

13908

No.

Supreme Court of Illinois

Stevens

vs.

^U
Fancett et al.

71641  7

SUPREME COURT,

Third Grand Division.

No. 307.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

FLETCHER STEVENS,
Plaintiffs in Error.
vs.
FREDERICK FAUCET,
SAMUEL ISHAM and
THOMAS FAUCET,
Defendants in Error.

APRIL TERM, A. D. 1860.
Appeal from
Circuit Court of Cook County.

ABSTRACT OF RECORD.

Page of
Record,

- 1 October 19, 1857. The defendants in error, Frederick Faucet, Samuel Isham and Thomas Faucet, filed in the Cook Co. Court of Common Pleas
- 2 their declaration, wherein they complain of Walter S. Stevens and Fletcher Stevens defendants. For that on the 10th January, 1857, they were possessed as of their own property of 9,000 sides of Hemlock tanned sole leather of the value of \$20,000; that they came to the possession of the
- 3 defendants by finding, and that the defendants well knowing, etc., on the day and year aforesaid converted the same to their own use.
- 4 Nolle Prosequi entered to defendant Walter S. Stevens.
- 5 Plea of general issue filed for defendant Fletcher Stevens.
- 6 Feb. 20, 1860, Jury empanelled to try cause.

12 On the trial plaintiffs read the deposition of Speers Cummings as follows; Am book-keeper for plaintiffs. Plaintiffs are engaged in Hide and Leather business and have been since 1853. Place of business 70 Gold street, New York. Firm name, Faucet, Isham & Co. Was then general clerk and book-keeper, between Aug. 1855 and Nov. 1856. Defts. were partners and engaged in the business of tanning hides. Firm name W. H. and F. Stevens, and carried on business at Stevensville, Sullivan Co., New York.

13 Plaintiffs and defendants made an agreement with each other, executed in my presence, and in the words and figures following: "It is this day agreed between Faucet, Isham & Co., of New York city, and W. H. & F. Stevens, of Stevensville, Sullivan county, New York, that said Faucet, Isham & Co. shall send to said W. H. & F. Stevens what hides they may require for the purpose of being tanned, and manufactured into sole leather in their tannery, at said Stevensville for three years from this date. The number of hides is not to be less than fifteen thousand each year, nor more than twenty-five thousand each year, unless both parties in writing shall hereafter agree to increase or lessen the amount.

"W. H. & F. Stevens during the said three years are not to tan hides for any other party. W. H. & F. Stevens agree to receive the hides at a dock in the City of New York, to pay all expenses of transportation to their tannery, to tan and manufacture them into sole leather in a good and workmanlike manner, to make leather of a quality and a gain in weight equal to that made by all first class tanners and to return the leather so tanned to said Faucet, Isham & Co., at a dock in the City of New York clear of all expenses of transportation. For all which services Faucet, Isham & Co. agree to pay said W. H. & F. Stevens five (5) cents per pound for each pound of leather so tanned and returned which shall be due at the average time of each invoice.

"It is further agreed that all the profit and loss on all the leather manufactured under this contract shall be equally divided between both parties, which shall be determined as follows: After said Faucet, Isham & Co. shall have sold the leather manufactured from each invoice

“of Hides, they shall deduct from the gross amount of such sales the
 “cost of the hides, with five per cent. added thereto, the amount paid and
 “payable for tanning. All costs and charges of cartage on both hides and
 “leather, inspection, exchanges and interests on all these amounts
 “till the sales are due by average. Also six per cent. on the gross amount
 “of the sales and the balance or difference, being gain or loss, shall be
 “equally divided between said Faucet, Isham & Co. and said W. H. & F.
 “Stevens. Faucet, Isham & Co. are to take the sole risk of all sales
 “made on credit.

“W. H. & F. Stevens agree to return the leather from each invoice
 “of hides within eight months from the time they leave the City of New
 “York, provided that each invoice shall not exceed one thousand hides.
 “In such case they agree to return them in a fair proportionate time, and
 “provided further, that in case hides are sent faster than they can be
 “worked an allowance shall be made in proportion. Faucet, Isham &
 “Co. shall procure what insurance against fire they may think necessary,
 “one half the cost of which shall be paid by W. H. & F. Stevens.

New York, Aug. 7, 1855.

(Signed,) W. H. & F. STEVENS,

(Signed.) FAUCET, ISHAM & CO.

“Witness, S. CUMMING.”

16 Which said agreement was read in evidence to the jury, and there-
 upon the defendant, by his counsel, then and there objected to the read-
 ing of the remaining part of the deposition of said witness, and the read-
 ing of the other and remaining depositions taken in behalf of the plaintiffs
 in said cause, and to any evidence being given to the jury for the purpose
 of showing a conversion by the def't, of leather manufactured under said
 contract, on the ground that it appeared from the evidence already given
 to the jury that the defendant was interested as a co-partner with the
 plaintiffs and Walter H. Stevens in said leather; but the Court overruled
 said objection and allowed the remaining portion of the deposition of said
 witness to be read in evidence to the jury, and also the other and remain-
 ing depositions taken in behalf of the plaintiffs in said cause, to which ru-

ling and decision of the Court the defendant by his counsel then and there excepted. And therefore the remaining portion of the deposition of said witness was read in evidence to the jury as follows :

I know the plaintiffs ; furnished hides to said Stevens to be manufactured into leather pursuant to said agreement. Between the day of the date thereof and the month of September, 1856, they furnished 18,815 hides, only a portion of the hides were returned by the said Stevens in accordance with said agreement, manufactured into leather, There were so returned 16,496 sides equal to 8248 hides and were returned as follows:

April 18, 1856,	-	-	-	-	569 sides.
" 17, "	-	-	-	-	531 "
" 22, "	-	-	-	-	441 "
" 22, "	-	-	-	-	523 "
May 1, "	-	-	-	-	1,362 "
" 8, "	-	-	-	-	245 "
" 25, "	-	-	-	-	188 "
June 2, "	-	-	-	-	294 "
" 11, "	-	-	-	-	667 "
" 18, "	-	-	-	-	614 "
" 25, "	-	-	-	-	252 "
July 2, "	-	-	-	-	293 "
" 5, "	-	-	-	-	543 "
" 11, "	-	-	-	-	288 "
" 17, "	-	-	-	-	277 "
Aug. 23, "	-	-	-	-	704 "
" 29, "	-	-	-	-	663 "
Sep. 2, "	-	-	-	-	749 "
" 8, "	-	-	-	-	854 "
" 11, "	-	-	-	-	430 "
" 17, "	-	-	-	-	612 "
" 22, "	-	-	-	-	332 "
Oct. 9, "	-	-	-	-	861 "
" 16, "	-	-	-	-	335 "
" 17, "	-	-	-	-	334 "

Oct. 22, "	- - - - -	369 sides,
" 29, "	- - - - -	1157 "
Nov. 3, "	- - - - -	311 "
" 17, "	- - - - -	319 "
" 12, "	- - - - -	309 "
" 18, "	- - - - -	864 "
Dec. 5. "	- - - - -	111 "
		16496

19 On the 16th of September, 1856, there remained unaccounted for 13,521½ hides.

The value of the leather per side in the months of September, October and November in the year 1856 was about \$4.40 per side.

Exhibit "B." hereto annexed, shows the state of accounts between Faucet, Isham & Co. and W. H. & F. Stevens.

Said Exhibit is as follows :

W. H. & F. STEVENS

In account with FAUCET, ISHAM & Co.		DR,
INTEREST TO SEPTEMBER 16, 1856.	WHEN DUE	AM'T.
1855.	ITEMS.	
Nov. 17,	To pd. Ins. on Hides & Leather, 1 yr. \$2,000 ½ pr. ct. - - -	Nov. 17, '55, \$25 00
	Add Interest from Nov. 17 '55 to September 16, '56, - - -	303 days, 1 45
" 27,	" Sent by Mail our Note Dec. 5, 4 months, April 8, '56, - - -	2'000 00
1856,	Add Interest from April 8, '56 to Sept. 16, '56, - - -	161 days, 41 76
Jan. 24,	" Sent by Mail our Note Feb. 5, at 4 months, - - -	June 8, '56, 3,000 00
	Add Interest from June 8, '56 to Sept. 16, '56, - - -	100 days, 57 54
Feb. 12,	" Paid Ins. on Hides & Leather in Tannery ½ pr. ct. - - -	Feb. 12, '56, 30 00
	Add Interest from Feb. 12, '56 to Sept. 16, '56, - - -	216 days, 1 24

Feb. 27,	To Our Note, March 5, 4 mo.	July 8, '56, \$3,000 00	
	Add Interest from July 8, '56, to Sept. 16, '56, - - - -	70 days,	40 29
Mar. 29,	" Our Note April 5, at 4 months,	Aug. 8, '56,	1,500 00
	Add Interest from Aug. 8, '56, to Sept. 16, '56, - - - -	39 days,	11 22
April 3,	" Paid Insurance on Tannery, 1 yr. \$5,000, - - - - -	April 3, '56,	125 00
	Add Interest from April 3, '56, to Sept. 16, '56, - - - -	166 days,	3 98
" 7,	" Paid Ins. on Hides & Leather 1 yr, \$3,000, $\frac{1}{2}$ per ct., - - - -	April 7, '56,	30 00
	Add Interest from April 7, '56, to Sept. 16, '56, - - - -	162 days,	93
" 26,	" Our Note May 5, at 4 mos., sent by Mail, - - - - -	Sept. 8, '56,	1,500 00
	Add Interest from Sept. 8, '56, to Sept. 16, '56, - - - -	8 days,	2 29
June 3,	" Our Note, June 5, at 4 months due Oct. 8, '56,	2,500 00	
	Deduct interest from Sept. 16, '56, to Oct. 8, '56, - - - -	10 55	
			<u>2,489 45</u>
" 26,	" Paid to Brown & Sherwood bill bark Mills and cartage -	June 26, '56,	93 00
	Add interest from June 26, '56, to Sept. 16, '56, - - - -	82 days,	1 46
July 1,	" Our note, July 5, at 4 months sent by mail Nov. 8, '56, - - - -	3,000 00	
	Deduct interest from Sept. 16, '56 to Nov. 8, '56, - - - -	30 30	
			<u>2,969 70</u>
Aug. 9,	" P'd their check on Union Bank, Monticello, May 17, '56, and interest, to Geo. Sears, dated Aug. 9, '56, - - - -		102 20
	Add interest from Aug. 9, '56, to Sept. 16, '56, - - - -		74
" 20,	" Draft Aug. 14, at 60 days date, Oct. 16, '56, - - - -	700 00	
	Deduct interest from Sept. 16, '56, to Oct. 16, '56, - - - -	4 02	
			<u>695 98</u>
" 28,	" Draft Aug. 21, at 60 days, date Oct. 23, '56, - - - -	500 00	
	Deduct interest from Sept. 16, '56, to Oct. 23, '56, - - - -	3 55	
			<u>496 45</u>

Sept. 8,	To Draft Aug. 30, at 60 days, date			
	Nov. 1, '56, - - - -	\$500 00		
	Deduct interest from Sept. 16, '56,			
	to Nov. 1, '56, - - - -	14 41		
		<u>485 59</u>		\$495 59
" 9,	" Draft Sept. 5, at 60 days, date			
	Nov. 7, '56, - - - -	1,000 00		
	Deduct interest from Sept. 16, '56,			
	to Nov. 7, '56, - - - -	9 98		
		<u>990 02</u>		990 02
	" Cash paid freight on leather to			
	Sept. 16, '56, - - - -	due June 27,	296 11	
	Add interest from June 27, '56, to			
	Sept 16, '56, - - - -		4 51	
			<u>4 51</u>	
				\$20,005 95

CR.

By tanning 31,484½ lbs. c 5c inv. 1,				
due April 25, '56, less as per		\$448 81		
agreement \$1,125 40,				
Add interest from April 25,				
'56, to Sept. 16, - - - -	12 40			
	<u>461 21</u>			
" tanning 29,900½ lbs. c 5c inv 2				
due April 29, '56, - - - -	1,495 02			
Add interest from April 29 to				
Sept. 16, - - - -	40 14			
	<u>1,535 16</u>			
" profit on above invoice as per				
agreement, due Nov. 3, '56,	304 88			
Deduct interest from Sept. 16				
to Nov. 3, - - - -	2 80			
	<u>302 08</u>			
" tanning 27,621 lbs. c 5c inv. 4,				
due July 10, '56, - - - -	1,381 05			
Add interest from July 10 to				
Sept. 16, - - - -	18 00			
	<u>1,399 05</u>			
" ½ profit on above inv. due Jan. 20,				
'57, - - - -	90 89			
Deduct interest from Sept. 16,				
'56, to Jan. 20, '57, - - - -	2,19			
	<u>88 70</u>			
" tanning 79,394½ lbs. c 5c, due				
Aug. 11, '56, - - - -	3,969 72			
Add interest from Aug. 11, to				
Sept. 16, - - - -	27 39			
	<u>4,091 11</u>			
			<u>7,883 31</u>	
Due F., I. & Co., on Sept. 16, '56,	- - - -			\$12,122 68

22 On his cross examination he stated, the hides were always delivered at the dock in New York. The value of the hides was \$81,627.87, and that was their cost to the plaintiffs. The amount of the sales made by the plaintiffs between the date of the agreement and the month of September, 1856, was \$35,097 17. The advances were made by plaintiffs to W. H. & F. Stevens from time to time, and were not discontinued until they ceased to return the leather.

26 The amount on plaintiffs' books, now kept in the name of W. H. & F. Stevens, for all notes and drafts paid, and also the credits for tanning, and all the hides sent them to tan under said agreement were charged to an account called on the books of the plaintiffs, "W. H. & F. Stevens, contract account."

27 It was not the business of the plaintiff to buy hides to be manufactured and then sell them on commission for the manufacturer, they making advances of money in the purchase of hides, and selling for a profit after deducting a commission to be paid the manufacturers, such transactions have not been of frequent occurrence or occasional occurrence. I never knew it to occur in plaintiffs business. The plaintiffs then read the deposition of Talman Hill, as follows :

31 "Am a tanner by trade, have been in plaintiffs' employ since Oct. 1855
32 had been in their employ to some extent before that time, know of the
33 plaintiffs furnishing hides to W. H. & F. Stevens, to be tanned at their
34 tannery, between the months of Aug. 1855 and Nov. 1856, am so familiar
with leather manufactured by the Stevens as to be able to distinguish it from
leather manufactured by other tanners out of the same quality of hides ;
they are accustomed to make and stamp the hides in such a way as to
distinguish them from others, one of the marks they placed on their hides
was an invoice mark placed on each side, consisting of numbers from 1
to 7, and the process of tanning would not obliterate their marks. There
was also a stamp placed upon each side after it was tanned, which consisted
of the words Stevensville. It was customary for Hemlock sole
leather tanners to stamp leather manufactured by them.

The manner of the conveyance employed in the transportation of hides from the plaintiffs to said Stevens, and of return from the said Stevens to the plaintiffs were by the merchants and tanners line and the New York and Erie Rail Road.

35 The date of the arrival of the last lot of leather sent by the said Stevens to the plaintiffs was in the early part of December 1856.

The average value of the hides furnished by the plaintiffs to the said Stevens into leather in the months of September and October 1856, was \$4,00 to \$4,50 per side.

I saw afterwards some of the leather manufactured from the hides sent by the plaintiffs by the said Stevens, and which was not returned to said plaintiffs by said Stevens. I saw in Cleveland, Ohio, in the early part of December 1856, a lot of such leather, of about 1000 sides. In Chicago, Illinois, two other lots of about 800 each—1600, one lot of about 400 in the store of Osborn, Adams & Co.

Also one lot in Montreal, Canada, of about 1273. I recognized the leather by the style of tanning, handling of the hides, coloring of the leather and by the kind of hides from which it was made. I recognize the same invoice marks upon it as I had seen at the tannery of said Stevens, and at the store of the plaintiffs, on leather received from the said Stevens. There was no stamp of the tanner or tannery on the leather I saw, such as is usually placed on leather by tanners after it is tanned, except on one side which I saw in the store of Root & Daval, in Chicago, in one of the lots of leather I before spoke of. In Cleveland the leather was all in the store of J. H. Crittenden & Co. In Chicago I saw it in the store of Osborn, Adams & Co., about 800 hides in the store house of Peck & Co. and about 800 sides in the store house of Root & Daval.

In Montreal the leather was all in the store of Hugh Thompson & Son. I do not know of my own knowledge who took the leather to the place or places I saw it. I was sent to the various places by the plaintiffs for the purpose of identifying this leather, and I identified the leather as I before stated.

38 On his cross examination in said deposition, he stated. I know of the arrival of the last lot of leather, because the carting of said plaintiffs is all done under my supervision, and no leather could be delivered to the plaintiffs without my knowing it.

