were established by competent proof and allowed by the arbitrators as coming within the scope of their authority - there were some items which were offered and proved that were rejected because they did not come within their authority. One of these items amounted to two hundred dollars or more presented by defendant as proper to be submitted and passed to his credit it being for a span of horses sold by the defendant to one James Means who had formerly been a partner with these parties, and by said Means sold to said complainant and by him taken out of the state as said Means had not paid for said horses said defendant claimed that he should be allowed their value in the award which we were to make up, the arbitrators refused to allow it; Another item was



a note of two hundred dollars or more which dependant had paid, given to Chaney Harding for money loaned to said Means and signed by said dependant as security, who took the same to St. Louis and expended it for groceries were shipped <sup>come</sup> to Monmouth, Illinois, but before they arrived there they were seized by the creditors of Butler & Means and sold to pay the demands of that firm - said dependant having paid <sup>said</sup> that note claimed that it should be allowed him by said arbitrator as a demand against said complainant - the arbitrator rejected it.

Ans. Objected to by corrupt Counsel.

Mr. C.

Was or not said arbitration had only to arrange a compromise between the parties or was it or not for determining the balance between them on a settlement and to find the amt which was to be paid and that to be binding upon the parties.

Objected to.

Ans 6

It was not to arrange a compromise; it was to find the amount due from one party to the other on an examination of partnership accounts where the parties



and one James Means had been partners and some accounts against said Means individually and some against the firm of Butler & Means which the parties agreed to recon in as part of their com partnership transactions.

Int 7

What was the agreement of the complainant to this suit as to the account of James Means and how was said account to be acted upon. Objected to

Ans 7

I have answered this in my former deposition. Complainant told me that Means who was his partner at that time in the grocery business was drinking very badly and that he could not dissolve nor settle with him until the old partnership business of Claycomb, Butler & Means was settled up - that Claycomb would not settle unless they reconed in an individual account he had against Means and an account he had against Butler and Means and to effect said settlement he agreed that all those matters should be considered as a part of the partnership transaction.

Int 8

State the manner in which the proceedings were had and how the



finding or award was made up, and when signed?

Ans 8

The best of my recollection is that Judge Quinby swore Mr. Harding & myself as arbitrators, I was a justice of the Peace at the time and swore Quinby as arbitrator. The parties presented their demands respectively, witnesses were called by each party respectively and sworn by Judge Quinby - after an examination of the testimony and listening to the statements of the parties - all other persons except the arbitrators left the room in which we were sitting, which was the office of Harding & Quinby and we consulted for some time as to the award - before commencing the ~~award~~ arbitration each party gave the other his bond to abide the finding of the arbitrators before the arbitrators separated Judge Quinby made a statement of those items which could readily be reduced and the amounts fixed I was then to draw the award and fill it out with those items leaving a space for Quinby to fill in the items when he had figured them up, that we met on the Thursday



following in the office of Harding & Quimby where the blank spaces in the award which I presented were filled out by Judge Quimby with the items which he was to figure up. That Judge Quimby signed the award first, then I signed it and A. G. Harding wrote his name nearly over Judge Quimby's. The date that I put on the award I saw was changed at the time we signed it to agree with that date.

Int. 9

State as to an adjournment being had before the award was made up, for the purpose of taking further testimony.

Ans 9.

There was no adjournment for the purpose of taking further testimony. We only separated as stated in the preceding answer and when we met it was for the purpose of signing the award.

Cross Examination by Complainant's Counsel.

Int 1.

Do you mean by any thing contained in this deposition to vary, alter or contradict any part of your former deposition given in this case?

Ans 1

I do if it does vary, alter or contradict it.

Int 2

If this deposition contradicts any part of your former deposition which is true?



Ans 2

If it does this is true.

Qnr 3

Was the agreement spoken of by you in answer to the seventh interrogatory in chief of the complainant to allow in the arbitration the account of Butten and Means and of James Means, made before or after the bonds were signed?

Ans 3

I acted as arbitrator on statements of complainant made to me before the bonds were signed, when the arbitrators met and the bonds were about to be drawn the matter was talked over before and at the time the bonds were drawn. The agreements were all made before and at the time the bonds were being drawn and before the bonds were signed. O. A. Paine.

I agree to waive notice of the time & place of taking the above deposition.

Philo C. Reed, atty for complt

State of Illinois

Warren County } City of Mounmouth

I, Willis B. Greer, Notary Public

in and for the city of Mounmouth in said county and state, do hereby certify that the said witness Cleazor A. Paine prior to the taking of the foregoing deposition



and on the eighth day of December A.D. 1860 was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption to this deposition so far as he might be interrogated in relation thereto; and the said deposition was on the eighth day of December 1860 at the city of Mounmouth in said county and state taken and reduced to writing by me and read to said witness before signing and signed and sworn to by said witness in my presence.



Given under my hand and seal of office this 8<sup>th</sup> day of December 1860

Wells B. Greer

Notary Public.