41 The plaintiff then read in evidence the deposition of John A. Leach who testified as follows : Am accustomed to the handling and inspection of leather since March 1853, and with the plaintiff as clerk. The number of hides furnished by the plaintiffs to Stevens between the month of Aug. 1855, and the month of November, 1856, was 18,815. Have been accustomed to seeing and handling the leather manufactured by the Stevens. Am and was so familiar with the quality and appearance of the leather manufactured by them as to be able to distinguish it from leather manufactured by other tanners out of the same quality of hides. They were accustomed to make and stamp the hides manufactured by them in such a way as to distinguish them from others. The number of hides furnished by the plaintiffs to said Stevens was 18,815. Of the hides so sent 16,496 sides were returned to plaintiffs manufactured into leather. There were returned 16496 sides, equal to 8248 hides, were returned to plaintiff by said Stevens. They were returned, with very few exceptions, by the Merchants and Tanner's line on the Delaware and Hudson Canal. They were marked with the invoice mark and stamped Stevensville. Date of last
45 arrival of leather was December 5, 1856. Then due the plaintiffs 21,134 sides of the value of about \$4.40 per side. I afterwards saw some of the
46 leather manufactured from the hides sent from the plaintiffs to the said Stevens and which were not returned by the said Stevens to the plaintiffs.

Saw in Cleveland Dec. 10, 1856, 998 sides.

Saw part on a cart, part in a forwarding store on dock, part in store of Crittenden, and afterwards all of it in Crittenden's store.

Dec. 11, 1856, saw in store of Peck & Co. Chicago, 800 sides.

Same day in store of Osborn, Adams & Co., Chicago, 400 "

Same day in store of Root & Daval, Chicago 799 "

Dec. 17, 1856 saw in store of John Haw, St. Louis, about 1006 "

Dec. 26, 1856, saw at Illinoistown, on the opposite side of the river from St. Louis, about 1000 "

47 I found upon it the invoice marks same as what had been put on the leather returned to us by Stevens, manufactured out of hides sent them by plaintiffs.

On his cross examination he stated the leather sent by the Stevens' to the plaintiffs, viz: 16,496 sides were all sold by the plaintiffs.

The hides I saw were purchased in the City of New York at about \$4.35 per hide and the cash cost to the plaintiffs was \$81,627 87.

52	Plaintiffs took possession at St. Louis and sold	1006 hides.
	At Chicago,	1600 "
	At Cleveland,	1000 "
	At Cincinnati,	600 "

55 Plaintiff then read in evidence the deposition of Richard W. Broadhead as follows: Was during the year 1856 one of the owners of a line of
 56 canal boats running in the Delaware and Hudson Canal between Wertz-
 57 boro and the City of New York. Carried hides and leather mostly be-
 tween those places. Our boats were engaged in carrying hides and leather
 to and from Wertzboro for the tannery of W. H. & F. Stevens. All the hides
 taken on board our boats for said Stevens, during and after the month of
 August, 1855, were sent by Faucet, Isham & Co. The leather manufac-
 tured by Stevens was taken on board our boats at Wertzboro, the leather
 was carried to the City of New York and delivered to Faucet, Isham &
 58 Co. from the opening of navigation in the year 1856, up to the month of
 September of that year. The defendant during the period named made
 application to me for a boat to take leather to place or places other than
 the City of New York. He wished to engage the boat and hands by the
 day, to be under his direction, to go where he pleased, to Albany or fur-
 ther west. He wished it not to be known that he was shipping—not to
 be known to any person. He wished particularly that it should not be
 known in the swamp, (by swamp is meant the place where the wholesale
 hide and leather dealers are located,) the application of defendants was
 made to me at my place of business in the City of New York, at the foot
 of Vesey street, when our boats were in. I agreed to let him have a boat

in pursuance of his request, and referred him to my agent at Wertzboro. A boat was furnished by my firm to said defendant according to his request. The name of the boat was the William C. Rose. The master's name was Edwin J. Bailey. It was hired by the day and for one or more trips as he (the defendant) wanted her. It made three trips for the defendant. The boat went from Wertzboro to Albany and once further west. The captain had the management of the boat but she was controlled by Fletcher H. Stevens and a man he put in charge of her. Fletcher Stevens furnished the freight, which consisted wholly of leather from Wertzboro. In one of his trips he brought back some lumber and paid for the use of the boat.

59 Fletcher Stevens represented to me when he hired the boat that the plaintiffs were trying to take the advantage of him and cheat him, and that the plaintiffs had a large amount of money of his in their hands which he could not get of them, and he wanted to sell enough leather to make him whole, and get a fair settlement; it was on the strength of these representations that I kept the matter secret, as the transaction was an unusual one, but I believed the representations made.

60 The plaintiffs then read the deposition of Edwin J. Bailey, as follows:

Am boat captain; was employed during the month of September and Oct. 1856, in freighting leather and merchandise on the canal, except one trip I ran in September on the Western canal to Oswego. Know defendant, Fletcher Stevens; the circumstance under which I first became acquainted with Fletcher was his shipment, at Wertzboro in Sept., 1856, of a load of Hemlock sole leather on board of my boat, the William C. Rose to go to Oswego.

The Stevens' tannery was situated at Stevensville, about twenty
62 miles from the Delaware and Hudson Canal. Prior to the 16th of September, 1856, I took away leather on my boat manufactured by W. H. & F. Stevens, from Wertzboro on said Delaware and Hudson Canal; Ira Dorance directed as to its shipment; I delivered it to Faucet, Isham & Co. I did not in the year 1856, prior to September, deliver any leather manu-
63 factured by said Stevens to any other persons than as before stated. On

the 16th of Sept. 1856, and subsequently to that time, I received three boat loads of leather at Wertzboro, manufactured by W. H. & F. Stevens; Ira Dorance directed about its shipment.

The quantity on first cargo was	5,565 sides.
“ “ second “	5,829 “
“ “ third “	2,810 “

I was to carry them to Albany, and Fletcher Stevens was to meet me there and give me directions; I took the first to Oswego; the second to Albany and Troy, and the third to Albany. The leather was not stamped. Dorance, when we put the leather on board, said we must not take any that was stamped; found some eight or ten sides stamped and threw them out. Saw Fletcher Stevens while we were putting the leather on board
64 at Wertzboro; at Albany while the leather was on board; at Oswego while delivering the first load, and at Troy while I was delivering a part of the second load.

He was on my boat, while the leather was on board, with a man he introduced by the name of Stratton; this person was on board until we got to Oswego; he passed by the name of Stratton while on board.

I saw him again in July, 1857, at Cocheton Centre, Sullivan County; he then passed by the name of William H. Stanton, his true name.

65 The first cargo was all delivered at Oswego; the second was all delivered at Albany, except something over 1,000 sides; the third cargo was all delivered at Albany; at Oswego I delivered the cargo to three steamboats and put on the dock, all by the order of Stratton. The second cargo I delivered as follows:

To boat H. F. Atkinson, of Rochester,	1,000 sides.
“ “ Troy, of Buffalo,	1,800 “
“ American Trans. Co.'s boat,	1,000 “
“ Northern R. R. Co., at Troy,	1,000 “
“ Central “ “	1,000 “

Third cargo delivered as follows :

To Central R. R.,	1,000 “
“ Seneca Falls line boat,	1,000 “
“ Amer. Trans. Co.'s boat,	600 “
66 “ Peter Martin,	210 “

The last two loads were delivered by the order of Fletcher Stevens.

Stratton superintended the delivery of the leather at Oswego; Fletcher superintended the delivery at Albany and Troy. Stevens also enjoined me to secrecy as to where the leather came from and the destination of the boat. He told me Stratton knew where to clear the boat on the canal. I was present when the invoice was made out; it was made out by Stratton; Stevens was present and dictated; it was invoiced part leather, part dry goods, I think, and provisions. Stratton was directed by Stevens to clear the cargo under that invoice. Stevens said he had more leather to be taken by me; he said he wanted it kept still. Stevens said he had more than one cargo to go by my boat; he said he wanted the matter kept still, as the leather belonged as much to him as to Faucet, Isham & Co., and he had a right to sell it; he said that if things went on as they had been, Faucet, Isham & Co. would cheat him out of a large amount, and therefore he wanted it all kept quiet; such directions were first given at Albany at the time the first load was taken there. Stratton was present and in hearing. The leather I carried was manufactured at the tannery prior to the 16th of Sept; was stamped Stevensville. After the first cargo had left my boat I heard Stevens say, I think, they are going to Montreal with a part of it; know I heard Stratton say so. I saw Stevens on board one of the Canada boats said to be bound to Canada. The leather or a part of it was on board of this boat. Stratton was also on board of her.

On his cross-examination he says:

70 I think W. H. & F. Stevens began to carry on the tannery at Stevensville in 1855. They had a large establishment; I don't know the extent of their operations.

71 The boat was not employed in the usual course of the business of W. H. & F. Stevens, nor for the firm. The boat was employed by Fletcher H. Stevens and not the firm. I refer to the William C. Rose, in which was carried those three loads.

72 The plaintiff's counsel then read to the jury the evidence of William H. Stanton as follows:

73 Was clerk for O. D. Stevens. Then firm O. D. & F. Stevens. Then for T. D. & O. D. Stevens. Was in employ of defendants in September

and part of October, 1856. Was employed to sell a boat load of leather. Employment commenced at Albany. Was to take charge of a canal boat freighted with leather, and was to ship and send the leather according to defendant's instructions. My employment terminated the forepart of October, 1856. Went on board canal boat "W. C. Rose," in September, 1856, at Albany. Leather was on board at that time. Quantity about 5000 sides. Part of the leather was rolled while on board. I was on board as Supercargo. Boat was employed to transport the leather from Albany to Oswego. Was introduced to the captain by the name of Stratton and passed by that name on board the boat. Deft. knew my real name, had known him for five years. I paid the tolls and defendant paid the money. Part of the leather was sent to Montreal, part to Toronto and part to Chicago by direction of the defendant.

76 The leather sent to Montreal was sold to Hugh Thompson & Son. Do not know what became of the leather sent to Toronto. Of the 2000 sides sent to Chicago 1000 sides arrived before I left Chicago, which I sold. The balance I sold to be received by the purchaser on arrival. Leather at Montreal sold by defendant. Do not know who sold the leather at Toronto, if sold. All the leather was sold for the benefit of defendant.

77 Bill of sale of leather sold at Montreal was made out in the name of L. L. Stratton & Co. In Chicago bill of sale was made out in the name of F. Stafford & Co. Only know of one boat load. Defendant advised me to take the name of Stratton, assigning as a reason that there were other persons who had an interest in the leather. That he had a difficulty with Faucet, Isham & Co., and could not do business with them or get pay for his leather; that he wished to sell the same and pay off his debts; that he had taken counsel upon the subject and had been advised so to do. And

78 if I passed under an assumed name it would be more difficult for the owners to reach him and break up his plans. This conversation took place in Albany in Sept. In consequence of this advice I took the name of Stratton. I registered my name in Montreal as Stratton and defendant his as Stafford. Leather in Montreal was sold for about \$10,800. Paid for in drafts on New York, endorsed, payable to the order of L. L. Stratton.

79 800 sides were sent to Toronto. 2000 sides were sent to Chicago; both

lots were consigned to F. Stafford. Sold the leather in Chicago to Osborn, Adams & Co. 1000 sides at 22 cents, and 1000 to arrive, at same rate. Received pay for 1000 sides amounting to about \$3200.

81 On his cross-examination he said defendant's business amounted to about 20,000 sides a year.

Plaintiffs then read in evidence the deposition of Ira Dorance as follows:

I was employed as agent by the Merchants and Tanners line of canal boats. There was an arrangement made in August, 1856 by the defendant about storing leather, the arrangement was this: All the stamped leather to be forwarded in the usual course of business to the plaintiffs, the unstamped leather was to be stored by me in a separate storehouse, until he 86 gave orders to forward it. The stamped leather was to be forwarded in quantities of from 400 to 700 sides.

Between the latter part of Aug. and Sept., 15, '56, 5851 sides or thereabouts was stored with me. Subsequently there was between 8 and 9000 sides stored at different times. All this was unstamped leather. Received also leather stamped "Stevensville," which I forwarded to plaintiffs by direction of defendant.

The canal boat received the leather in separate loads..	The first left
Sept. 16, with	5851 sides or thereabouts
2nd Oct. 27, with	5857 " "
3rd Nov. 8, with	2813 " "

I gave the master of said boat instructions to take the leather to Rondout or to Albany, at one of which places the defendant would meet him and give him further orders. Defendant authorized me to give such instructions.

88 The defendant's instructions to me were, that immediately upon the arrival of the W. C. Rose, I was to ship the unstamped leather on board of her with as little delay and as quickly as possible, and direct the Master to go to Rondout or to Albany with said leather, and have the defendant meet

him and give further instructions, and if any one inquired with reference to the destination of said leather I was instructed by him to say that it had been sent to the plaintiffs in New York city.

On his cross-examination he says :

90 The leather received in storage was received subject to the direction of the defendant. Defendants were engaged in carrying on a large tannery and in manufacturing leather.

Plaintiffs then read in evidence the deposition of Walter H. Stevens, as follows :

I was engaged in the tannery, merchandizing and other business connected with it ; during the period specified was connected with defendant, Fletcher Stevens, in the tanning and mercantile business ; firm name was W. H. & Fletcher Stevens. During the period specified the greater portion of the hides received by W. H. & F. Stevens were received from
91 Faucet, Isham & Co., of New York. The hides were received on joint account. I considered that the leather was manufactured for plaintiffs and also for W. H. & F. Stevens, and that both parties were interested in the leather. During the same time we were manufacturing some leather for
92 Snell & Healy on a previous contract. The full names of the partners in the firm of W. H. & F. Stevens, were Walter H. Stevens and John
93 Fletcher Stevens. The defendant superintended the removal of the leather.

In his cross-examination he says :

The contract was reduced to writing. Not having it before me, all I can say, is the hides were received on what is known among tanners as on joint account, each party having an interest in the leather after it is manufactured. Mr. Samuel Isham, one of the plaintiffs, stated that they were ready to make reasonable advances and that they would be willing to advance 75cts per hide.

95 I thought plaintiffs did not make advances to us according to the contract, or rather according to the understanding. The plaintiff, Frederick Faucet, did refuse to furnish an account of sales. This was after the delivery of the two first lots of leather, containing, I should think, either

6,000 or 8,000 sides; how much was due I cannot say. In July, 1856, I think we had sent forward from 10 to 12,000 sides. About this time plaintiffs refused to accept our drafts, and the consequence was we got embarrassed in our business; the result was very injurious to our business.

96 The plaintiffs were advised of the necessity of making advances and what the consequences would be if they refused.

Plaintiffs here rested.

98 The defendant, thereupon, by his counsel asked the court to instruct the jury to find for the defendant by way of non-suit, on the ground that it appeared from the plaintiffs' own showing that the plaintiff, the defendant, and Walter H. Stevens were interested as co-partners in the property for the conversion of which this action is brought, and that they were so interested at the time of such conversion, but the Court refused to so instruct the jury, and defendant excepted.

The defendant by his counsel then entered his motion to exclude from the jury the evidence given in behalf of the plaintiff, showing or tending to show a conversion of the property in question by the defendants, on the ground that it appeared from the plaintiffs' own showing that the defendant, at the time of such conversion, was interested in said property as a co-partner with said plaintiffs and Walter H. Stevens, and that

99 the subject matter of the suit was the co-partnership property of the said property of the said plaintiffs, the said defendant and Walter H. Stevens. But the Court overruled said motion, and refused to withdraw said evidence from the jury, and the defendant excepted.

The defendant by his counsel then read to the jury the evidence of Alfred L. Stevens, as follows:

Know Frederick Faucet and Samuel Isham, plaintiffs, and know defendant. Know of hides had by W. H. & F. Stevens had of firm of Faucet, Isham & Co., in 1856. Brought to tannery to be made into sol-leather. Was in employ of W. H. & F. Stevens at the time. There were between 18,000 and 19,000 hides. They were principally tanned then. Although after the tannery of W. H. & F. Stevens was burned some of

the hides were taken to the tannery of D. S. & O. D. Stevens at Cocheton, and to the tannery of Gildersleeve at Hortonsville and to Palen's tannery at Fallsburg. The hides were received from plaintiffs at the wharf in the city
 100 of New York and brought from thence to the tannery. They were tanned and sent back to Wertzboro to be shipped there for the plaintiffs except those which were on hand at the burning of the tannery, and except about 14 000 sides of leather, which I afterwards learned were sent to other places besides New York to sell, for the benefit of W. H. & F. Stevens, many of
 101 which were slaughtered hides leather. The hides not received by plaintiffs, Between 16,000 and 17,000 sides were sent back to New York to
 102 plaintiffs. Tannery was burned Nov. 9, 1856. I know from the invoices that the plaintiffs bought the hides on 6 months time and that the leather was principally furnished and returned within 6 months. I was present at the destruction of the tannery on the 9th of March. In the course of a few days, perhaps a week, the agent of the plaintiffs came up from New York, and I, deponant, as agent of W. H. & F. Stevens, and the agent of the plaintiffs who came up to represent the plaintiffs and take care of their interests, agreed that the leather then in the yard and unfinished should be sent to other tanneries in the country to be finished.

Under this arrangement 659 hides were sent to Palen's landing, 3882 sides were sent to Gildersleeves tannery, and 1727 sides were sent to the tannery of D. S. and O. D. Stevens.

All the sides were partly manufactured by W. H. & F. Stevens.

The leather sent to these respective tanneries was finished and sent to the plaintiffs as follows:

Between 12th and 16th of March 1857, were sent from Palen's landing to plaintiffs, 659 sides.

Between Dec. 8, 1856, and March 10, 1857, there were finished and sent to plaintiffs from Gildersleeve's tannery, 3882 "

Between June 15, 1857, and Aug. 15, 1857, there were finished and sent to plaintiffs from D. S. and O. D. Stevens, 1727 "

I had a knowledge of the leather in the tannery of W. H. & F. Stevens before the fire and after and to the best of my judgment there was over two

thousand sides destroyed by the fire, in the lofts and on the scales, etc., all of which was tanned, and some of which was finished. The quality of the leather destroyed was good and it was of an average value of \$4.50 per side.

There was an insurance on the hides and leather, and plaintiff, Frederick Faucet stated in my presence that he had received the insurance on 3000 sides but did not state the amount received, but stated that he received the value of the leather insured. He also stated that he had received the amount for which the tannery buildings were insured. The policy having been assigned to plaintiffs the amount received on the tannery he stated to be \$3,500. The plaintiffs had no interest in the buildings but held the policy as a security for their interest in the hides which W. H. & F. Stevens were to tan.

I understood during the year 1856 that the plaintiffs would not furnish W. H. & F. Stevens with account of sales of leather tanned by the latter and forwarded to the plaintiffs, make advances of money to W. H. & F. Stevens on account of tanning as was agreed on to enable debt. and W. H. & F. Stevens to carry on the business. I know that W. H. & F. Stevens were much embarrassed in their business because such advances were not made. I understood that the avails of the leather made of the slaughter hides and the other leather not sent to New York from Wertzboro, but to the other points and places, was applied, or a considerable part of it, to the payment of debts contracted by W. H. & F. Stevens in manufacturing leather at the tannery.

The process of tanning adds about half to the value of the hides, and a fair compensation for tanning and returning leather to market is about one-third. When the leather is high price, bark and mechanical labor is generally high also, so that the average cost of tanning is about one-third the value of the leather. The slaughter hides, part and parcel of the leather sent elsewhere alluded to in my answer to 4th interrogatories was about 750 hides or equal to 1,500 sides of leather. None of which was purchased by plaintiffs but purchased elsewhere by W. H. & F. Stevens.

And being cross-examined, he says :

106

I am a brother of defendant ; was in employ of W. H. & F. Stevens from March, 1855, to Dec., 1856 ; my business was in and about the tan-

nery purchasing bark and hiring men, and overseeing and assisting them generally, as the agent of W. H. & F. Stevens, in the work which was extensive and requiring the employment of many men and teams. Have resided in the same place since Dec., 1856, and have been principally in the employ of D. S. Stevens, and engaged in assisting in rebuilding the tannery. I was present and helped to count the hides which were taken away after the fire to be finished. I was employed by W. H. & F. Stevens and assisted in the count as their agent and employee. Made memorandum at the time.

108 Defendant, by his counsel, then read in evidence the deposition of Alial P. Bush, as follows :

After the burning of the tannery plaintiff, F. Faucet, wished me to finish tanning some of the leather which was in an unfinished state, but we could not make an arrangement, and after this Palen & Co. agreed to finish the leather. Faucet said to me that the policy of Insurance on the tannery was \$3,500 ; that it was assigned to them and they would get the money on it ; but I don't know as they got it. In my judgment the process of tanning adds one half to the value of the hides ; a fair compensation for tanning is $\frac{1}{3}$ @2-5. I have tanned hides and received one half for tanning ; sides of sole leather will average from \$4 50 to \$5 each side.

On his cross-examination he said :

Since the month of December, 1856, I have been employed in Rushville, mainly in the tannery owned by E. Fobes.

Defendant then read in evidence the deposition of Thomas Gilder-leave, as follows :

110 In about a week or two after the destruction of the tannery of W. H.
& F. Stevens, F. Faucet and a man named Hill (acting as his agent)
111 brought 3,882 sides of leather from that tannery to our tannery. Most of
them were new tanned and only required scrubbing and rolling ; between
150 and 360 required one laying of liquor ; the rest required no liquors ;
we finished them and sent them to the plaintiff in New York. Process of

tanning adds about one half to the value of hides. Fair compensation for tanning and returning to market about $\frac{1}{2}$, though tanners don't often get it. Have tanned at the half, and my father also, who is a practical tanner.

- 113 I have been in the employ of I. & N. Gildersleeve since Dec. 1856 as foreman in the tannery.

Defendants here rested, and Plaintiffs read in evidence the second deposition of Speers Cummings as follows:

I know by books of plaintiff that hides sent by plaintiffs to defendants to be tanned were subsequently tanned by other parties. Part by D. S. & O. D. Stevens, I. & N. Gildersleeve, Palen, Flager & Co. Faucet, Isham & Co. paid these several firms the full expense of tanning and finishing.

- 116 The proceeds of all the leather received by plffs. from Gildersleeve and Palen & Flager amounting to \$18,326.94, were carried to credit of W. H. & F. Stevens' account, and that received from D. S. & O. D. Stevens amounting to \$4,508.99 were carried to their account, each sale was credited to Palen & Flager and I. & N. Gildersleeve above named, under the head of their contract accounts.

When the sales were all closed the full net proceeds of the sales for the amount I have before stated were credited to W. H. & F. Stevens. I have already stated the allowance on said leather and hides made to W. H. & F. Stevens by said plaintiffs in their accounts.

- | | | | |
|-----|--|------|--------|
| 117 | Plaintiffs received at St. Louis the proceeds of | 1006 | sides. |
| | At Chicago proceeds of | 1558 | " |
| | At Cleveland " | 999 | " |
| | At Cincinnati " | 800 | " |

The net proceeds of these several lots amounting to \$18,938.25 were credited to the account of W. H. & F. Stevens' contract.

Plaintiffs received from Insurance Companies as follows:

- | | | |
|-----|--|---------|
| 118 | From the <u>Ætna</u> for loss by fire in the tannery. Policy having been assigned to plaintiffs, | \$3,000 |
| | From the Clinton Insurance Company one half face of policy, | 1,500 |
| | From Roger's Ins Co. half face of policy, | 1,500 |

Washington Ins. Co. half face of policy,	1,500
Excelsior Ins. Co. half face of policy,	1,500
Phoenix Ins. Co. half face of policy.	1,500
Market Ins. Co. half face of policy.	1,000
Williamsburgh Ins. Co. half face of policy,	1,250

The last named 8 policies being for loss and damage by fire on hides and leather in said tannery. All said sums were credited to W. H. & F. Stevens. The present condition of the accounts between the plaintiffs and W. H. & F. Stevens show the latter to be indebted to the former in the sum of \$20,366.81, which I know to be correct.

The plaintiff then read the second deposition of Talma Hill as follows :

136 I can distinguish leather manufactured from slaughtered hides from that manufactured from other hides. The unstamped hides means hides taken from domestic cattle and have never been dried. I can also tell the leather taken from slaughter hides because the grain is softer and thicker, and the trim is different from that made from dry hides.

There was not among the leather identified by me at Cleveland, Chicago or Montreal any leather which had been manufactured from slaughter hides.

138 The plaintiffs then read the second deposition of John A. Leach as follows:

139 Leather manufactured from slaughter hides can easily be distinguished by me from that manufactured from other hides. Can distinguish it by the manner in which it is trimmed and its general appearance. Having been so accustomed for the past six years to handle leather made from slaughter hides and other kinds of hides. I can distinguish it readily from other hides and without any difficulty. There was no slaughter leather whatsoever, among the leather so identified by me—none whatever. I handled almost every side of said leather, and if there had been any amongst it I would have easily distinguished it from the other leather.

The Court gave for the plaintiff the following instructions to the jury.

143 If the jury believe from the evidence that the leather in question was manufactured by W. H. & F. Stevens out of hides forwarded by the plaintiffs to be tanned under the contract of 7th of Aug., 1855, offered in evidence, and that the same was tanned by said W. H. & F. Stevens under

said contract and that after said leather was manufactured and whilst the same was on the way to the plaintiff in the city of New York the defendant Fletcher Stevens without the knowledge or consent of the plaintiffs or
 144 his co-partner W. H. Stevens intercepted the same or any part thereof and sold and converted it to his own use, then the plaintiffs are entitled to recover in this action for such ~~commission~~. *Conversion*

If the jury believe from the evidence that the defendant and W. H. Stevens received of the plaintiffs, under the contract of the 7th of August, 1855, given in evidence, hides to be tanned into leather and returned to the plaintiffs, that after such hides or a portion of them were so received and tanned into leather, the defendant fraudulently and maliciously took or caused to be taken the said leather, or a portion thereof, to places other than the city of New York, and without the consent of the plaintiffs, or either of them, sold and converted the same, or a portion thereof, to his, said defendant's, own use, the plaintiffs are entitled to recover of the defendant in this action the value of the leather so converted and which has not been discovered by them at ^{*some*} ~~the time~~ of such conversion, and the jury may give interest on such value from the time of such conversion by way of damages.

144 To the giving of each of these instructions the defendant objected and excepted.

Defendant by his counsel then asked the Court to give the following instructions to the jury:

1st. If the jury shall believe from the evidence that the contract offered in evidence by plaintiffs and entered into between them and W. H. & F. Stevens, covered the property in the leather or sides of leather carried away from the tannery of defendant, then the interest on said property being a joint or co-partnership interest only, and owned by the defendant in common with the plaintiffs, then the plaintiffs cannot recover damages for the conversion thereof by defendant, and the verdict should be for the defendant.

146 2d. The measure of the Damages (if any) in this case is the value of the aliquot share or proportion owned by the plaintiffs in the property in controversy, subject to all deductions on account of the property recov-

ered. After the time of said conversion all deductions on account of moneys received by plaintiffs after the destruction of the tannery by fire, the property destroyed thereby and also to all deductions to which said defendant with said W. H. Stevens might be entitled upon a statement of the accounts, to set off against the value of said property converted.

3d. The defendant in this case is entitled to recover or set off against the amount of the plaintiffs' claim—all damages or matters of claim to which he would be entitled upon a statement of the accounts between the plaintiffs and defendant F. Stevens and Walter H. Stevens, such as the moneys received on insurance policies, after the fire; the property after that time returned to and received by plaintiffs, the property recovered by plaintiffs; the amount due to W. H. & F. Stevens by plaintiffs, under the tanning contract, as defendant's proportion thereof, and all matters of account arising under the contract, as between the said plaintiffs and the said W. H. & F. Stevens, and that subject to these matters the injury of the plaintiffs is only the value of their interest in the property converted.

4th. Under the contract given in evidence by the plaintiffs there is such a co-partnership in relation to said property embraced in said contract as prevents a recovery by the plaintiffs in this action; and if the jury believe from the evidence that the property sued for in this case is the same property, or any portion thereof, embraced by the provisions of said contract, then as to such property the verdict should be for the defendant.

5th. If the jury believe from the evidence that the defendant converted any part of the leather claimed to have been manufactured under the contract, yet if they believe the leather to have been enhanced in value by the labor and materials of W. H. & F. Stevens, in tanning under the contract, they should make such deduction from the value of the leather as is equal to the cost of the tanning under the contract, and the verdict should only be for the balance remaining.

6th. The jury are only to find as damages the value of the interest of the plaintiffs in the leather, subject to all deductions arising by a fair and equitable adjustment of the accounts existing at the time of the conversion between said plaintiffs, and said defendant, and W. H. Stevens under the

contract given in evidence by the plaintiffs, if the jury shall believe that the leather in controversy was manufactured under that contract.

7th. The jury are only to assess as damages the value of the interest of plaintiffs in the property under the contract, and not the value of the leather; but they should take into consideration the value of the interest also of defendant, F. Stevens, and the interest of W. H. & F. Stevens, making allowances for the manufacture of the leather under said contract and all profits and losses.

149 8th. The defendant is allowed to recoup or set off all matters of account arising out of said contract as between the plaintiffs and W. H. & F. Stevens, and to have just and equitable allowances for whatever would be due W. H. & F. Stevens upon a settlement of the contract or joint account.

9th. The true measure of damages in this case is the value of whatever balance of accounts may have been shown to be due by defendant (if any) to plaintiffs, by taking considerations all the dealings between the defendant and W. H. Stevens and the plaintiffs under the tanning contract given in evidence, with such other charge or damage as the plaintiff may have sustained by reason of conversion.

150 The Court refused to give either of the instructions, and defendant excepted.

150 Verdict for \$33,690 80.

151 Motion for new trial overruled and defendant excepted.

153 Motion for arrest of judgment overruled.

HOYNE, MILLER & LEWIS,

Defendant's Attornies.

Stevens

v. i.

Francis School

Abstract

17,25
 8,62

 25,87
 5,00

 31,87
 10,00

 21,87

101

The above is a list of the items which have been received from the various sources mentioned in the report. The total amount received is \$21,87. This amount is to be used for the purchase of books and other materials for the school. The following is a list of the items which have been received from the various sources mentioned in the report.

102

The above is a list of the items which have been received from the various sources mentioned in the report. The total amount received is \$10,00. This amount is to be used for the purchase of books and other materials for the school. The following is a list of the items which have been received from the various sources mentioned in the report.

103

The above is a list of the items which have been received from the various sources mentioned in the report. The total amount received is \$181. This amount is to be used for the purchase of books and other materials for the school. The following is a list of the items which have been received from the various sources mentioned in the report.

104

The above is a list of the items which have been received from the various sources mentioned in the report. The total amount received is \$381. This amount is to be used for the purchase of books and other materials for the school. The following is a list of the items which have been received from the various sources mentioned in the report.

Francis School

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

FLETCHER STEVENS,
Plaintiffs in Error.

vs.
FREDERICK FAUCET,
SAMUEL ISHAM and
THOMAS FAUCET,
Defendants in Error.

APRIL TERM, A. D. 1860.
Appeal from
Circuit Court of Cook County.

Page of
Record,

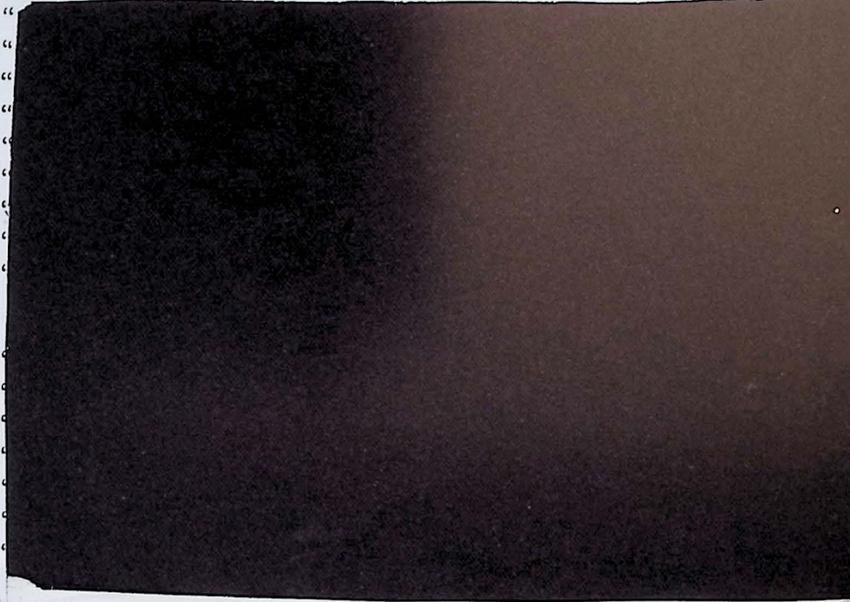
ABSTRACT' OF RECORD.