And afterwards to wit - on the 25<sup>th</sup> day of March A.D. 1861, there was filed in the office of the clerk of said court, a replication in words & figures following to wit:-

Replication

William C. Butler

"

Samuel Claycomb

~ In the Peoria County Circuit Court, March Term A.D. 1861

This replicant saving and reserving to himself all full means



of advantage of exception, which may be  
 had & taken to the manifold errors, uncer-  
 tainties, and insufficiencies of the answer  
 of the said defendant to the amended bill  
 filed in this cause for replication  
 thereto, saith that he doth & will ever  
 maintain and prove his said bill &  
 amendments thereto to be true, certain & suf-  
 ficient in law to be answered unto by the  
 said defendants, and that the answer  
 of the said defendant is very uncertain,  
 evasive, and insufficient in the law to  
 be replied unto by this replicant; without  
 that, that any other matter or thing in  
 the said answer contained material  
 or effectual in the law to be replied  
 unto, and not herein & hereby well  
 and sufficiently replied unto, and not  
 herein and hereby well & sufficiently re-  
 plied unto, confessed or avoided, traversed or  
 denied, is true; all which matters and things  
 this replicant is ready to aver, maintain  
 and prove as this Honorable Court shall  
 direct, and humbly prays as in & by his said  
 bill he hath already prayed

Attest Mead  
 Complainants Solicitor



And afterwards to wit - on the 8<sup>th</sup> day of August AD 1861, by general order of court there was filed in this cause, a deposition in words and figures following to wit:

State of Illinois  
Peoria County }<sup>ss</sup>

William C. Butler } In the circuit court  
" } In Chancery for  
Samuel Claycomb } Deposition

Notice

Take notice that on the first day of August AD 1861 between the hours of 8 o'clock A.M. and 6 o'clock P.M. of said day and continuing from day to day if necessary at the office of and before the clerk of the circuit court within and for the county of Warren and state of Illinois, in the city of Monmouth in said county or before some other person authorized by law to take depositions, we shall take the depositions of Ivory Quincy, James G. Madden and James Means to be read in evidence on the trial of the above entitled cause on the part of said defendant when and where you can appear and cross examine said witnesses if you deem proper

To Messrs Wead & Johnson,  
Attys for Compt  
Peoria July 20, 1861

James V. e  
Mannington & Culloch

Sols for Deft.

Received a copy of the within notice this 20<sup>th</sup> day of July  
AD 1861 A. M. Wead & W. B. Johnson



(Copy)

## Exhibit "A"

|        |                                                   |          |
|--------|---------------------------------------------------|----------|
| Item 1 | Amount paid N. A. Rankin                          | \$468.60 |
| " 2    | Book account                                      | \$56.32  |
| " 3    | Cash by Dixon                                     | \$40.00  |
| " 4    | Balance on Oyster                                 | \$55.50  |
| " 5    | Amount due from Butler Means 1 <sup>st</sup> year | \$135.52 |
| " 6    | Interest on last item                             | \$30.00  |
| " 7    | Collected on keep of 1/2                          | \$27.07  |
| " 8    | Note & int                                        | \$23.83  |
| " 9    | Drift in favor of Despain & cots                  | \$125.60 |
| " 10   | " " " " H. Harding                                | \$227.00 |
| " 11   | Paid Moses Jones                                  | 27.33    |
| " 12   | Paid James Means                                  | 273.75   |



In Justice Court, Before Elisha Nye, Esquire  
Justice of the Peace

William C. Butler } In the circuit Court  
" } In Chancery

Samuel Claycomb } for Injunction

Deposition of  
Means

Deposition of James Means aged about 49 years, a witness in the above entitled suit taken by, Elisha Nye, Esquire, a justice of the peace of the County of Warren and State Illinois on the 1st & 5th days of August 1861 at the office of Elisha Nye in Mount Pleasant, Warren County, Illinois in the presence of the plaintiffs attorney and defendants attorney Warren County, as:- James Means being duly sworn deposes and says as follows, viz:-

James Means sworn. Plaintiff attorney asked to have the witness examined on his Verdict, as to his interest in said suit, but was refused by the justice taking this deposition, on the ground that said attorney had a right to ask him as to his interest in the said case in his evidence in chief. Plffs counsel objects to examination of witness:

July 1st

Are you or not the same James Means whose testimony has been taken heretofore in this case, and is now on the files in this case?



Answer

Inter 2<sup>d</sup>

I am the same person  
What is your name age and place of  
residence?

Answer

My name is James Means, my age  
49 years and residence Warren County  
Illinois.

Inter 3<sup>d</sup>

Are you or not interested in the event  
of this suit.

Answer

I don't know that I am - If I  
am I do not know it.

Inter 4

Were or were not the different items  
of debt in favor of Samuel Claycomb  
named and described in the award  
of the arbitrators between the plaintiff  
and the defendant in this suit (a copy  
of which is here shown to you) paper  
shown to witness marked "A"; Justly due  
from the firm of Butler Means to the  
said Claycomb, and were properly charge-  
able to the said complainant at the time  
of the time of the said arbitration and  
did or did not the said plaintiff & de-  
fendant expressly agree and consent  
that all the items mentioned in the said  
award should be submitted to said ar-  
bitrators for their consideration and  
adjudication. State all you know about  
it (objected to) by Plff attorney



Answer  
186

I knew the first item A. A. Rauten to be right \$468.66. The second item Book A. Oct I know to be right \$56.32. The 3<sup>d</sup> item is right - I put the money myself for Butter & Means \$40.00 - paid by Dixsen the 4<sup>th</sup> item I suppose to be right Butter told me he bought the Oysters of Claycomb and brot them over to our Grocery and Butter & Means sold them \$55.50. Item 5<sup>th</sup> was submitted to the arbitrators by agreement of those parties as being an item properly chargeable against Butter the complainant. I did not know the amount due to Claycomb \$135.52. The 6<sup>th</sup> I knew nothing about the interest. This was a matter for the arbitrators \$30.00. Item 7<sup>th</sup> I suppose it to be right \$2707 & believe it to be right. Item 8<sup>th</sup> Is right it was a note that Butter & Means gave to Claycomb \$23.83 Item 9<sup>th</sup> Is right and was properly chargeable to Butter \$125.60 Item 10. Judgment in favor of H. C. Harding \$227.00 is right & properly chargeable to Butter the complainant. Item 11. Paid Moses Jones \$2733 is right and properly chargeable against complainant. Item 12 - paid James Means \$273.75 is right and was properly chargeable to Butter in the settlement. And the said Complainant and defendant agreed that all the items

OK



mentioned in the said award should be submitted to the arbitrators for their consideration and adjudication (objt to)

Puty 5,

State whether or not you heard a conversation between complainant and dependant after the said award was made and concluded by the said arbitrators, about the said award and the payment of the same; if yes, state what the said complainant said about the payment of the said award to said dependant.

Answer

I heard a conversation between them after the award of the arbitrators. The complainant was not willing to pay the whole of the award, and did not feel able to do so. The complainant spoke of having a piece of land and a Gold watch & my recollection is that he was willing to pay that much upon the award, and spoke of this land and Gold watch as being all he had to turn out.

### Cross Interrogatories

Cross Put 1

State whether you and complainant were in partnership in business in this place, if yes, state when the copartnership commenced and when it ended.

Answer

We were in copartnership in this place. I don't know as I can state when it



commenced as when it ended. It commenced somewhere in the year 1848<sup>'49</sup> or 50, I am not certain which, and ended in 1853, 4 or 5, I think.

Cross Int 2

State whether the items in exhibit A and numbered from 1 to 12 were items due from yourself and Butler (as partners) to defendant.

Answer

What was due Claycomb was due from us as partners - all except the last item No 12 - which was due to Claycomb from me for goods taken out of his store and to be accounted for by Butler & Means in the trade of the Slaughter house which Butler & Means sold to Claycomb.

Cross Int 3

State how you knew that the items mentioned in exhibit "A." and in the award are the same items which was agreed upon between Complainant & defendant should be submitted to the arbitrators.

Answer

I was there at the arbitration - the items were brought up, one at a time those that were objected to were urged as being true and took testimony on both sides and left it to the arbitrators.

Cross Int 4

State whether the defendant just preceding to your examination to day talked to and refreshed your recollection as to what you should testify to when examined.

Answer

We had a conversation just before the



the examination commenced - we talked about the award of the arbitrators and he showed me the award, which did refresh my memory as to some of the items.

Cross Int. 5

Did you not have a conversation in relation to other matters (connected with your testimony herein) than the award, if you state what it was.

Answer

I don't recollect of having any conversation there might have been something said but I do not recollect of any now nor what it was.

Cross Int. 6

Did you merely ask Claycomb for the award and look at it to refresh your recollection in relation to items ~~or~~ did you not have a conversation with Claycomb at the time with regard to the items therein mentioned.

Answer

I asked him for the award for the purpose of refreshing my memory of the items in the award - we might have spoke about it but what it was I cannot tell.

Cross Int. 7

Was the defendant Samuel Claycomb present during your examination in chief and did you not during said examination ask said Claycomb for information in regard to certain items as an



item mentioned in the award.

Answer

(110) He was present and I asked about a certain note mentioned in the award - I asked who the note was given to and I then recollected it. I then asked him about the beef account and he said it was money that we collected and that he should have had one third of it which is the amount mentioned in Exhibit A.

Continued till to-morrow the 2<sup>d</sup> of August at 9 o'clock A.M. O'Nye, J.P.

Continued by agreement of counsel till Augt 5<sup>th</sup> at 9 o'clock A.M.

Augt 5<sup>th</sup>/61 = Cross Examination of James Means resumed = Complainants and defendants counsel present.

Cross Int 8

Were you present when the complainant and defendant made the agreement to submit their several accounts to the arbitrators - if yes state how long before the arbitration the agreement was made and where the parties were at the time.

Answer

I do not recollect of being present when the agreement was made

Cross Int, 9<sup>th</sup>

State how you know that said complainant (Butler) agreed that all the items mentioned in Exhibit marked "A" should



be submitted to the arbitrators.

Answer

I was at the trial or arbitration, and I heard it talked over between the plaintiffs and defendant.

Cross Inty 10

State whether you can tell what items were mentioned by the parties during the conversation referred to in your answer to the preceding interrogatory.

Answer

I do not recollect that they referred to any particular items.

Cross Inty 11

Did or did not the complainant (Butter) claim at a time that a portion of the items mentioned in exhibit A. were not chargeable to the firm of Butter & Means, if yes, state what items were so objected to.

Answer

It appears to me that he did and that the item was the store bill against Means.

Cross Inty 12

Did or did not complainant (Butter) ever agree to your knowledge that the store bill against you referred to in your answer to the preceding interrogatory and marked item 12 in Exhibit A should be charged to the firm of Butter & Means.

Answer

I sold the interest of Butter & Means in a slaughter house which belonged to Butter & Means and Claycomb to the defendant, provided Butter was willing to the trade and I told Claycomb the de-



pendant in order to get him to trade with me that money was hard and I agreed that we (Butler & Means) would take what goods we necessarily needed in place of requiring all money of him in payment and I went in and told Butler the trade I had made with Claycomb and all the talk as far as I recollected it at the time Butler raised no objection to the trade. I considered that any goods that Butler or me or the firm of Butler & Means that should be taken up was payment on Claycomb's side as far as they went on the purchase of the Slaughter house. I never heard Butler agree that said item should be charged to Butler & Means only in the way above stated.

Cross Q<sup>y</sup> 13.

How long after the slaughter house trade was made did you and Butler remain in partnership - state as near as you can recollect.

Answer

Somewhere between 12 to 18 months I don't think it was quite eighteen months.

Cross Q<sup>y</sup> 14<sup>th</sup>

Was or not the whole of said store bill (item 12) made during the existence of said partnership.

Answer

I think it was.

Cross Int. 15

In your answer to direct interrogatory



No. 5 You state you heard a conversation between complainant & dependant in which complainant offered to pay a piece of land and a good watch on the award of the arbitrators do you or not mean to be understood that said complainant in said conversation proposed to dependant to give him said land and watch to settle the award.