- 1 October 19, 1857. The defendants in error, Frederick Faucet, Samuel
- 2 Isham and Thomas Faucet, filed in the Cook Co. Court of Common Pleas
- 3 their declaration, wherein they complain of Walter S. Stevens and Fletcher
- 4 Stevens defendants. For that on the 10th January, 1857, they were pos-
- 5 sessed as of their own property of 9,000 sides of Hemlock tanned sole
- 6 leather of the value of \$20,000; that they came to the possession of the
- 7 defendants by finding, and that the defendants well knowing, etc., on the
- 8 day and year aforesaid converted the same to their own use.
- 9 Nolle Prosequi entered to defendant Walter S. Stevens.
- 10 Plea of general issue filed for defendant Fletcher Stevens.
- 11 Feb. 20, 1860, Jury empannelled to try cause.

On the trial plaintiffs read the deposition of Speers Cummings as follows; Am book-keeper for plaintiffs. Plaintiffs are engaged in Hide and Leather business and have been since 1853. Place of business 70 Gold street, New York. Firm name, Faucet, Isham & Co. Was then general clerk and book-keeper, between Aug. 1855 and Nov. 1856. Defts. were partners and engaged in the business of tanning hides. Firm name W. H. and F. Stevens, and carried on business at Stevensville, Sullivan Co., New York.

13 Plaintiffs and defendants made an agreement with each other, execu-





(Signed,) W. H. & F. STEVENS,
(Signed,) FAUCET, ISHAM & CO.

“ Witness, S. CUMMING.”

- 16 Which said agreement was read in evidence to the jury, and thereupon the defendant, by his counsel, then and there objected to the reading of the remaining part of the deposition of said witness, and the reading of the other and remaining depositions taken in behalf of the plaintiffs in said cause, and to any evidence being given to the jury for the purpose of showing a conversion by the def't, of leather manufactured under said contract, on the ground that it appeared from the evidence already given to the jury that the defendant was interested as a co-partner with the plaintiffs and Walter H. Stevens in said leather; but the Court overruled said objection and allowed the remaining portion of the deposition of said witness to be read in evidence to the jury, and also the other and remaining depositions taken in behalf of the plaintiffs in said cause, to which ru-

ling and decision of the Court the defendant by his counsel then and there excepted. And therefore the remaining portion of the deposition of said witness was read in evidence to the jury as follows :

I know the plaintiffs ; furnished hides to said Stevens to be manufactured into leather pursuant to said agreement. Between the day of the date thereof and the month of September, 1856, they furnished 18,815 hides, only a portion of the hides were returned by the said Stevens in accordance with said agreement, manufactured into leather. There were so returned 16,496 sides equal to 8248 hides and were returned as follows:

April 18, 1856,	-	-	-	-	569 sides.
“ 17, “	-	-	-	-	531 “
“ 22, “	-	-	-	-	441 “
“ 22, “	-	-	-	-	523 “
May 1, “	-	-	-	-	1,362 “
“ 8, “	-	-	-	-	245 “
“ 25, “	-	-	-	-	188 “
June 2, “	-	-	-	-	294 “
“ 11, “	-	-	-	-	667 “
“ 18, “	-	-	-	-	614 “
“ 25, “	-	-	-	-	252 “
July 2, “	-	-	-	-	293 “
“ 5, “	-	-	-	-	543 “
“ 11, “	-	-	-	-	288 “
“ 17, “	-	-	-	-	277 “
Aug. 23, “	-	-	-	-	704 “
“ 29, “	-	-	-	-	663 “
Sep. 2, “	-	-	-	-	749 “
“ 8, “	-	-	-	-	854 “
“ 11, “	-	-	-	-	430 “
“ 17, “	-	-	-	-	612 “
“ 22, “	-	-	-	-	332 “
Oct. 9, “	-	-	-	-	861 “
“ 16, “	-	-	-	-	335 “
“ 17, “	-	-	-	-	334 “

Oct. 22, "	- - - - -	369 sides,
" 29, "	- - - - -	1157 "
Nov. 3, "	- - - - -	311 "
" 17, "	- - - - -	319 "
" 12, "	- - - - -	309 "
" 18, "	- - - - -	864 "
Dec. 5, "	- - - - -	111 "
		16496

19 On the 16th of September, 1856, there remained unaccounted for 13,521½ hides.

The value of the leather per side in the months of September, October and November in the year 1856 was about \$4.40 per side.

Exhibit "B." hereto annexed, shows the state of accounts between Faucet, Isham & Co. and W. H. & F. Stevens.

Said Exhibit is as follows:

W. H. & F. STEVENS

		In account with FAUCET, ISHAM & Co.	DR,
1855.	INTEREST TO SEPTEMBER 16, 1856. ITEMS.	WHEN DUE	AM'T.
Nov. 17,	To pd. Ins. on Hides & Leather, 1 yr. \$2,000 ½ pr. ct. - - -	Nov. 17, '55,	\$25 00
	Add Interest from Nov. 17 '55 to September 16, '56, - - -	303 days,	1 45
" 27,	" Sent by Mail our Note Dec. 5, 4 months, April 8, '56, - - -		2'000 00
1856,	Add Interest from April 8, '56 to Sept. 16, '56, - - -	161 days,	41 76
Jan. 24,	" Sent by Mail our Note Feb. 5, at 4 months, - - -	June 8, '56,	3,000 00
	Add Interest from June 8, '56 to Sept. 16, '56, - - -	100 days,	57 54
Feb. 12,	" Paid Ins. on Hides & Leather in Tannery ½ pr. ct. - - -	Feb. 12, '56,	30 00
	Add Interest from Feb. 12, '56 to Sept. 16, '56, - - -	216 days,	1 24

Feb. 27,	To Our Note, March 5, 4 mo.	July 8, '56, \$3,000 00	
	Add Interest from July 8, '56, to Sept. 16, '56, - - -	70 days,	40 29
Mar. 29,	" Our Note April 5, at 4 months,	Aug. 8, '56,	1,500 00
	Add Interest from Aug. 8, '56, to Sept. 16, '56, - - -	39 days,	11 22
April 3,	" Paid Insurance on Tannery, 1 yr. \$5,000, - - - -	April 3, '56,	125 00
	Add Interest from April 3, '56, to Sept. 16, '56, - - -	166 days,	3 98
" 7,	" Paid Ins. on Hides & Leather 1 yr, \$3,000, $\frac{1}{2}$ per ct., - - -	April 7, '56,	30 00
	Add Interest from April 7, '56, to Sept. 16, '56, - - -	162 days,	93
" 26,	" Our Note May 5, at 4 mos., sent by Mail, - - - -	Sept. 8, '56,	1,500 00
	Add Interest from Sept. 8, '56, to Sept. 16, '56, - - -	8 days,	2 29
June 3,	" Our Note, June 5, at 4 months due Oct. 8, '56,	2,500 00	
	Deduct interest from Sept. 16, '56, to Oct. 8, '56, - - -	10 55	
		<hr/>	2,489 45
" 26,	" Paid to Brown & Sherwood bill bark Mills and cartage -	June 26, '56,	93 00
	Add interest from June 26, '56, to Sept. 16, '56, - - -	82 days,	1 46
July 1,	" Our note. July 5, at 4 months sent by mail Nov. 8, '56, - - -	3,000 00	
	Deduct interest from Sept. 16, '56 to Nov. 8, '56, - - -	30 30	
		<hr/>	2,969 70
Aug. 9,	" P'd their check on Union Bank, Monticello, May 17, '56, and interest, to Geo. Sears, dated Aug. 9, '56, - - -		102 20
	Add interest from Aug. 9, '56, to Sept. 16, '56, - - -		74
" 20,	" Draft Aug. 14, at 60 days date, Oct. 16, '56, - - -	700 00	
	Deduct interest from Sept. 16, '56, to Oct. 16, '56, - -	4 02	
		<hr/>	695 98
" 28,	" Draft Aug. 21, at 60 days, date Oct. 23, '56, - - -	500 00	
	Deduct interest from Sept. 16, '56, to Oct. 23, '56, - - -	3 55	
		<hr/>	496 45

Sept. 8,	To Draft Aug. 30, at 60 days, date Nov. 1, '56, - - -	\$500 00	
	Deduct interest from Sept. 16, '56, to Nov. 1, '56, - - -	4 41	
		<u> </u>	\$495 59
" 9,	" Draft Sept. 5, at 60 days, date Nov. 7, '56, - - -	1,000 00	
	Deduct interest from Sept. 16, '56, to Nov. 7, '56, - - -	9 98	
		<u> </u>	990 02
	" Cash paid freight on leather to Sept. 16, '56, - - -		due June 27, 296 11
	Add interest from June 27, '56, to Sept 16, '56, - - -		4 51
			<u> </u>
			\$20,005 95

CR.

By tanning 31,484½ lbs. c 5c inv. 1, due April 25, '56, less as per agreement \$1,125 40,	\$448 81		
Add interest from April 25, '56, to Sept. 16, - - -	12 40		
	<u> </u>	461 21	
" tanning 29,900½ lbs. c 5c inv 2 due April 29, '56, - - -	1,495 02		
Add interest from April 29 to Sept. 16, - - -	40 14		
	<u> </u>	1,535 16	
" profit on above invoice as per agreement, due Nov. 3, '56,	304 88		
Deduct interest from Sept. 16 to Nov. 3, - - -	2 80		
	<u> </u>	302 08	
" tanning 27,621 lbs. c 5c inv. 4, due July 10, '56, - - -	1,381 05		
Add interest from July 10 to Sept. 16, - - -	18 00		
	<u> </u>	1,399 05	
" ½ profit on above inv. due Jan. 20, '57, - - -	90 89		
Deduct interest from Sept. 16, '56, to Jan. 20, '57, - - -	2,19		
	<u> </u>	88 70	
" tanning 79,394½ lbs. c 5c, due Aug. 11, '56, - - -	3,969 72		
Add interest from Aug. 11, to Sept. 16, - - -	27 39		
	<u> </u>	4,091 11	
		<u> </u>	7,883 31
Due F., I. & Co., on Sept. 16, '56, - - -			\$12,122 68

The manner of the conveyance employed in the transportation of hides from the plaintiffs to said Stevens, and of return from the said Stevens to the plaintiffs were by the merchants and tanners line and the New York and Erie Rail Road.

35 The date of the arrival of the last lot of leather sent by the said Stevens to the plaintiffs was in the early part of December 1856.

The average value of the hides furnished by the plaintiffs to the said Stevens into leather in the months of September and October 1856, was \$4.00 to \$4.50 per side.

I saw afterwards some of the leather manufactured from the hides sent by the plaintiffs by the said Stevens, and which was not returned to said plaintiffs by said Stevens. I saw in Cleveland, Ohio, in the early part of December 1856, a lot of such leather, of about 1000 sides. In Chicago, Illinois, two other lots of about 800 each—1600, one lot of about 400 in the store of Osborn, Adams & Co.

Also one lot in Montreal, Canada, of about 1273. I recognized the leather by the style of tanning, handling of the hides, coloring of the leather and by the kind of hides from which it was made. I recognize the same invoice marks upon it as I had seen at the tannery of said Stevens, and at the store of the plaintiffs, on leather received from the said Stevens. There was no stamp of the tanner or tannery on the leather I saw, such as is usually placed on leather by tanners after it is tanned, except on one side which I saw in the store of Root & Daval, in Chicago, in one of the lots of leather I before spoke of. In Cleveland the leather was all in the store of J. H. Crittenden & Co. In Chicago I saw it in the store of Osborn, Adams & Co., about 800 hides in the store house of Peck & Co. and about 800 sides in the store house of Root & Daval.

In Montreal the leather was all in the store of Hugh Thompson & Son. I do not know of my own knowledge who took the leather to the place or places I saw it. I was sent to the various places by the plaintiffs for the purpose of identifying this leather, and I identified the leather as I before stated.

38 On his cross examination in said deposition, he stated. I know of the arrival of the last lot of leather, because the carting of said plaintiffs is all done under my supervision, and no leather could be delivered to the plaintiffs without my knowing it.

41 The plaintiff then read in evidence the deposition of John A. Leach who testified as follows : Am accustomed to the handling and inspection of leather since March 1853, and with the plaintiff as clerk. The number of hides furnished by the plaintiffs to Stevens between the month of Aug. 1855, and the month of November, 1856, was 18,815. Have been accustomed to seeing and handling the leather manufactured by the Stevens. Am and was so familiar with the quality and appearance of the leather manufactured by them as to be able to distinguish it from leather manufactured by other tanners out of the same quality of hides. They were accustomed to make and stamp the hides manufactured by them in such a way as to distinguish them from others. The number of hides furnished by the plaintiffs to said Stevens was 18,815. Of the hides so sent 16,496 sides were returned to plaintiffs manufactured into leather. There were returned 16496 sides, equal to 8248 hides, were returned to plaintiff by said Stevens. They were returned, with very few exceptions, by the Merchants and Tanner's line on the Delaware and Hudson Canal. They were marked with the invoice mark and stamped Stevensville. Date of last
45 arrival of leather was December 5, 1856. Then due the plaintiffs 21,134 sides of the value of about \$4.40 per side. I afterwards saw some of the
46 leather manufactured from the hides sent from the plaintiffs to the said Stevens and which were not returned by the said Stevens to the plaintiffs.

Saw in Cleveland Dec. 10, 1856, 998 sides.

Saw part on a cart, part in a forwarding store on dock, part in store of Crittenden, and afterwards all of it in Crittenden's store.

Dec. 11, 1856, saw in store of Peck & Co. Chicago, 800 sides.

Same day in store of Osborn, Adams & Co., Chicago, 400 "

Same day in store of Root & Daval, Chicago 799 "

Dec. 17, 1856 saw in store of John Haw, St. Louis, about 1000 "

Dec. 26, 1856, saw at Illinoistown, on the opposite side of the river from St. Louis, about 1000 "

47 I found upon it the invoice marks same as what had been put on the leather returned to us by Stevens, manufactured out of hides sent them by plaintiffs.

On his cross examination he stated the leather sent by the Stevens' to the plaintiffs, viz: 16,496 sides were all sold by the plaintiffs.

The hides I saw were purchased in the City of New York at about \$4.35 per hide and the cash cost to the plaintiffs was \$81,627 87.

52	Plaintiffs took possession at St. Louis and sold	1006 hides.
	At Chicago,	1600 "
	At Cleveland,	1000 "
	At Cincinnati,	600 "

55 Plaintiff then read in evidence the deposition of Richard W. Broadhead as follows: Was during the year 1856 one of the owners of a line of
56 canal boats running in the Delaware and Hudson Canal between Wertz-
57 boro and the City of New York. Carried hides and leather mostly be-
tween those places. Our boats were engaged in carrying hides and leather
to and from Wertzboro for the tannery of W. H. & F. Stevens. All the hides
taken on board our boats for said Stevens, during and after the month of
August, 1855, were sent by Faucet, Isham & Co. The leather manufac-
tured by Stevens was taken on board our boats at Wertzboro, the leather
was carried to the City of New York and delivered to Faucet, Isham &
58 Co. from the opening of navigation in the year 1853, up to the month of
September of that year. The defendant during the period named made
application to me for a boat to take leather to place or places other than
the City of New York. He wished to engage the boat and hands by the
day, to be under his direction, to go where he pleased, to Albany or fur-
ther west. He wished it not to be known, that he was shipping—not to
be known to any person. He wished particularly that it should not be
known in the swamp, (by swamp is meant the place where the wholesale
hide and leather dealers are located,) the application of defendants was
made to me at my place of business in the City of New York, at the foot
of Vesey street, when our boats were in. I agreed to let him have a boat

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 of Vesey street, when our boats were in. I agreed to let him have a boat

in pursuance of his request, and referred him to my agent at Wertzboro. A boat was furnished by my firm to said defendant according to his request. The name of the boat was the William C. Rose. The master's name was Edwin J. Bailey. It was hired by the day and for one or more trips as he (the defendant) wanted her. It made three trips for the defendant. The boat went from Wertzboro to Albany and once further west. The captain had the management of the boat but she was controlled by Fletcher H. Stevens and a man he put in charge of her. Fletcher Stevens furnished the freight, which consisted wholly of leather from Wertzboro. In one of his trips he brought back some lumber and paid for the use of the boat.

59 Fletcher Stevens represented to me when he hired the boat that the plaintiffs were trying to take the advantage of him and cheat him, and that the plaintiffs had a large amount of money of his in their hands which he could not get of them, and he wanted to sell enough leather to make him whole, and get a fair settlement; it was on the strength of these representations that I kept the matter secret, as the transaction was an unusual one, but I believed the representations made.

60 The plaintiffs then read the deposition of Edwin J. Bailey, as follows:

Am boat captain; was employed during the month of September and Oct. 1856, in freighting leather and merchandise on the canal, except one trip I ran in September on the Western canal to Oswego. Know defendant, Fletcher Stevens; the circumstance under which I first became acquainted with Fletcher was his shipment, at Wertzboro in Sept., 1856, of a load of Hemlock sole leather on board of my boat, the William C. Rose to go to Oswego.