Answer

He spoke of having a piece of land & good watch - he pulled the watch out in his hand, ~~then~~ <sup>then</sup> satisfied he would have given the watch and land to have got rid of the award - I don't know that he made any direct offer to that effect.

Cross Int. 16

Did or not said complainant in said conversation state to said Claycomb that the arbitrators had awarded upon matters not properly chargeable to the firm of Butler & Means and not contemplated in the bond, if yes, state what item or items if any were mentioned.

Answer

If he did I do not recollect it.

Adjourned to 1 o'clock P. M.

Cross Int. 17

Was there any thing said by complainant during said conversation about any notes or debts due from dependant to said complainant which were not allowed in the



arbitration, and which defendant should pay - If yes, state what was said fully.

Answer There was something said about a small note that the complainant said he had neglected to present to the arbitrators that he should have been allowed for it.

Cross Int. 18 If defendant Claycomb loses this suit would you not be liable to him for the debts due him from the firm of Butler and Means.

Answer I should try not to be - I don't consider I should be liable to Claycomb let the suit go as it will.

Cross Int. 19<sup>th</sup> Has or not defendant Claycomb ever released you from liability on the debt due him from the firm of Butler & Means.

Answer I don't know what you would call a release - he never receipted me, I have never asked him for it - I did not consider I owed him anything.

Cross Int. 20<sup>th</sup> If during the trial of this cause it should be decided that your store bill marked item 12 in Exhibit A was not properly included in the arbitration, or that it was not chargeable to the firm of Butler and Means would not you be liable to defendant Claycomb for the amount of said account.



Answer

I don't think I would.

Cross Inty 21

Was or not defendant Claycomb ever agreed with you that he would not hold you liable for the amount of said account if he was defeated in this suit.

Answer

He has not we have never talked or agreed any thing about it.

Cross Inty 22

Would it not be to your interest to have complainant Butler pay all the debts due Claycomb upon the firm of Butler & Means.

Answer

If it would I don't know it.

Inty 23

If you are still liable to defendant Claycomb for the debts due him from the firm of Butler & Means would it not be to your interest to have complainant Butler pay them

Answer

If I am I will make him pay them if it is worth it. I consider I am released already by law.

Cross Inty 24<sup>th</sup>

In your answer to preceding interrogatory you state you consider you are released from the debts due from the firm of Butler & Means to defendant Claycomb - please state how you became released or how you consider yourself released.

Answer

Butler and me was in partnership and we dissolved partnership and Butler agreed to pay



the debts - Butter was perfectly solvent - Claycomb sued Butter instead of suing Butter Means and delayed time till Butter became insolvent thereby cut me out of the chance to make it of Butter.

Cross Entry 25<sup>th</sup>

Would it not be best for you to have the award of the said arbitrators sustained.

Answer

I don't know that it makes any difference with me at all.

Cross Entry 26,

Would it not relieve you from any liability whatever to defendant Claycomb if he Claycomb should succeed in this suit

Answer

If I am liable it might - I do not consider I am liable.

Cross Entry 27,

If your store bill marked item 12 in Exhibit A was not properly chargeable to Complainant Butter or the firm of Butter Means would it not be to your interest to have the award sustained and to have defendant Claycomb gain this suit.

Answer

There is a heap of things that might happen but the said item was properly charged to Butter and Means and to the complainant in the account before the arbitrators. If I am liable to Claycomb it might be to my interest but I don't believe nor consider I am myself



cross entry 28

liable at all let the suit go as it will.

Will you please answer whether it would not be to your interest to have the award sustained and to have defendant Clay come in the suit if you should be mistaken in relation to your store bill being properly chargeable to Butler and Means or to complainant Butler at the arbitration.

Answer

I don't think it would make any difference with me. I think Clay could look his chance of three ways to make his money: he could have sued Butler & Means or he could have sued Butler or Means.

James Means.

State of Illinois,  
Warren County, ss

I, the undersigned a justice of the Peace of the said county do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof - that the said witness was first duly sworn and that the said deposition was carefully read to the witness and signed by him and that all the questions and answers in the foregoing deposition are agreed by the counsel on both sides to be considered as



jected to.

Dated this 5<sup>th</sup> day of August 1861

Elisha Nye

Justice of the Peace

Mr. C. Butler

vs

Saml Claycomb

=====

In justice court before

Elisha Nye

J.P

Deposition of Ivory Quinby aged about 44 years, a witness in the above entitled suit taken by Elisha Nye, Justice, a justice of the Peace of the county of Warren State of Illinois on the 2<sup>d</sup> day of August 1861 at the office of Elisha Nye in Moundmouth in said county in the presence of Plaintiffs and defendant attorneys - on the part of the defendant. Warren County, Ill. Ivory Quinby being duly sworn deposes and says as follows viz:

Ivory Quinby Sworn

Inter 1

What is your name, age and place of residence

Answer

My name is Ivory Quinby - my age is forty four years - my residence Moundmouth, Warren County, Illinois.

Inter 2<sup>d</sup>

What was your business in 1852 and subsequently till 1857



Answer

I was engaged somewhat in the practice of law in Mounmouth, Illinois in connection with H.C. Harding.

Inty 3<sup>d</sup>

Are you or not the same Ivory Quincy who acted as arbitration in connection with H.C. Harding & E. S. Paine on the matters and things submitted to you as such arbitrators by complainant and defendant in May 1854, and whose deposition has heretofore been taken in this cause.

Answer

I am.

Inty 4<sup>th</sup>

Will you please look at papers marked No. 1, 2 & 3, with the name of officer taken the deposition written on the margin and state if ever you saw them before - if so state what papers they are where you first saw them and when.