62 The Stevens' tannery was situated at Stevensville, about twenty miles from the Delaware and Hudson Canal. Prior to the 16th of September, 1856, I took away leather on my boat manufactured by W. H. & F. Stevens, from Wertzboro on said Delaware and Hudson Canal; Ira Dorance directed as to its shipment; I delivered it to Faucet, Isham & Co. I did not in the year 1856, prior to September, deliver any leather manu-
63 factured by said Stevens to any other persons than as before stated. On

the 16th of Sept. 1856, and subsequently to that time, I received three boat loads of leather at Wertzboro, manufactured by W. H. & F. Stevens; Ira Dorance directed about its shipment.

The quantity on first cargo was	5,565 sides.
“ “ second “	5,829 “
“ “ third “	2,810 “

I was to carry them to Albany, and Fletcher Stevens was to meet me there and give me directions; I took the first to Oswego; the second to Albany and Troy, and the third to Albany. The leather was not stamped. Dorance, when we put the leather on board, said we must not take any that was stamped; found some eight or ten sides stamped and threw them out. Saw Fletcher Stevens while we were putting the leather on board
 64 at Wertzboro; at Albany while the leather was on board; at Oswego while delivering the first load, and at Troy while I was delivering a part of the second load.

He was on my boat, while the leather was on board, with a man he introduced by the name of Stratton; this person was on board until we got to Oswego; he passed by the name of Stratton while on board.

I saw him again in July, 1857, at Cocheton Centre, Sullivan County; he then passed by the name of William H. Stanton, his true name.

65 The first cargo was all delivered at Oswego; the second was all delivered at Albany, except something over 1,000 sides; the third cargo was all delivered at Albany; at Oswego I delivered the cargo to three steamboats and put on the dock, all by the order of Stratton. The second cargo I delivered as follows:

To boat H. F. Atkinson, of Rochester,	1,000 sides.
“ “ Troy, of Buffalo,	1,800 “
“ American Trans. Co.'s boat,	1,000 “
“ Northern R. R. Co., at Troy,	1,000 “
“ Central “ “	1,000 “

Third cargo delivered as follows :

To Central R. R.,	1,000 “
“ Seneca Falls line boat,	1,000 “
“ Amer. Trans. Co.'s boat,	600 “
66 “ Peter Martin,	210 “

The last two loads were delivered by the order of Fletcher Stevens.

Stratton superintended the delivery of the leather at Oswego; Fletcher superintended the delivery at Albany and Troy. Stevens also enjoined me to secrecy as to where the leather came from and the destination of the boat. He told me Stratton knew where to clear the boat on the canal. I was present when the invoice was made out; it was made out by Stratton; Stevens was present and dictated; it was invoiced part leather, part dry goods, I think, and provisions. Stratton was directed by Stevens to clear the cargo under that invoice. Stevens said he had more leather to be taken by me; he said he wanted it kept still. Stevens said he had more than one cargo to go by my boat; he said he wanted the matter kept still, as the leather belonged as much to him as to Faucet, Isham & Co., and he had a right to sell it; he said that if things went on as they had been, Faucet, Isham & Co. would cheat him out of a large amount, and therefore he wanted it all kept quiet; such directions were first given at Albany at the time the first load was taken there. Stratton was present and in hearing. The leather I carried was manufactured at the tannery prior to the 16th of Sept; was stamped Stevensville. After the first cargo had left my boat I heard Stevens say, I think, they are going to Montreal with a part of it; know I heard Stratton say so. I saw Stevens on board one of the Canada boats said to be bound to Canada. The leather or a part of it was on board of this boat. Stratton was also on board of her.

On his cross-examination he says :

70 I think W. H. & F. Stevens began to carry on the tannery at Stevensville in 1855. They had a large establishment; I don't know the extent of their operations.

71 The boat was not employed in the usual course of the business of W. H. & F. Stevens, nor for the firm. The boat was employed by Fletcher H. Stevens and not the firm. I refer to the William C. Rose, in which was carried those three loads.

72 The plaintiff's counsel then read to the jury the evidence of William H. Stanton as follows :

73 Was clerk for O. D. Stevens. Then firm O. D. & F. Stevens. Then for T. D. & O. D. Stevens. Was in employ of defendants in September

and part of October, 1856. Was employed to sell a boat load of leather. Employment commenced at Albany. Was to take charge of a canal boat freighted with leather, and was to ship and send the leather according to defendant's instructions. My employment terminated the forepart of October, 1856. Went on board canal boat "W. C. Rose," in September, 1856, at Albany. Leather was on board at that time. Quantity about 5000 sides. Part of the leather was rolled while on board. I was on board as Supercargo. Boat was employed to transport the leather from Albany to Oswego. Was introduced to the captain by the name of Stratton and passed by that name on board the boat. Deft. knew my real name, had known him for five years. I paid the tolls and defendant paid the money. Part of the leather was sent to Montreal, part to Toronto and part to Chicago by direction of the defendant.

76 The leather sent to Montreal was sold to Hugh Thompson & Son. Do not know what became of the leather sent to Toronto. Of the 2000 sides sent to Chicago 1000 sides arrived before I left Chicago, which I sold. The balance I sold to be received by the purchaser on arrival. Leather at Montreal sold by defendant. Do not know who sold the leather at Toronto, if sold. All the leather was sold for the benefit of defendant.

77 Bill of sale of leather sold at Montreal was made out in the name of L. L. Stratton & Co. In Chicago bill of sale was made out in the name of F. Stafford & Co. Only know of one boat load. Defendant advised me to take the name of Stratton, assigning as a reason that there were other persons who had an interest in the leather. That he had a difficulty with Faucet, Isham & Co., and could not do business with them or get pay for his leather; that he wished to sell the same and pay off his debts; that he had taken counsel upon the subject and had been advised so to do. And

78 if I passed under an assumed name it would be more difficult for the owners to reach him and break up his plans. This conversation took place in Albany in Sept. In consequence of this advice I took the name of Stratton. I registered my name in Montreal as Stratton and defendant his as Stafford. Leather in Montreal was sold for about \$10,800. Paid for in drafts on New York, endorsed, payable to the order of L. L. Stratton.

79 800 sides were sent to Toronto. 2000 sides were sent to Chicago; both

lots were consigned to F. Stafford. Sold the leather in Chicago to Osborn, Adams & Co. 1000 sides at 22 cents, and 1000 to arrive, at same rate. Received pay for 1000 sides amounting to about \$3200.

81 On his cross-examination he said defendant's business amounted to about 20,000 sides a year.

Plaintiffs then read in evidence the deposition of Ira Dorance as follows:

I was employed as agent by the Merchants and Tanners line of canal boats. There was an arrangement made in August, 1856 by the defendant about storing leather, the arrangement was this: All the stamped leather to be forwarded in the usual course of business to the plaintiffs, the unstamped leather was to be stored by me in a separate storehouse, until he
86 gave orders to forward it. The stamped leather was to be forwarded in quantities of from 400 to 700 sides.

Between the latter part of Aug. and Sept., 15, '56, 5851 sides or thereabouts was stored with me. Subsequently there was between 8 and 9000 sides stored at different times. All this was unstamped leather. Received also leather stamped "Stevensville," which I forwarded to plaintiffs by direction of defendant.

The canal boat received the leather in separate loads..	The first left	
Sept. 16, with	5851 sides or thereabouts	
2nd Oct. 27, with	5857 " "	
3rd Nov. 8, with	2813 " "	

I gave the master of said boat instructions to take the leather to Rondout or to Albany, at one of which places the defendant would meet him and give him further orders. Defendant authorized me to give such instructions.

88 The defendant's instructions to me were, that immediately upon the arrival of the W. C. Rose, I was to ship the unstamped leather on board of her with as little delay and as quickly as possible, and direct the Master to go to Rondout or to Albany with said leather, and have the defendant meet

him and give further instructions, and if any one inquired with reference to the destination of said leather I was instructed by him to say that it had been sent to the plaintiffs in New York city.

On his cross-examination he says :

90 The leather received in storage was received subject to the direction of the defendant. Defendants were engaged in carrying on a large tannery and in manufacturing leather.

Plaintiffs then read in evidence the deposition of Walter H. Stevens, as follows :

I was engaged in the tannery, merchandizing and other business connected with it ; during the period specified was connected with defendant, Fletcher Stevens, in the tanning and mercantile business ; firm name was W. H. & Fletcher Stevens. During the period specified the greater portion of the hides received by W. H. & F. Stevens were received from
91 Faucet, Isham & Co., of New York. The hides were received on joint account. I considered that the leather was manufactured for plaintiffs and also for W. H. & F. Stevens, and that both parties were interested in the leather. During the same time we were manufacturing some leather for
92 Snell & Healy on a previous contract. The full names of the partners in the firm of W. H. & F. Stevens, were Walter H. Stevens and John
93 Fletcher Stevens. The defendant superintended the removal of the leather.

In his cross-examination he says :

The contract was reduced to writing. Not having it before me, all I can say, is the hides were received on what is known among tanners as on joint account, each party having an interest in the leather after it is manufactured. Mr. Samuel Isham, one of the plaintiffs, stated that they were ready to make reasonable advances and that they would be willing to advance 75cts per hide.

95 I thought plaintiffs did not make advances to us according to the contract, or rather according to the understanding. The plaintiff, Frederick Faucet, did refuse to furnish an account of sales. This was after the delivery of the two first lots of leather, containing, I should think, either

6,000 or 8,000 sides; how much was due I cannot say. In July, 1856, I think we had sent forward from 10 to 12,000 sides. About this time plaintiffs refused to accept our drafts, and the consequence was we got embarrassed in our business; the result was very injurious to our business.

96 The plaintiffs were advised of the necessity of making advances and what the consequences would be if they refused.

Plaintiffs here rested.

98 The defendant, thereupon, by his counsel asked the court to instruct the jury to find for the defendant by way of non-suit, on the ground that it appeared from the plaintiffs' own showing that the plaintiff, the defendant, and Walter H. Stevens were interested as co-partners in the property for the conversion of which this action is brought, and that they were so interested at the time of such conversion, but the Court refused to so instruct the jury, and defendant excepted.

The defendant by his counsel then entered his motion to exclude from the jury the evidence given in behalf of the plaintiff, showing or tending to show a conversion of the property in question by the defendants, on the ground that it appeared from the plaintiffs' own showing that the defendant, at the time of such conversion, was interested in said property as a co-partner with said plaintiffs and Walter H. Stevens, and that

99 the subject matter of the suit was the co-partnership property of the said property of the said plaintiffs, the said defendant and Walter H. Stevens. But the Court overruled said motion, and refused to withdraw said evidence from the jury, and the defendant excepted.

The defendant by his counsel then read to the jury the evidence of Alfred L. Stevens, as follows:

Know Frederick Faucet and Samuel Isham, plaintiffs, and know defendant. Know of hides had by W. H. & F. Stevens had of firm of Faucet, Isham & Co., in 1856. Brought to tannery to be made into sol-leather. Was in employ of W. H. & F. Stevens at the time. There were between 18,000 and 19,000 hides. They were principally tanned then. Although after the tannery of W. H. & F. Stevens was burned some of

the hides were taken to the tannery of D. S. & O. D. Stevens at Cocheton, and to the tannery of Gildersleeve at Hortonsville and to Palen's tannery at Fallsburg. The hides were received from plaintiffs at the wharf in the city of New York and brought from thence to the tannery. They were tanned and sent back to Wertzboro to be shipped there for the plaintiffs except those which were on hand at the burning of the tannery, and except about 14 000 sides of leather, which I afterwards learned were sent to other places besides New York to sell, for the benefit of W. H. & F. Stevens, many of which were slaughtered hides leather. The hides not received by plaintiffs. Between 16,000 and 17,000 sides were sent back to New York to plaintiffs. Tannery was burned Nov. 9, 1856. I know from the invoices that the plaintiffs bought the hides on 6 months time and that the leather was principally furnished and returned within 6 months. I was present at the destruction of the tannery on the 9th of March. In the course of a few days, perhaps a week, the agent of the plaintiffs came up from New York, and I, deponent, as agent of W. H. & F. Stevens, and the agent of the plaintiffs who came up to represent the plaintiffs and take care of their interests, agreed that the leather then in the yard and unfinished should be sent to other tanneries in the country to be finished.

Under this arrangement 659 hides were sent to Palen's landing, 3882 sides were sent to Gildersleeves tannery, and 1727 sides were sent to the tannery of D. S. and O. D. Stevens.

All the sides were partly manufactured by W. H. & F. Stevens.

The leather sent to these respective tanneries was finished and sent to the plaintiffs as follows:

Between 12th and 16th of March 1857, were sent from Palen's landing to plaintiffs, 659 sides.

Between Dec. 8, 1856, and March 10, 1857, there were finished and sent to plaintiffs from Gildersleeve's tannery, 3882 "

Between June 15, 1857, and Aug. 15, 1857, there were finished and sent to plaintiffs from D. S. and O. D. Stevens, 1727 "

I had a knowledge of the leather in the tannery of W. H. & F. Stevens before the fire and after and to the best of my judgment there was over two

thousand sides destroyed by the fire, in the lofts and on the scales, etc., all of which was tanned, and some of which was finished. The quality of the leather destroyed was good and it was of an average value of \$4.50 per side.

There was an insurance on the hides and leather, and plaintiff, Frederick Faucet stated in my presence that he had received the insurance on 3000 sides but did not state the amount received, but stated that he received the value of the leather insured. He also stated that he had received the amount for which the tannery buildings were insured. The policy having been assigned to plaintiffs the amount received on the tannery he stated to be \$3,500. The plaintiffs had no interest in the buildings but held the policy as a security for their interest in the hides which W. H. & F. Stevens were to tan.

I understood during the year 1856 that the plaintiffs would not furnish W. H. & F. Stevens with account of sales of leather tanned by the latter and forwarded to the plaintiffs, make advances of money to W. H. & F. Stevens on account of tanning as was agreed on to enable debt. and W. H. & F. Stevens to carry on the business. I know that W. H. & F. Stevens were much embarrassed in their business because such advances were not made. I understood that the avails of the leather made of the slaughter hides and the other leather not sent to New York from Wertzboro, but to the other points and places, was applied, or a considerable part of it, to the payment of debts contracted by W. H. & F. Stevens in manufacturing leather at the tannery.

The process of tanning adds about half to the value of the hides, and a fair compensation for tanning and returning leather to market is about one-third. When the leather is high price, bark and mechanical labor is generally high also, so that the average cost of tanning is about one-third the value of the leather. The slaughter hides, part and parcel of the leather sent elsewhere alluded to in my answer to 4th interrogatories was about 750 hides or equal to 1,500 sides of leather. None of which was purchased by plaintiffs but purchased elsewhere by W. H. & F. Stevens.

And being cross-examined, he says :

106 I am a brother of defendant ; was in employ of W. H. & F. Stevens from March, 1855, to Dec., 1856 ; my business was in and about the tan-

nery purchasing bark and hiring men, and overseeing and assisting them generally, as the agent of W. H. & F. Stevens, in the work which was extensive and requiring the employment of many men and teams. Have resided in the same place since Dec., 1856, and have been principally in the employ of D. S. Stevens, and engaged in assisting in rebuilding the tannery. I was present and helped to count the hides which were taken away after the fire to be finished. I was employed by W. H. & F. Stevens and assisted in the count as their agent and employee. Made memorandum at the time.

108 Defendant, by his counsel, then read in evidence the deposition of Alial P. Bush, as follows :

After the burning of the tannery plaintiff, F. Faucet, wished me to finish tanning some of the leather which was in an unfinished state, but we could not make an arrangement, and after this Palen & Co. agreed to finish the leather. Faucet said to me that the policy of Insurance on the tannery was \$3,500 ; that it was assigned to them and they would get the money on it ; but I don't know as they got it. In my judgment the process of tanning adds one half to the value of the hides ; a fair compensation for tanning is $\frac{1}{3}$ @2-5. I have tanned hides and received one half for tanning ; sides of sole leather will average from \$4 50 to \$5 each side.

On his cross-examination he said :

Since the month of December, 1856, I have been employed in Rushville, mainly in the tannery owned by E. Fobes.

Defendant then read in evidence the deposition of Thomas Gilder-leave, as follows :

110 In about a week or two after the destruction of the tannery of W. H.
& F. Stevens, F. Faucet and a man named Hill (acting as his agent)
111 brought 3,882 sides of leather from that tannery to our tannery. Most of
them were new tanned and only required scrubbing and rolling ; between
150 and 360 required one laying of liquor ; the rest required no liquors ;
we finished them and sent them to the plaintiff in New York. Process of

tanning adds about one half to the value of hides. Fair compensation for tanning and returning to market about $\frac{1}{3}$, though tanners don't often get it. Have tanned at the half, and my father also, who is a practical tanner.

113 I have been in the employ of I. & N. Gildersleeve since Dec. 1856 as foreman in the tannery.

Defendants here rested, and Plaintiffs read in evidence the second deposition of Speers Cummings as follows :

I know by books of plaintiff that hides sent by plaintiffs to defendants to be tanned were subsequently tanned by other parties. Part by D. S. & O. D. Stevens, I. & N. Gildersleeve, Palen, Flager & Co. Faucet, Isham & Co. paid these several firms the full expense of tanning and finishing.

116 The proceeds of all the leather received by plffs. from Gildersleeve and Palen & Flager amounting to \$18,326.94, were carried to credit of W. H. & F. Stevens' account, and that received from D. S. & O. D. Stevens amounting to \$4,508.99 were carried to their account, each sale was credited to Palen & Flager and I. & N. Gildersleeve above named, under the head of their contract accounts.

When the sales were all closed the full net proceeds of the sales for the amount I have before stated were credited to W. H. & F. Stevens. I have already stated the allowance on said leather and hides made to W. H. & F. Stevens by said plaintiffs in their accounts.

117	Plaintiffs received at St. Louis the proceeds of	1006 sides.
	At Chicago proceeds of	1558 "
	At Cleveland " "	999 "
	At Cincinnati " "	600 "

The net proceeds of these several lots amounting to \$18,938.25 were credited to the account of W. H. & F. Stevens' contract.

Plaintiffs received from Insurance Companies as follows :

118	From the Ætna for loss by fire in the tannery. Policy having been assigned to plaintiffs,	\$3,000
	From the Clinton Insurance Company one half face of policy,	1,500
	From Roger's Ins Co. half face of policy,	1,500

Washington Ins. Co. half face of policy,	1,500
Excelsior Ins. Co. half face of policy,	1,500
Phœnix Ins. Co. half face of policy.	1,500
Market Ins. Co. half face of policy.	1,000
Williamsburgh Ins. Co. half face of policy,	1,250

The last named 8 policies being for loss and damage by fire on hides and leather in said tannery. All said sums were credited to W. H. & F. Stevens. The present condition of the accounts between the plaintiffs and W. H. & F. Stevens show the latter to be indebted to the former in the sum of \$20,366.81, which I know to be correct.

The plaintiff then read the second deposition of Talma Hill as follows :

136 I can distinguish leather manufactured from slaughtered hides from that manufactured from other hides. The unstamped hides means hides taken from domestic cattle and have never been dried. I can also tell the leather taken from slaughter hides because the grain is softer and thicker, and the trim is different from that made from dry hides.

There was not among the leather identified by me at Cleveland, Chicago or Montreal any leather which had been manufactured from slaughter hides.

136 The plaintiffs then read the second deposition of John A. Leach as follows:

139 Leather manufactured from slaughter hides can easily be distinguished by me from that manufactured from other hides. Can distinguish it by the manner in which it is trimmed and its general appearance. Having been so accustomed for the past six years to handle leather made from slaughter hides and other kinds of hides. I can distinguish it readily from other hides and without any difficulty. There was no slaughter leather whatsoever, among the leather so identified by me—none whatever. I handled almost every side of said leather, and if there had been any amongst it I would have easily distinguished it from the other leather.

The Court gave for the plaintiff the following instructions to the jury.

143 If the jury believe from the evidence that the leather in question was manufactured by W. H. & F. Stevens out of hides forwarded by the plaintiffs to be tanned under the contract of 7th of Aug., 1855, offered in evidence, and that the same was tanned by said W. H. & F. Stevens under

cred. After the time of said conversion all deductions on account of moneys received by plaintiffs after the destruction of the tannery by fire, the property destroyed thereby and also to all deductions to which said defendant with said W. H. Stevens might be entitled upon a statement of the accounts, to set off against the value of said property converted.

3d. The defendant in this case is entitled to recover or set off against the amount of the plaintiffs' claim—all damages or matters of claim to which he would be entitled upon a statement of the accounts between the plaintiffs and defendant F. Stevens and Walter H. Stevens, such as the moneys received on insurance policies, after the fire; the property after that time returned to and received by plaintiffs, the property recovered by plaintiffs; the amount due to W. H. & F. Stevens by plaintiffs, under the tanning contract, as defendant's proportion thereof, and all matters of account arising under the contract, as between the said plaintiffs and the said W. H. & F. Stevens, and that subject to these matters the injury of the plaintiffs is only the value of their interest in the property converted.

4th. Under the contract given in evidence by the plaintiffs there is such a co-partnership in relation to said property embraced in said contract as prevents a recovery by the plaintiffs in this action; and if the jury believe from the evidence that the property sued for in this case is the same property, or any portion thereof, embraced by the provisions of said contract, then as to such property the verdict should be for the defendant.

5th. If the jury believe from the evidence that the defendant converted any part of the leather claimed to have been manufactured under the contract, yet if they believe the leather to have been enhanced in value by the labor and materials of W. H. & F. Stevens, in tanning under the contract, they should make such deduction from the value of the leather as is equal to the cost of the tanning under the contract, and the verdict should only be for the balance remaining.

6th. The jury are only to find as damages the value of the interest of the plaintiffs in the leather, subject to all deductions arising by a fair and equitable adjustment of the accounts existing at the time of the conversion between said plaintiffs, and said defendant, and W. H. Stevens under the

contract given in evidence by the plaintiffs, if the jury shall believe that the leather in controversy was manufactured under that contract.

7th. The jury are only to assess as damages the value of the interest of plaintiffs in the property under the contract, and not the value of the leather; but they should take into consideration the value of the interest also of defendant, F. Stevens, and the interest of W. H. & F. Stevens, making allowances for the manufacture of the leather under said contract and all profits and losses.

149 8th. The defendant is allowed to recoup or set off all matters of account arising out of said contract as between the plaintiffs and W. H. & F. Stevens, and to have just and equitable allowances for whatever would be due W. H. & F. Stevens upon a settlement of the contract or joint account.

9th. The true measure of damages in this case is the value of whatever balance of accounts may have been shown to be due by defendant (if any) to plaintiffs, by taking considerations all the dealings between the defendant and W. H. Stevens and the plaintiffs under the tanning contract given in evidence, with such other charge or damage as the plaintiff may have sustained by reason of conversion.

150 The Court refused to give either of the instructions, and defendant excepted.

150 Verdict for \$33,690 80.

151 Motion for new trial overruled and defendant excepted.

153 Motion for arrest of judgment overruled.

HOYNE, MILLER & LEWIS,
Defendant's Attornies.

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Stevens
v.s.

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Sanutt

Filed May 3^d 1860
L. Veland
Clk.

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Supreme Court

" " " "

Walter Stearns

vs

Frederick Faucett et al.

The contract made between Faucett, Isham & Co and W. H. & F. Stearns set forth on page 2 of Abstract clearly constituted the members of these two firms partners in respect to the leather manufactured under and in pursuance of the terms of the contract.

Faucett, Isham & Co were engaged in the hide and leather business in the City of New York. W. H. & F. Stearns were engaged in the business of tanning hides at Stevensville Sullivan Co. N. Y. By the terms of the contract Faucett, Isham & Co were to furnish to W. H. & F. Stearns what hides the latter might require for the purpose of being tanned in their tannery for a period of three years and they engaged to do nothing else during this period than to manufacture the hides so furnished to them into leather. They furthermore engaged to receive the hides at a dock in New York and to bear the expense of transporting them to their tannery and to return at their own expense the leather when manufactured to a dock in the City of New York. Faucett, Isham & Co engaged to sell the leather and to take the sole risk of all sales

made on credits and it is agreed that ^{all} the profit and loss on all the leather manufactured under the contract shall be equally divided between the two firms.

By the terms of the contract the two firms were embarked in a joint enterprise to wit: the manufacture and sale of leather with a view to share equally between them all the profits and losses which might result therefrom the services contributed by each firm being such as appertain to its particular or peculiar business and employment. -

Fancett Deham & Co were to advance to G. H. & C. Stevens 5 cents per pound on the leather manufactured at the average time of the arrival of each invoice and they were to be allowed in the first settlement of a commission of five per cent for purchasing the hides a commission of 6 per cent for selling the leather and assuming the risk of sales made on credits and they were to be further allowed interest on all sums advanced by them for the purchase of hides tanning charges for cartage on both hides and leather inspection and exchanged, until the sales are due by average and the profits to be divided and the losses born by the parties are to be determined as follows. -

First there is to be set down the gross amount of the sales of the leather.

Second The sums advanced by Fancett Deham &

Co. with interest and Commissions as above stated and the difference (between these amounts being gain or loss) it is to be divided equally (between the two firms). If the gross amount of the sales exceed the advances interest and Commissions then there is a profit to be divided equally between the two firms.

If it falls short then there is a loss which is to be borne equally by the two firms. If the hides or leather are by any casualty lost or injured the firms are to bear the loss equally. If insured this provided that they shall pay equally the expense of the insurance and if destroyed (by fire) they must account to each other for the money received from such insurance.

There is nothing in the shape of a certain compensation secured to either party for the amount to be finally received by either firm or whether either firm shall ultimately receive anything or not is to be determined by the final result of the enterprise. The liability of O. H. & F. Stevens to pay back in the event of a loss all or a portion of the money advanced to them is fixed as certain by the terms of the contract as their right to share the profits if profits shall accrue and there is just as much propriety in saying that the commissions and interest monies which Fancett Osborn & Co are allowed to retain out of the gross amount of sales were intended as a compensation to them for buying the hides and selling the leather and storing and handling

both. as there is no saying that the 5 Cent per pound advanced to O. N. & F. Stevens was intended as a compensation to them for their services in tanning the hides. The two firms are to be equally affected by the event of the enterprise and in respect to the profits and losses which may result from it they stand precisely alike.

The parties it is true have not declared in their contracts that they intended a copartnership nor have they stated that this was not their intention but their agreement contains every element of a copartnership and the court must regard and ~~regard~~^{treat} it as constituting that relation.

Unless the parties supposed that by the terms of the contract O. N. & F. Stevens were interested in the leather when manufactured why is it expressly provided that Fancett Deham & Co shall assume the risk of all sales made on credit? If the leather was regarded as alone the property of Fancett Deham & Co. this provision is entirely meaningless as every man takes the risk ~~and~~ credit upon sales of his own property. But if the leather was regarded as the property of the two firms and the sales of it are made on their joint account then the provision is a proper one and operates as an indemnity to O. N. & F. Stevens against all losses which might arise from the contracting of bad debts in the sale of the property leaving them however to suffer from

losses which might arise from casualities depressions of the market and all other causes-

It may also be asked why it was expressly provided that Fancett & Shum & Co shall procure insurance upon the property and that C. H. & F. Stearns shall share with them the expense of such insurance unless it was supposed by the parties that both firms were interested in the leather and on whatever should be realized from it.

Champion et al vs Postwick 18 Chund 175 was a case when three persons ran a kind of stage coaches from Utica to Rochester the route being divided between them into three sections the occupant of each section furnishing his own carriage and horses hiring drivers and paying the expenses of his own section but the money received as fare of passengers deducting therefrom only tolls paid at turnpike gates was divided among the parties in proportion to the number of miles run by each. Held in an action by a passenger for an injury occasioned by the negligence of the driver of the coach of one of them, that all were liable as partners.

It was urged by B. F. Postle and Roger W. Sherman for plaintiffs in error that there was no joint interest communion or participation in the profits of the business and consequently no

partnership as between the defendants themselves -
Chancellor Walworth at page 181
says "the division of the whole passage & money after
paying out of the fund the expenses of the tolls was
a division of the profits of a joint concern so as to
constitute a partnership between themselves as to that
fund: to entitle either of them to an account: and
to render them liable to third persons as partners as
to everything in which the different owners of that
fund had a joint or common interest"

The Chancellor at page 185 approves of
the distinction between a stipulation for a compensa-
tion proportional to the profits and a stipulation
for an interest in such profits so as to entitle a
party to an account as partner and the ground up-
on which the distinction is based seems to be that
in the first case he would not be entitled to an
account and consequently would have no lien upon
the profits to the exclusion of other creditors in the
other case he would be entitled to an account and
would therefore have a specific lien for his share
of the profits before other creditors and at page
186 he says "when each member of a firm con-
tributed in different and distinct ways towards
carrying on a joint enterprise third parties know-
ing of this arrangement and giving credit to one
member of the firm would have no claim against
the other members of the firm"

In *Parton vs Blanchard* 1 Selden 191 the court says "to constitute persons partners as between themselves there must be an interest in the profits and profits each party must by the agreement in some way share in the losses as well as the profits."

In *Part vs Epton* 54 Eng Com & Rep. 38 Chief Justice Tindall says "Traders become partners between themselves by a mutual participation in profit and loss but as to third persons they are partners if they share the profits of a concern; for he who receives a share of the profits receives a part of that fund upon which the creditors of the concern have a right to rely for payment and as therefore to be liable for losses although he may have expressly stipulated for an exemption from them."

By a memorandum in writing the defendant a general merchant agreed with the plaintiff in consideration of the general services of the latter in business to allow him in addition to a fixed salary one fifth of the net profits in all new business. Held to be a partnership between the parties and that the plaintiff had a right against the defendant to an account and the appointment of a receiver.

Katsch vs Schuck 13. Dur. 668.

In *Tibbatts vs Tibbatts* 6. The Loan 82.

Judge of The Loan says "It is matter of some nice-
ty to draw the line between agency and partner-
ship. a stipulated sum to be paid out of the pro-
fits of the partnership would not constitute tech-
nically an individual a partner although his a-
greement would bring him substantially within
some of the leading principles which constitute a
partnership."

"It is not necessary to constitute a partnership that
each individual should contribute to the capital
equally or indeed that a partner should advance
any portion of the capital. One may agree to con-
tribute his labor in the management of the concern
which is sufficient to make him a partner if he be
a sharer in the profit and loss" "Partnership" says
Toussier "is formed by a contract by which one per-
son or partnership agrees to furnish another person
or partnership to whom it is furnished in his or
~~his~~ ^{her} own name or firm on condition of receiving
a share in the profits in proportion determined by
the contract and of being liable to losses and expenses
to the amount furnished and no more" The contract
in that case, related to the management of a farm
and was held to constitute the parties to it partners
as between themselves.

Lobby vs Partnership 4. Am. Ed. 3. 39. "The result

of these authorities appeared to be that when two persons agreed simply to share the profits of a trade or adventure they will be partners in those profits but if one be the mere agent or servant, ^{of the other} and received his share in lieu of wages then as there is no contract between the parties they are not partners and the distinction seems not to be unascertainable. For if on the one hand it be said that A & B agreed to divide the profits and on the other that A agreed to give B 1/3 the profits as a remuneration for his trouble then these two modes of expression convey very different notions of the rights existing between the parties. In the former case the natural inference is that A & B have equal rights in all that concern the profits though only one may possess the capital. In the other case the inference is that A has the sole control over the entire concern subject to account to B for his share of the profits.

See also *Chap. et al. vs. Brammond* 4. Barn & Ald. 663.
 (6 Eng. Com. L. 645).

"It is clear that in the cases supposed will be insisted with very different rights and privileges."

See also *Chap. et al. vs. Brammond* 4. Barn & Ald. 663.
 (6 Eng. Com. L. 645)

In the case of *Griffith et al. vs. Puffer* 22 Vermont 184. Court says "In order to constitute a partnership between the parties themselves it is necessary

" that they should have a common interest in the profits
" and loss of the business which they are engaged
" It is not essential that each should furnish a share
" of the capital or property which is to become the stock
" or subject matter of the business of the partners. One
" may furnish the capital or stock and another con-
" tribute his labor and skill. And if it be agreed bet-
" ween the parties that one shall furnish on his own ac-
" count a particular kind of stock to be used in the
" business yet if when purchased it becomes the sub-
" ject of labor and skill and in its altered state is to
" be sold for the common benefit it constitutes a part-
" nership business "

see also

Fremont vs Coupland 2 D. R. 170. (9. Eng. Com. L. 531.)

Selby vs Hutchinson 4 R. L. 329.

When one person advances funds to carry on a trade and
another furnishes his personal services for which he
is to receive a portion of the profits there is a part-
nership between them both as regards the partners
themselves and third persons

Dot vs Healey 16. Johnson 33.

There is always a partnership as between the parties
themselves when there is a mutual participation in
the profit and loss.

Shew vs Busby 2 D. R. 116. 117. (29 Eng. Com. L. 459)

Vassar vs Karp 14. Barb. 341.