Answer

I have seen all the papers mentioned before. The first paper is a bond from Wm. C. Butler to James Means dated May 6<sup>th</sup> 1854. The second paper is an award made by H.C. Harding, E. S. Paine and myself between said Butler & Claycomb in May 1854. The paper marked No. 3, is a memorandum of acct between said Claycomb & Butler made by me at the time of said arbitration - all of these papers I



first saw in May 1854 at or before the time of the arbitration.

July 5,

Will you please looked at the papers marked No 445 with the name of the officer taking these depositions written on the margin (paper here shown to the witness) and say if you have any recollection of items upon them submitted to said arbitrators and your best recollection as to the papers.

Answer

I have examined the papers marked No 445 and recollect that there were submitted to said arbitrators - items of account of the same character as set out in said papers and my impression is that said papers No 445 were before the arbitrators at the time of the arbitration. J. Quincy adjourned till Monday next at 9 o'clock.

Oliver Nye, J.P.

State of Illinois  
Warren County } ss

I the subscriber a justice of the Peace of the said county do certify that the above deposition was taken by me at the time and place mentioned in the caption thereof that the said witness was first duly sworn



and that the said deposition was carefully read to the witness and signed by him. All the questions in the foregoing deposition by agreement of attorneys considered objected to.

Dated this 5<sup>th</sup> day of August A.D. 1861  
Elisha Nye, J.P.

Butler & Means

To S. Clay coach

|      |                                         |          |
|------|-----------------------------------------|----------|
| 1862 | To amt paid Rankin                      | \$461.00 |
|      | " Book ape                              | 56.32    |
|      | " Cash by Dixon                         | 40.00    |
|      | " Bal on Oysters                        | 57.00    |
|      | " Bal on Settlement                     | 161.00   |
|      | Interest                                | 30.00    |
| 1854 | Notes & interest                        | 33.80    |
|      | Collected on Deep                       |          |
|      | Accounts # 138 one third                | 46.00    |
|      | April 14 Judgment in favor of C. Hardin | 212.50   |
|      | " " Judgment in favor of Wm Deshaime    | 120.60   |
|      | " 11 Judgment in favor of Al Hardin     | 222.00   |
|      | paid Moses Jones                        | 35.00    |
|      | paid James Means                        | 273.75   |
|      |                                         | 1748.97  |

Exhibit No 3.

Elisha Nye, J.P.



|                                           |           |
|-------------------------------------------|-----------|
| S. Claycomb & Co. To Butter & Means       | do        |
| Amount paid at St Louis                   | \$ 195.00 |
| " " " To A. Knowles                       | 100.00    |
| " " " " " " "                             | 166.60    |
| " " " To S. Claycomb                      | 20.00     |
| To Hoops \$3.00 expenses hauling the tank | 650       |
| To J. N. C. Butler for Ties               | 3421      |
| To groceries for Blaupete House           | 75        |
| To Samuel Little for work                 | 70        |
| To 3 lbs candles 15 cts                   | 45        |
| To Gooden for work in                     | 63        |
| To Bedford Haley                          | 150       |
| To T. H. Trice                            | 100       |
| To Gilmore per cent on Hoops              | 520       |
| To Wm Paul for work                       | 300       |
| To A. G. A. Willett for work              | 140       |
| To J. L. Clark for work                   | 162       |
| To T. Deuby for work                      | 75        |
| To Bedford Haley                          | 150       |
| To D. Bunnackman                          | 75        |
| To Sanders for Co                         | 476       |
| To Lewy Lamsdale                          | 245       |
| James Means work in building house        | 3000      |
| To Geo. W. Babcock                        | 817       |
| To James McKimsey                         | 115       |
| To John Miner                             | 145       |
| To Sam Metton                             | 245       |
| Candles                                   | 591.60    |
|                                           | 75        |



|                 |              |
|-----------------|--------------|
| To James Ferry  | 85           |
| To James Hodges | 30           |
| " A Williams    | 190          |
|                 | 250          |
|                 | 320          |
|                 | <hr/> 601.08 |

~~Exhibit No. 4~~  
~~Elisha Nye, J.P.~~

|                        |              |
|------------------------|--------------|
| Lumber                 | 5.00         |
| Labor building house   | 10.00        |
| To Bedford Haley       | 25           |
| Coal                   | 50           |
| Paid Boy               | 40           |
| A. McAllen for Hauling | 10           |
| Paid boy               | 30           |
| Paid Tailor boy        | 4            |
| " boy                  | 30           |
| " "                    | 13           |
| " By J. Means          | 100          |
|                        | <hr/> 609.45 |
|                        | 45           |
|                        | <hr/> 609.91 |

Exhibit No 4,  
 Elisha Nye, J.P.



124

|                                                                                                            |               |
|------------------------------------------------------------------------------------------------------------|---------------|
| Amount paid Rankin                                                                                         | 468.66        |
| Book of c                                                                                                  | 56.32         |
| Cash by Dixon                                                                                              | 40.00         |
| Bal on oysters                                                                                             | 55.50         |
| Am't due from Butte & Means to<br>J. Claycomb on sett of affairs of firm<br>of Butte Means & Co - 1st year | 135.52        |
| Interest on last item                                                                                      | 30.00         |
| Collected on beef of c $\frac{1}{3}$                                                                       | 27.91         |
| Note & Int                                                                                                 | 23.83         |
| Invest in favor of Despain & c                                                                             | 125.60        |
| " " " " Hardy "                                                                                            | 227.00        |
| Paid Moses Jones                                                                                           | 27.33         |
| Paid James Means                                                                                           | 273.75        |
|                                                                                                            | <hr/> 1490.58 |
|                                                                                                            | <hr/> 947.52  |
|                                                                                                            | 543.06        |
|                                                                                                            | <hr/> 346     |
|                                                                                                            | 539.60        |
| That Butte pay on the debt to C.<br>Hardy the value of 2 horses                                            | 140.00        |
| Claycomb Dr.                                                                                               |               |
| Money put in by B. & M. in slaughtering                                                                    | 609.91        |
| B & M share of profits                                                                                     | 294.54        |
|                                                                                                            | <hr/> 904.45  |
| Account                                                                                                    | 43.07         |



We, U. C. Harding, Ivory Quincy and C. A. Paine, the arbitrators chosen by Samuel Claycomb and William C. Butler to whom was submitted "all matters, differences and dealings where the said Butler and Claycomb and one James Means have been partners in business of any kind or nature" after hearing the allegations of the parties, and examining their accounts respectively filed, do award as follows to wit.

We find and allow the account of said Claycomb against said Butler as follows.

|                 |                                                     |               |
|-----------------|-----------------------------------------------------|---------------|
| 1 <sup>st</sup> | Amount paid N. A. Runkin                            | \$468.66      |
| 2 <sup>d</sup>  | Book account                                        | 56 32         |
| 3 <sup>d</sup>  | Cash by Dixon                                       | 40 00         |
| 4 <sup>th</sup> | Balance on Oyster                                   | 55 50         |
| 5 <sup>th</sup> | Amount due from Butler & Means 1 <sup>st</sup> year | 135.52        |
| 6 <sup>th</sup> | Interest on last item                               | 30.00         |
|                 | Collected on beef of $\frac{1}{3}$                  | 27 01         |
|                 | State & Int.                                        | 23 83         |
|                 | Indt in favor of Despain & co                       | 125 60        |
|                 | " " " M. Harding                                    | 297 00        |
|                 | Paid Moses Jones                                    | 27 33         |
|                 | Paid James Means                                    | 273.75        |
|                 |                                                     | <hr/> 1490.58 |

And we find and allow to said Butler as against said



Claycomb as follows

|                                                 |              |
|-------------------------------------------------|--------------|
| Money put in by Butter Means<br>in Slaughtering | \$609.91     |
| B & M share of profits                          | 294.54       |
| Account                                         | <u>43.07</u> |
|                                                 | 947.52       |
| Share of item premium on hogs                   | <u>346</u>   |
|                                                 | 960.98       |

We the arbitrators therefore find and  
award as follows, that the said Wil-  
liam C. Butter pay to the said Samuel  
Claycomb the sum of five hundred and  
thirty nine dollars and sixty cents.

1490 58  
950 98  
539 60

Given under our hands and seals  
this the ~~6th~~ day of May A.D. 1854

A. B. Harding  
C. A. Paine

Real  
C. A. Paine  
Real

Exhibit No 2

Olisha Nye, J. P.



I, William C. Butler am held and firmly bound unto Samuel Claycomb in the sum of fifteen hundred dollars for the payment of which well and truly to be made, I hereby bind myself my heirs, executors and administrators if default be made in the conditions which follow to wit:—

The condition of the above obligation is such that whereas this day the said William C. Butler and the said Samuel Claycomb have this day agreed to submit to Hon. A. C. Harding, Hon. J. Quincy and E. A. Paine as arbitrators all the matters differences and dealings where the said Butler and said Claycomb and one James Means have been partners in business of any kind or nature, hereby agreeing to abide the finding of said arbitrators and acknowledge that the award which may be found against me, if any, shall be entered as judgment confessed in any court of record in the state of Illinois: And I further agree and bind myself to pay said award if any against me, and so doing this obligation to be void. otherwise to be and remain in full force and virtue

~~W. C. Butler~~



Given under my hand and seal this  
6<sup>th</sup> day of May A.D. 1834

Wm C Butler (Seal)

Witness - Absalom Vanderveer

Exhibit No 1.

Elisha Nye, J.P.

State of Illinois }  
Warren County }  
William C. Butler

4 } In Chancery  
Samuel Claycomb }

I, Wm. Laforty, Clerk of  
the circuit court in and for said  
County of Warren and State of Illi-  
nois, do hereby certify that the two  
papers to which this certificate is  
attached, were two of the original  
papers filed in this cause and were  
omitted to be sent with the papers  
in the case to Peoria County on a change  
of venue from this court.

Seal

In witness whereof I have hereunto  
set my hand and affixed the seal of  
our said <sup>circuit</sup> court at my office in  
Moundmouth this 2<sup>d</sup> day of August A.D. 1861  
Wm Laforty, Clerk



In Justice Court before Elisha Nye, J.P.  
 Wm C Butler

<sup>14</sup>  
 }  
 (Paul Claycomb)

Deposition of James G. Madden  
 aged about 42 years a witness in the  
 above entitled suit, taken by Elisha  
 Nye, Esquire, a justice of the Peace of the  
 County of Warren, Illinois on the 5<sup>th</sup>  
 day of August 1861 at the office of  
 Elisha Nye in said county in the  
 presence of the attorneys for Plaintiff  
 & Defendant (on the part of defend-  
 ant) Warren County, ss. James  
 G. Madden being duly sworn  
 deposes and says as follows, viz:—

James G. Madden, sworn

Q<sup>1</sup> What is your name, age, and place of  
 residence.

A<sup>1</sup> My name is James G. Madden, my  
 age 42 years—residence Moundmouth  
 Illinois.

Q<sup>2</sup> Have you ever seen the papers  
 numbered Exhibits 1, 2, 3, 4, & 5, here  
 shown to you, and if so under  
 what circumstances and when  
 state all you know about it.

A<sup>2</sup> I have seen the papers referred to.