The case of Denny et al vs Lebat et al Mentely 32.
was an agreement to pay for services rendered a
certain part of the net profits after certain specific
deductions. It was an agreement to share or divide
the profits & losses as in this case,

and at page 91-2 Court says

" But however this may be we think there is no sound
" distinction between an agreement to pay to a party a
" certain share of the gross profits and an agreement
" to pay a certain share of the net profits as explained
" in the present contract: the clear meaning of the terms
" of which is that Lebat Appleton & Co. were to pay
" Cooper one third part of the profits after making
" certain specified deductions therefrom and Cooper
" clearly was not to be liable for any losses.

We do not think a case can be found where a court
has held that parties under an agreement to share
or divide between them the profits and losses of a par-
ticular enterprise or adventure, were not partners.

The interest of a partner is in the entirety of the joint
property and his rights of disposition and control
are co-extensive but the share of a partner owned although
undivided is his distinct property. And consequently
he has the sole power to make or authorize any con-
tract in relation to its disposition or use -

21 Dec or Jan 99.

One partner cannot sue another partner for wrongfully disposing of the partnership property.

Bulkley vs Carlisle 2 California 420.

Leary vs Williams 1 Quest. 667.

Chesvill vs Collins 7 Dand 284.

5 P. Mon 489

4. Cal. 276. - 318

5. Cal 299.

2 E. D. Smith Rep. 190.

The principle is well settled that partners cannot sue each other at law for any matter relating to the partnership concerns unless there has been a final settlement between them a balance ascertained and an express promise to pay the balance.

Chadsey vs Harrison 11 Ill. 156.

Burckward vs Kennedy 3 Scam. 369.

Weston vs Emerton 1 Wend. 532

And the reason why a remedy at law is denied to one partner as against another is on account of the difficulty of adjusting complicated accounts between them.

1 Chittys Pleas. 44.

If the plaintiffs with the defendant and Walter C. Stevens were co-partners and as such interested in the leather manufactured under the contract

given in evidence that the action cannot be maintained and the court erred in overruling the motion made in behalf of defendant (See page 18 of Abstract) to exclude the evidence in behalf of the plaintiff tending ~~to~~ to prove a conversion (by the defendant) of a portion of said leather and in giving the 1st and 2nd instructions in behalf of the plaintiff and in refusing the first instruction asked in behalf of defendant.

The fact that by the terms of the contract, the leather was to be sent to the plaintiffs and they were to sell it does not ~~but~~ give them any additional right of property in the leather.

It is a provision relating entirely to the mode or manner in which the business was to be conducted a violation of this provision by W. H. & F. Stevens or either of them might be a ground for asking the interposition and aid of a court of equity. But it certainly cannot be treated as a tort any more than the breach or violation of a provision in any other contract.

It appears from the evidence that the plaintiffs sent to W. H. & F. Stevens to be manufactured under this contract 18,815 equal when tanned to - 37,630 sides

That a portion of the leather manufactured from these

hides was with the concurrence of W. H. Stearns
but without the knowledge or consent of the
plaintiffs. Fancett Isham & Co sold by Fletcher
Stearns who had the principal charge and man-
agement of the business at Stearnsville. He giving
as a reason for this that he had had difficulty with
Fancett Isham & Co and would not do business with
them or get pay for his leather. That he wished to
sell the same and pay off his debts that he had
taken counsel upon the subject and had been
advised that he could ^{do} so. (See page 15 of Abstract)

The Court held that this amounted to a conver-
sion of plaintiffs property and that the plaintiffs
were entitled to recover the full value of the prop-
erty so converted less such part of it as had been
recovered by them since such conversion with inter-
est in such value from the time of such conversion
by way of damages and refused to instruct the
jury that the true measure of damages was the
value of the plaintiffs interest in the property at
the time of its conversion under this instruction
the jury found a verdict in favor of the plain-
tiffs for \$33,690.80 -

It was proved that the hides cost \$4.37
each (page 11 of Abstract) and that the leather
when manufactured was worth \$4.40 per side (see
page 10 of Abstract) thus making the leather worth
a little more than twice as much as the hides.

one hide makes two sides of leather.

this increased value was of course given to the same material by the labor and skill of the manufacturer. Fancett Isham & Co had not paid one dollar towards the manufacture of the leather which was sold by the defendant. Fletcher Stearns and it is clear that their real and actual interest in it could not be determined except upon a final settlement of the account between the two firms - and it is equally clear that O. H. & F. Stearns would have had a specific lien upon this leather to remunerate them for the labor and skill they had bestowed upon the raw material in giving it its increased value - and this lien would be preferred to the claims of the creditors of Fancett Isham & Co. Had Fancett Isham & Co obtained possession of all the leather manufactured under this contract without advancing anything to O. H. & F. Stearns and had they become insolvent O. H. & F. Stearns could undoubtedly by a proceeding in Chancery have enjoined them from further disposing of the leather and obtained the appointment of a receiver for the portion of it then remaining on hand and should it appear that the proceeds of sale already amounted to more than sufficient to pay whatever Fancett Isham & Co would be entitled to upon a final settlement, then the entire proceeds of the leather in the hands of the receiver would be directed to be paid to O. H. & F. Stearns.

A Statement of the amount of moneys expended and of the amount received by Fausett Deham & Co in this transaction will show the great injustice of this verdict.

The whole cost of the hides to the plaintiffs see page 8 of Abstract - was \$31,627.87

The amount advanced by them to O. H. & F. Stevens including freight insur. & interest (see page 5.67. of Abstract) was 20,005.95
making \$51,633.82

16,496 hides were returned to them by O. H. & F. Stevens in pursuance of the contract (see page 4)

Their value at \$4.40 per side would be \$72,582.40

They afterwards received (see page 11)

4,206 hides @ \$4.40 18,506.40

They received at the tanning of the it was burned 6,268 hides from which they realized over and above the expense of finishing tanning \$22,835.93

They received of insurance money (see page 22)

\$12,750
\$126,671.70
101,633.82

Making a difference against Fausett Deham & Co of \$25,041.01

This statement may not be entirely accurate but it shows conclusively that Fausett Deham & Co have

suffered no damage but have really received much more than they were entitled to under the contract.

If the plaintiffs were entitled to recover, the measure of their damages should have been the value of their interest in the property at the time of its conversion with interest. The general rule of damages is unquestionably the value of the property taken at the time of its conversion but there are exceptions and qualifications of this rule as plain and well established as the rule itself. Whenever the property is returned and received by the plaintiffs the rule does not apply and when the property has been sold and the proceeds been applied to the payment of plaintiffs debt or otherwise to his use the reason of the rule ceases and justice forbids its application. In all such cases the facts may be shown in mitigation of damages. These principles are supported by many adjudications and are founded in equity and practical convenience."

Pierce vs Benjamin 11 Pick. 361.

The amount of the plaintiffs recovery should be limited to such a sum as will completely indemnify them for the injury they have sustained.

Dusen v Houghlee vs Hatcher 3 N. H. 18.

Green vs Fanned 4 Barr. 22. 23.

Chamberlain vs Shaw 18 Pick. 253.

Hogew. Miller Lewis.

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Supreme Court

Fletcher Steward

vs

Frederick Sancetotal

Argument for Appellus.

Filed May 29. 1860
L. Keland
Clk.

Boyer Phillip Lewis

Supreme Court
" " "
Hatched Stevens
vs
Frederick Faucett et al.

The contract made between Faucett Isham & Co and W. H. F. Stevens set forth on page 2 of abstract clearly constituted the members of these two firms partners in respect to the leather manufactured under and in pursuance of the terms of the contract.

Faucett Isham & Co were engaged in the hide and leather business in the City of New York. W. H. F. Stevens were engaged in the business of tanning hides at Stevensville Sullivan Co N. Y. By the terms of the contract Faucett Isham & Co were to furnish W. H. F. Stevens what hides the latter might require for the purpose of being tanned in their tannery for a period of three years and they engaged to do nothing else during this period than to manufacture the hides so furnished to them into leather. They further were engaged to receive the hides at a dock in New York and to bear the expense of transporting them to their tannery and to return at their own expense the leather when manufactured to a dock in the City of New York. Faucett Isham & Co engaged to sell the leather and to take the full cost of all sales made on credit and it is agreed

that all the profit and loss on all the leather manufactured under the contract, shall be equally divided between the two firms.

By the terms of the contract the two firms were embarked in a joint enterprise to wit: the manufacture and sale of leather with a view to share equally between them all the profits and losses which might result therefrom the services contributed by each firm being such as appertained to its particular or peculiar business and employment. -

Fancetto Isham & Co were to advance to J. H. F. Stevens 5 cents per pound on the leather manufactured at the average time of the arrival of each invoice and they were to be allowed in the first settlement a commission of five per cent for purchasing the hides a commission of 6 per cent for selling the leather and assuming the risk of sales made on credit and they were to be further allowed interest on all sums advanced by them for the purchase of hides tanning charges for cartage on both hides and leather inspection and exchange, until the sales are due by average and the profits to be divided and the losses born by the parties are to be determined as follows.

First there is to be set down the gross amount of the sale of the leather.

Second The sums advanced by Fancetto, Isham & Co with interest and commissions as above stated and the difference between these amounts being gain or loss

as to be divided equally between the two firms. If the gross amount of the sales exceed the advanced interest and commissions then there is a profit to be divided equally between the two firms. If it falls short then there is a loss which is to be born equally by the two firms. If either the hides or leather are by any casualty lost or injured the firms are to bear the loss equally. If insured this provided that they shall pay equally the expense of the insurance and if destroyed by fire they must account to each other for the money received from such insurance.

There is nothing in the shape of a certain compensation secured to either party for the amount to be finally received by either firm or whether either firm shall ultimately receive anything or not is to be determined by the final result of the enterprise. The liability of H. H. & F. Stevens to pay back in the event of a loss all or a portion of the money advanced to them is fixed as certain by the terms of the contract as their right to share the profits if profits shall accrue and their just as much propriety in saying that the commission and interest money which Fancett, Johnson & Co are allowed to take out of the gross amount of sales were intended as a compensation to them for buying the hides and selling the leather and string and handling both, as there is in saying that the 5 cents per pound advanced to H. H. & F. Stevens was intended as a compensation to them for their services in tanning the hides. The two firms are to be

Equally affected by the events of the enterprise and in respect
to the profits and losses which may result from it they
stand precisely alike.

The parties did not have not declared in their
contract that they intended a partnership, nor have they
stated that this was not their intention but their agree-
ment contains every element of a ^{Co.} partnership and the Court
must regard and ~~take~~ ^{treat} it as constituting that relation.

Unless the parties supposed that by the terms
of the contract W. H. & F. Stevens were interested in the leather
when manufactured why is it expressly provided that
Fancett Osburn & Co shall assume the risk of all sales
made on credit? If the leather was regarded as alone
the property of Fancett Osburn & Co this provision is entirely
meaningless as every man takes the risk of credit upon
sales of his own property. But if the leather was regarded
as the property of the two firms and the sales of it as
made on their joint account then the provision is a proper
one and operates as an indemnity to W. H. & F. Stevens against
all losses which might arise from the contracting of bad
debts in the sale of the property leaving them however to
suffer from losses which might arise from casual or
depressions of the market and all other causes.

It may ^{also} be asked why it is expressly provided
that Fancett Osburn & Co shall procure insurance upon
the property and that W. H. & F. Stevens shall share with
them the expense of such insurance unless it was sup-
posed by the parties that both firms were interested in

the leather and it whatever should be realized from it.

Chapman et al vs Postwick 18 Mees 170, was a case where three persons ran a line of stage-coaches from Utton to Rochester the route being divided between them into three sections the occupant of each section furnishing his own carriages and horses hiring drivers and paying the expenses of his own section but the money received as fare of passengers deducting therefrom only tolls paid at turnpike gates was divided among the parties in proportion to the number of miles run by each. Held in an action by a passenger for an injury occasioned by the negligence of the driver of the coach of one of them that all were liable as partners.

It was urged by B. F. Butler and Roger W. Sherman for plaintiffs in error that there was no joint interest communion or participation in the profits of the business and consequently no partnership as between the defendants themselves.

Chancellor Walworth at page 181 says "the division of the whole passage money after paying out of that fund the expenses of the tolls was a division of the profits of a joint concern so as to constitute a partnership between themselves as to that fund: to entitle either of them to an account: and to render them liable to third persons or partners as to everything in which the different owners of that fund had a joint or common interest."

The Chancellor at page 185 approves of the distinction between a stipulation for a compensation proportional to the profits and a stipulation for an interest in such profits so as to entitle ^{aparty} to an account as partners and the ground upon which the distinction is based seems to be that in the first case he would not be entitled to an account and consequently would have no lien upon the profits to the exclusion of other creditors in the other case he would be entitled to an account and would therefore have a specific lien for his share of the profits before other creditors and at page 186 he says "when each member of a firm contributes in different and distinct ways toward carrying on a joint enterprise third parties knowing of this arrangement and giving credit to one member of the firm cannot have no claim against the other members of the firm"

In *Pattison vs Blanchard* 1 Seldw 191. the court says
"to constitute persons partners as between themselves
"there must be an interest in the profits as profits
"each party must by the agreement in some way
"share in the losses as well as the profits"

In *Pott vs Epton* 54 Eng. Com. L. Rep. 38. Chief Justice Tindall says "Traders become partners between themselves by a mutual participation in profits & losses
"but as to third persons they are parties if they share
"the profits of a concern: for he who receives a share

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of the profits received a part of that fund upon which
the creditors of the concern have a right to rely for pay-
ment and is therefore to be liable for losses although
he may have expressly stipulated for an exemption
from them

By a memorandum in writing the defendant a gen-
eral merchant agreed with the plaintiff in considera-
tion of the general services of the latter in business to
allow him in addition to a fixed salary one fifth
of the net profits of all new business. Held to be a
partnership between the parties and that the plaintiff
had a right against the defendant to an account
and the appointment of a receiver

Katsch vs Schenck 13. Jan 668.

In Tibbatts vs Tibbatts 6 McLean 82.

Judge McLean says "It is a matter of sound
policy to draw the line between agency and part-
nership. a stipulated sum to be paid out of the profits
of the partnership would not constitute technically
an individual a partner although his agreement would
bring him substantially within some of the leading
principles which constitute a partnership"

"It is not necessary to constitute a partnership that
each individual should contribute to the capital equal
or indeed that a partner should advance any por-
tion of the capital (He may agree to contribute his

" labor in the management of the concern which is
" sufficient to make him a partner if he be a sharer
" in the profit and loss" - "Partnership" says Fournier
" is formed by a contract by which one person or partne-
" ship agrees to furnish another person or partnership to
" whom it is furnished in his or ~~her~~ ^{her} own name or firm
" on condition of receiving a share in the profits in
" proportion determined by the contract and of being
" liable to losses and expenses to the amount furnished
" & no more" The contract in that case related to the
" management of a farm and was held to constitute
" the parties to it partners as between themselves.

" Solycit on Partnership 4 And Ed 539 " The result
" of these authorities appear to be that when two persons
" agree simply to share the profits of a trade or ad-
" venture they will be partners in their profits (but if
" one be the mere agent or servant of the other and
" receive his share in lieu of wages then as there is no
" mutuality between the parties they are not partners) and
" the distinction seems not to be unreasonable. For
" if on the one hand it be said that A & B. agree
" to divide the profits and on the other hand that
" A. agrees to give B. $\frac{1}{2}$ the profits as a remuneration
" for his trouble these two modes of expression convey
" very different notions of the rights existing between
" the parties. In the former case the natural inference
" is that A & B. have equal rights in all that con-

"-ceded the profits though only one party possessed the
" capital. In the other case the inference is that A
" had the sole control over the entire the concerned subject
" to account to B. for his share of the profits"

See also *Cheapchal vs Bramond* 4 Barn & Ald 663
(6 Eng. Com. 645)

"It is clear that in the case supposed will be invested
with very different rights and privileges"

See also *Cheapchal vs Bramond* 4 Barn & Ald 663
(6 Eng. Com. 645)

In the case of *Griffiths and vs Puffin* 22
Vermond 184. Court says "I would constitute a
" partnership between the parties themselves it is clear
" say that they should have a common interest in the
" profits and loss of the business in which they are en-
" gaged. It is not essential that each should furnish
" a share of the capital or property which is to be-
" come the stock or subject matter of the business of
" the partners. One may furnish the capital or stock
" and another contribute his labor and skill. And if it
" be agreed between the parties that one shall furnish
" on his own account a particular kind of stock
" to be used in the business yet if when purchased it
" becomes the subject of labor and skill and in its
" altered state is to be sold for the common benefit it
" constitutes a partnership business"
see also.

Tremont vs Compland 2 Bing 170. (9 Eng Com L 531)
Selby vs Hutchinson 4 Gill 359.