Nos 1, 2, 4 & 5 have been seen in the possession of the defendant No 3 is a memorandum in the hand writing of Ivory Quincy and of the arbitrators between complainant and defendant - it was left with me when the deposition of Ivory Quincy in this case was taken before me as Master in Chancery and should have been attached to his said deposition as an exhibit but through a mistake was not attached to said deposition. I marked it at the time as an exhibit in connection with said Ivory Quincy's testimony taken before me. It has remained in my possession ever since that time until up to the day of the commencement of the taking of these depositions when it was delivered to Esme Nye, the Justice taking these depositions.

Inty 3<sup>d</sup>

Are you not acquainted with the hand writing of this defendant and also of the complainants.

Answer

I have seen them write frequently and am acquainted with their hand writing



July 4<sup>th</sup>

Answer.

Exhibits No 4 & 5 shown to witness state in whose hand writing these exhibits are No 4 - I think is in the hand writing of the complainant. No 5 is partly in the hand writing of the defendant and I should think partly in the hand writing of E. A. Paine one of the arbitrators

July 5

Did you or did you not before the commencement of this suit between the Plaintiff and defendant relative to the matters between them and at their mutual request make a computation and statement of account between them. If yes state whether the item of \$161.00 as set down in exhibit No 5, was the balance found to be due from Butler and Means to J. Claycomb the defendant an settlement of accounts between Butler and Means and the defendant for the first year and of said item of account of \$161.00 is the same item reduced by said arbitrators in their award to \$135.52/100 and whether the Plaintiff and defendant at the time of making the said computation mutually agreed that the said item of \$161.00 was justly chargeable to the firm of



Butler Means as balance on settlement for the first year.

Answer

In the fall as near as I can recollect before the time of the arbitration, complainant and defendant and James Means come into my office and requested me to make for them some calculations about their partnership business for that year. They gave me the items from which to calculate and I made the calculation for them. They all continued in the office until the calculation was ended. I have a memorandum of said calculation before me made at the time in my hand writing which I used to refresh my memory as to items and amounts, and according to the statements of the parties made at that time each party was put an equal amount of capital into the business and receive an equal of the profits. According to their statements to me at that time Claycomb had put into the firm the amount of three hundred and seventy four dollars and eighty three cents ( $374\text{ }83\frac{1}{100}$ ) more than his share of capital which should be paid



to said Claycomb by Butler & Means to make them equal. And Butler & Means had received the sum of \$162.28<sup>2</sup>/<sub>3</sub>/100 more than their share of the proceeds which they should have paid to Claycomb to make the proceeds and profits equal. I do not know whether or not the item referred to in the interrogatory to which I am answering now of \$161.00 as having been reduced by the said arbitrators to the sum of \$135.52/100 is the same item that I found to be due in making the computation between Butler, Means & Claycomb of overpaid from Butler and Means to Claycomb to make their shares of the proceeds and profits equal. At the time I made the calculation referred to my recollection is that all the parties expressed themselves as being satisfied with the result of my calculation between them as above referred to.

Jas. G. Madden.

State of Illinois,  
Warren County } ss

I the undersigned a Justice of the Peace of the said county do certify that



the above deposition was taken by me at the time and place mentioned in the caption thereof that the said witness was first duly sworn and that the said deposition was carefully read to him the said witness and signed by him. And also all the questions in the foregoing deposition are by agreement considered objected to.

Dated August 5<sup>th</sup> 1861

Olisha Nye, J.P

And afterwards to wit - on the 30<sup>th</sup> day of November A.D. 1861, there filed in the office of the clerk of the circuit court of Peria County, an agreement in words and figures following: -

|                   |   |                      |
|-------------------|---|----------------------|
| William C. Butler | } | In the Peria Circuit |
| "                 |   | Court Nov. T. 1861   |
| Samuel Claycomb   | } | In chancery          |

It is agreed in this case that the same shall be tried by Judge Richmond in vacation upon written or printed arguments - that the complainant may amend his bill, if he desires, upon such terms as the Judge may deem equitable - that both parties may move to suppress depositions, & that the case shall be tried in all



respects & with the same effect as if done  
in term time in open court & exceptions  
may be filed, or an appeal taken to the  
Supreme court by either party at any  
time during the next term of the court  
after final judgment is entered & the ef-  
fect of this agreement shall be to give  
each party all the rights they could have  
if the case was tried in open court during  
term time Peoria Nov. 30. 1861.

Attest Weed for Copitt  
Julius Manning  
Atty for defendant.

Proceedings in Chancery before the circuit  
court, begun and held at the court  
house in the city and county of Peoria,  
Illinois, on the first Monday of March  
in the year of our Lord, one thousand  
eight hundred and sixty one - it being  
the fourth day of said month —  
Present - the Honorable Elisha N.  
Powell, Judge of the 16<sup>th</sup> Judicial circuit  
in the state of Illinois, James Stewart,  
sheriff, and Enock Fleoan, clerk, to wit in  
Monday, March 18<sup>th</sup> 1861.  
William C. Butler



Samuel Claycomb

On motion, complainant by head  
his solicitor has leave to amend his  
bill, <sup>filed</sup> herein. Complainant is ruled  
to file his amended bill by Wednesday  
morning next.

Wednesday, March 19<sup>th</sup> 1861.

William C. Butler

11

For Puzimction

Samuel Claycomb

On motion defendant is ruled  
to answer amended bill by Mon-  
day next.

Proceedings in Chancery at a term of the  
circuit Court of Peria County, begun and  
held at the court house in the city and  
county of Peria, state of Illinois, on the  
first Monday in the month of June  
in the Year of our Lord, one thousand, eight  
hundred and sixty two, it being the second  
day of said month. Present - the Hon-  
orable A. L. Merriman, Judge of the  
16<sup>th</sup> Judicial Circuit in said state,  
James Stewart, Sheriff, and Enoch Sloan,  
Clerk, to wit:



Thursday, June 12<sup>th</sup> AD 1862.

William C. Butler

"

For Registration

Samuel Claycomb

On motion this cause is continued on the former order of this court.

Proceedings in Chancery at a term of the circuit court begun and held at the Court House in the city and county of Peoria, State of Illinois, on the first Monday in the month of June, in the year of our Lord one thousand eight hundred and sixty three, it being the first day of said month. Present John A. J. Murray, sheriff, and Enock Sloan, clerk, to-wit:-

Monday, June 1<sup>st</sup> AD 1863

The Judge of this court not being present by force of the statute in such case made and provided, this court stands adjourned until to-morrow.

Tuesday, June 2<sup>d</sup> AD 1863.

This day at 10 o'clock in the forenoon came the Honorable A. L. Merriman Judge of the 16<sup>th</sup> Judicial Circuit in said state, and in due form this court is opened.



Saturday, June 20<sup>th</sup> A.D. 1863.

Honorable J. L. Richmond, Judge of the  
23<sup>d</sup> Judicial circuit in the state of Illinois  
presiding, by request of the Hon. Amos  
L. Merriman, Judge of the 16<sup>th</sup> Judicial  
circuit in said state.

William C. Butler

vs

Samuel Claycomb

This cause now coming on  
for a hearing upon the bill, answer,  
exhibits, proofs & argument of counsel  
& the court being fully advised in the premises  
with order, adjudge and decree that the award nam-  
ed & described in the bill herein filed be set  
aside and for naught held, and that the  
injunction prayed for in said bill re-  
straining the said Claycomb his agents  
and attorney from the prosecution of the  
suit at law, or any suit at law found-  
ed upon said award be made perpetual  
and that the complainant have & recover  
of the defendant his costs in this behalf  
expended and that he may have execution  
therefor. Done at Peoria this 20<sup>th</sup> day of  
June A.D. 1863.

J. L. Richmond, Judge &c



State of Illinois  
Peoria County } ss.

I, Enock Sloan, clerk  
of the circuit court in and for said  
county and state do hereby certify that  
the foregoing is a full, true and com-  
plete transcript of all the papers  
filed in the cause wherein William  
C. Butler is complainant and  
Samuel Claycomb is defendant, and  
of the proceedings of our said court  
appertaining thereto, as the same ap-  
pears of record and on file in my  
office.

Given under my hand and  
seal of said court at Peoria  
this 28th day of October  
A.D. 1863.

Enock Sloan, Clerk



State of Illinois p.

In the Supreme Court  
Third Grand Division

Is April Term A.D. 1864

Samuel Claycomb

vs Plaintiff in Error  
by ~~Wm. C. Butter~~  
William C. Butter

Defendant in Error

{ Error to the Circuit  
Court of Peoria Co. }

And now comes  
the said plaintiff in error by McCulloch &  
Taggart his attorneys and sheweth unto the  
Court now here that in the foregoing  
record and proceedings of the said Circuit  
Court of Peoria County in the cause where-  
in the said William C. Butter was complainant  
and the said Samuel Claycomb defendant  
there is manifest and manifold error in  
this to wit:

1<sup>st</sup> The said Court erred in  
rendering a decree in favor of the said  
Defendant in Error when said decree  
should have been in favor of plaintiff  
in Error.

2<sup>d</sup> The said Court erred not  
rendering a decree in favor of the said  
plaintiff in error.



3<sup>d</sup> The said Court erred in setting aside the award mentioned in the bill of said defendant in error.

4<sup>th</sup> The said Court erred, <sup>perpetually</sup> in restraining and enjoining the said Plaintiff in Error his agents and attorneys from further prosecuting the suit at law mentioned in the bill of said defendant in error.

5<sup>th</sup> The said Court erred in restraining and enjoining by its decree, the said Plaintiff in error from prosecuting any suit at law on the award mentioned in the bill of said defendant in error.

6<sup>th</sup> The said Court erred in rendering decree against the Plaintiff in error for the costs of said proceeding.

7. The said Court erred in awarding execution against the said plaintiff in error for the costs of the said proceeding in said Court.



8.<sup>th</sup> The said Court erred in receiving and considering improper, illegal and incompetent testimony on the part of the defendant in error.

9.<sup>th</sup> The said Court erred in rejecting proper, legal and competent testimony offered in said cause on the part of the Plaintiff in error.

10.<sup>th</sup> The said Court erred in not rendering a decree that said defendant in error should pay the amount shewn by the evidence in said cause to be justly and equitably due from defendant in error to the said plaintiff in error as a condition to the setting aside of said award.

11.<sup>th</sup> The said Court erred in not dismissing the said bill of said defendant in error

12.<sup>th</sup> The said Court erred in not dismissing the said bill at the costs of the said defendant in error

Wherefore, for and on account of the said errors as aforesaid the said plaintiff in error prays that the said



decree of said Circuit-Court- in the said  
Cause be reversed, set-aside & for nought  
esteemed and that he may have his costs  
in this behalf expended.

McCulloch & Taggart-

Attys for plff in error

And now comes the said defendant by Ward  
his attorney & says that in the record & proceedings  
aforesaid and in the decree aforesaid no such  
errors hath intervened as is above alleged & that  
he prays may be tried by the Court

By J. H. McCulloch  
his Attorney



92  
Samuel Claycomb  
vs  
William C. Butter

Record

Filed Jan'y. 19. 1864.  
S. Iceland  
clerk.

Recd of McCulloch & Taggart  
attys for Claycomb \$25<sup>00</sup> my  
fees making this Record  
E. J. Sloan, clk