"When one person advances funds to carry on a trade
" and another furnishes his personal services for which he
" is to receive a portion of the profits there is a partne-
" ship between them (both as regards the partners them-
" selves and third persons)"

Robt vs Henley 16 Johnson 33.

There is always a partnership as between the parties
themselves when there is a mutual participation in
the profit and loss.

Green vs Baily 2 Bing 107 (29 Eng Com L 439)
Wassal vs Camp 14 Barb. 341.

The case of Denny et al vs Lubet et al 12 Pick 82,
was an agreement to pay for services rendered a
certain part of the net profits after certain specific
deductions. It was not an agreement to share ~~and~~^{or}
divide the profits and losses as in this case.

And at page 91-2 Court says:

"But however this may be we think there is no
" sound distinction between an agreement to pay to
" a party a certain share of the gross profits and
" and an agreement to pay a certain share of the
" net profits as explained in the present con-
" tract the clear meaning of the terms of which is

"that Robert Appleton & Co were to pay Cooper one
 "third part of the profits after making certain spec-
 "ified deductions therefrom and Cooper clearly was
 "not ^{to be} liable for any loss"

One do not think a case can be found where a
 court has held that parties under an agreement
 to share or divide between them the profits and losses
 of a particular enterprise or adventure were not
 partners.

The interest of a partner is in the entirety of the joint
 property and his rights of disposition and control
 are co-extensive but the share of a partner (even al-
 though undivided) is his distinct property and
 consequently he has the sole power to make or au-
 thorize any contract in relation to its disposition or
 use. —

2 Duv on Ind 99.

One partner cannot sue another partner for wrongfully
 disposing of the partnership property.

Bulkeley v Cartwright 2, Cantabrigia 420.

Cary v Williams 1 Duv. 667.

Chitwood v Collins 8 B. Mon. 489.

4. Cond. 276. — 318.

J. Cal. 299.

2. Ex. Smith's Rep. 199.

The principle is well settled that partners can not sue each other at law for any matter relating to the partnership concerns unless there has been a final settlement between them a balance ascertained and an express promise to pay the balance.-

Chadley vs. Garrison 11. Ills. 156.

Burden vs. Kennedy 3. Scam. 569.

Westcott vs. Erierson 1. Wend. 532.

And the reason why a remedy at law is denied to one partner as against another is on account of the difficulty of adjusting complicated accounts between them.

1. Chittys Pleas. 44.

Of the plaintiff with the defendant and Chalters & Co. Stevens were copartners and as such interested in the leather manufactured under the contract given in evidence then this action cannot be maintained and the Court erred in overruling the motion made in behalf of defendant (See page 18 of Abstract) to exclude the evidence in behalf of the plaintiff tending to prove a concession by the defendant of a portion of said leather and in giving the 1st & 2nd instructions in behalf of the plaintiff and in refusing the first instruction asked in behalf of defendant.-

The fact that by the terms of the contract the leather was to be sent to the plaintiff and they were to

sell it does not give them any additional right of property in the leather. It is a provision relating entirely to the mode or manner in which the business was to be conducted a violation of this provision by W. H. and F. Stevens or either of them might be a ground for asking the interposition and aid of a court of equity - but it certainly cannot be treated as a tort any more than the breach or violation of a provision in any other contract -

It appears from the evidence that the plaintiffs sent to W. H. & F. Stevens to be manufactured under this contract 18,815 equal when tanned to 37,630 hides

That a portion of the leather manufactured from these hides was with the concurrence of W. H. Stevens (but without the knowledge or consent of the plaintiffs) Francisco D. Shaw & Co sold by Fletcher Stevens who had the principal charge and management of the business at Stevensville. He giving as a reason for this that he had had difficulty with Francisco D. Shaw & Co and would not do business with them or get pay for his leather. That he wished to sell the same and pay off his debts that he had taken counsel upon the subject and had been advised that he could do so. (See page 15 of Abstract)

The court held that this amounted to a conversion of plaintiffs property, and that the plaintiffs

One hide makes two sides of leather.

were entitled to recover the full value of the property so converted less such part of it as had been recovered by them since such conversion with interest in such value from the time of such conversion by way of damages and refused to instruct the jury that the true measure of damages was the value of the plaintiffs interest in the property at the time of its conversion. and in this instruction the jury found a verdict in favor of the plaintiffs for \$3,690.80 -.

It was proved that the hides cost \$4.35 each (page 11 of Abstract) and that the leather when manufactured was worth \$4.40 per side (see page 10 of Abstract) thus making the leather worth a little more than twice as much as the hides, * the increased value was of course given to the raw material by the labor and skill of the manufacturer. Fancett Isham & Co had not paid one dollar towards the manufacture of the leather which was sold by the defendant Fletcher Stevens and it is clear that their real and actual interest in it could not be determined except upon a final settlement of the account between the two firms - and it is equally clear that W. H. & F. Stevens would have had a specific lien upon this leather, to remunerate them for the labor and skill they had bestowed on the raw material in giving it its increased value and this lien would be preferred to the claims of other creditors of Fancett Isham & Co. Had Fancett Isham & Co obtained possession of all the leather manufactured under this

contract without advancing anything to W. H. & F. Stevens and had they become insolvent, W. H. & F. Stevens could undoubtedly by a proceeding in Chancery have enjoined them from further disposing of the leather and have obtained the appointment of a receiver for the portion of it then remaining on hand and should it appear that the proceeds of sales already amounted to more than sufficient to pay whatever Faucett, Isham & Co would be entitled to upon a final settlement then the entire ^{proceeds} of the leather in the hands of the receiver would be directed to be paid to W. H. & F. Stevens.

A Statement of the amount of money expended and of the amount received by Faucett, Isham & Co in this transaction will show the great injustice of this verdict.

The whole cost of the hides to the Plaintiffs see page 8 of Abstract was -	\$81,627.87
The amount advanced by them to W. H. & F. Stevens including freight insurance interest see page 567 of Abstract was -	20,005.95
	in all \$101,633.82
16,496 hides were returned to them by W. H. & F. Stevens in pursuance of the contract (see page 4.)	
Their value at \$1.40 per side would be	\$23,294.40
They afterwards received (see page 11)	
4,206 hides - \$1.40	\$5,888.40
They received at the tannery after it	

was burned 6268 hides from which
they realized over and above the
expense of finishing tanning & (see
page 22.) \$22,835.93

They received of insurance monies 12,750.
\$126,674.73
197,633.52
\$25,041.01

Making a difference against Fancett Dehau, of \$25,041.01

This Statement may not be entirely accurate but it shows conclusively that Fancett Dehau & Co have suffered no damage but have really received much more than they were entitled to under the contract.

If the plaintiffs were entitled to recover the measure of their damages should have been the value of their interest in the property at the time of the conversion with interest. "The general rule of damages is unquestionably the value of the property taken at the time of the conversion but there are exceptions and qualifications of this rule as plain and well established as the rule itself. Whenever the property is returned and received by the plaintiffs the rule does not apply and when the property had been sold and the proceeds been applied to the payment of plaintiffs debt or otherwise to his use the reason of the rule ceased and justice forbids its application. In all such cases the facts may be shown in mitigation of damages. These principles are supported by many authorities and are founded on equity and practical convenience."

Pierce vs Benjamin 14 Pick 361.

The amount of the plaintiff's recovery should be limited to such a sum as will completely indemnify them for the injury they have sustained.

Dutton Champ. Co. vs. Stratton 3, Metcalf 15.

Green vs. Fanner 4 Bow 22, 23

Chamberlain vs. Shaw - 18 Pick. 283. —

Thomas Miller & Lewis.

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Supreme Court

Fletcher Stoughton

vs

Fredrick Stuart

Argument for Appellus

Held May 29. 1860

L. Keland

Clk.

Wm. Phillips Lewis

United States of America
State of Illinois Cook County, Ill.

Pleas before the
Honorable the Judges of the Superior Court of
Chicago within and for the County of Cook
and State of Illinois at a regular term of said
Superior Court of Chicago, begun and holden
at the Court House in the City of Chicago in said
County and State, on the first ^{morning} day being the sixth
day of February in the year of our Lord eighteen hun-
dred and sixty, and of the Independence of the United
States of America the eighty fourth.

Present the Hon. John M. Wilson Chief Justice
of the Superior Court of Chicago,
Van N. Higgins Clerk of said Court,
Charles Haven Preventing Attorney
John Gray Sheriff of Cook County.

Adversely

Walter Kimball Clerk.

It is remembered, that hereofore to wit, on
the 19th day of October in the year of our Lord one
thousand eight hundred and fifty seven, Frederick
Faucett, Samuel Shum and Thomas Faucett by
their attorneys filed in the office of the Clerk of said
County Court of Common Pleas, then certain Writs

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ative, in the words & figures following, to wit:

State of Illinois County of Cook ss.

In the Cook County Court of Common Pleas,
of the November Term A. D. 1837.

Frederick Fancett, Samuel Dehann,
and Thomas Fancett, Parties doing business under
the firm name and style of Fancett, Dehann & Co.
Plaintiffs in this Suit, by George McAllister, Bennett &
Peapody, their attorneys, complain of Walter H. Stevens
and Fletcher Stevens, Defendants in this Suit, who
have been summoned &c. of a Plea of Trespass on the
Case.

For that whereas the said Plaintiffs heretofore
to wit: on the tenth day of January in the year
of our Lord one thousand eight hundred and
fifty seven, at to wit: the County aforesaid, were
lawfully possessed as of their own property of cer-
tain Goods and Chattels to wit: Nine skins and
sides of Hemlock tanned Sole Leather, of great
value, to wit: of the value of Twenty Thousand Dollars
lawful money of the United States of America.

And being so possessed, the said Plaintiffs afterwards
to wit: on the day and year above mentioned, at
to wit: the County aforesaid, casually lost the said
Goods and Chattels out of his possession; and the
same afterwards, to wit: on the day and year afo-

at to wit, the County aforesaid
said, Come to the possession of the said Defendants
by finding. Yet the said Defendants well knowing
the said Goods and Chattels to be the property of the
said Plaintiffs and of right to belong and apper-
tain to them, but contriving and fraudulently
intending, craftily and subtly to deceive and defraud
the said Plaintiff in this behalf, have not as yet
delivered the said Goods and Chattels, or any portion
of them, or any part thereof, to the said Plaintiff,
although often requested so to do, and have hitherto
wholly refused to do so; and afterwards, to wit:
on the day and year last aforesaid, at Term
the County aforesaid, converted and disposed of
the said Goods and Chattels to their own use.

To the damage of the said Plaintiff of Forty
Thousand Dollars, and therefore they bring this
Suit &c.

Scatu McAllister, Dewitt & Beardsley
Attys for Plffs

And afterwards, to wit, on the 22d day of December
in the year aforesaid, said day being one of the days
of the November Regular Vacation Term of said
Court, the following among other proceedings
were had and entered of Record in this Court,
to wit:

4
Frederick Fancett
Samuel Shaw and Thomas Fancett

vs
Walter H. Stevens and Fletcher Stevens
Trespall on Case

And now at this day comes the
said Plaintiffs by Seaton, McMillin & Sweet & Bentley
their attorneys and on their motion it is ordered that
a writ of Habeas Corpus be issued as to Defendant Walter
H. Stevens herein.

And afterwards to wit, on the 7th day of October
in the year of our Lord one thousand eight hundred
and fifty eight. Fletcher Stevens by his attorneys
files in the office of said Court his certain plea
in the words & figures following, to wit:

Cook County Court of Common Pleas
of the November Term 1858

Fletcher Stevens
impeached with
Walter H. Stevens
and
Frederick Fancett
Samuel Shaw
Thomas Fancett
Dover

And the said Defendant, the said Fletcher
Stevens, by Wm. Walter & Lewis his attorneys
comes and defends the wrong and injury aforesaid,
and says that he, together with the said Walter
& Lewis is not guilty of the said supposed
Grossness above laid to his charge or any
or either of them or any part thereof, in manner
and form as the said plaintiffs have above
thereof complained against him.

And of this by the said Defendant Fletcher
Stevens puts himself upon the Country &c.

Wm. Walter & Lewis
Attys for Defendant
Fletcher Stevens

And afterwards, to wit on the 20th day of
February in the year of our Lord, one thousand and
eight hundred and sixty, said day being one
of the days of the February Regular Term of the
Superior Court, ^{of the State} the following among other proceedings
were had and entered of Record in this Court to wit:

6
Fremick Fancett

Samuel Asham & Thomas Fancett

vs
Trespasors Case

Fletcher Steam

This day came said Plaintiffs
by Scates McWhitery Sweet their Attorneys and
said Defendant Fletcher Steam by Henry Miller
& Lewis his Attorneys all came and after
being joined with said it is ordered that a Jury
come, whereupon comes the Jury of good and
lawful men, to wit. Alexander Pimrose, Carter
Lamb, E. O'Malley, Jacob Larrick, John Coghlan
Luther Quirk, Anthony Pickett, John Hentley, W.
Wackler, Calvin Hill, P. Masony & John Owen-
port, who being duly elected tried and sworn
to try the issue joined on plea of said Defendant
after hearing proof testimony and view of ad-
judgment having arrived it is ordered upon
agreement of parties that Jury separate until
to-morrow morning.

And afterwards to wit on the 21st day of the
month of June last aforesaid, said day being
one of the days of the February Term of
said Court the following among other pro-
cessings were had & entered of Record in the
Court to wit:

Fredrick Fancett
Samuel Deham & Thomas Fancett
vs
Fletcher Stevens

And now again come
the parties to this cause by their respective attor-
neys as aforesaid and the Jury having con-
sidered their verdict on Tuesday, for the trial
of this cause also came and after hearing the
testimony and some of adjournment
having arrived upon agreement it is ordered
being separate until tomorrow morning.

And afterwards to wit: on the 2nd day of
the month of June aforesaid, said day being one of
the days of the February Term of said Court,
the following among other proceedings were had
and entered of Record in this Court, to wit:

Fredrick Fancett
Samuel Deham & Thomas Fancett
vs
Fletcher Stevens

And now again come the
parties to this cause by their attorneys as aforesaid

said, and the Jury empannelled herein, for the trial of the issues joined with Hetcher: Stevens also comes and after hearing further testimony and leave of adjournment having arrived upon agreement it is ordered jury separate until tomorrow morning.

And afterwards to wit: on the 23^d day of the month of June aforesaid, said day being one of the days of the February Term of said Court the following among other proceedings were had and entered of Record in this Court to wit:

Frederick Sancett
 Samuel Deham & Thomas Sancett
 vs
 Trespass on Case
 Hetcher Stevens

And now again comes the parties to this cause as aforesaid and the jury empannelled herein for the trial of this cause on issues joined with Hetcher Stevens also come and after hearing further testimony and leave of adjournment having arrived upon agreement it is ordered that jury separate until tomorrow morning.

And afterwards to wit, on the 24th day of
the month of June aforesaid, said day being one
of the days of the February Term of said Court.
The following among other proceedings were
had and entered of Record in this Court to wit:

Frederick Fowcett

Samuel Scham & Thomas Fowcett

vs
Fletcher Stevens

Trespass on Case.

And now again come the parties
to this cause as aforesaid, and the Jury em-
pannelled herein for the trial of this cause on
June joined with said Fletcher Stevens, and
come, and testimony being all submitted argu-
ments of Counsel and the instructions of the
Court, the Jury retire to consider of their ver-
dict. And afterwards come into Court and
submit their verdict and say, That the Jury find
defendant Fletcher Stevens guilty and apes
damages at Thirty three thousand six hun-
dred and ninety dollars, and eighty cents.
And thereupon said defendant, Fletcher
Stevens submits his motion herein for a new
trial in this cause.

changes in the behalf appended, and that they
were executed therefor.

And afterwards, to wit, on the day and year last
aforesaid, Fletcher Stevens by his Attorneys filed
in the office of the Clerk of said Court, his certain Bill
of Exceptions in the words of figures following, to wit:

Superior Court of
Chicago
Frederick H. Fancett
Samuel DePaul
Thomas Fancett
vs
Fletcher Stevens

It is remembered that on this
the 20th day of February A. D. 1860, said Cause came
on to be tried and a jury having been duly empaneled
and sworn, the plaintiffs to make out their case and
in evidence the following deposition of Fred Com-
mings:

Answer to the first Interrogatory, My name is Fred
Comings. I am aged 30 years, and Cook & Ferguson

General Clerk of the plaintiffs - and reside in the City of New York.

Answer to the Second Interrogatory. I am acquainted with the parties Plaintiffs and Defendant in the title of this Interrogatory named. I have known Plaintiffs since 1853. and Defendant since August 1855.

Answer to the Third Interrogatory. The plaintiffs are engaged in the Hides & Leather business, and to my knowledge have been so engaged since 1853. they are connected in business as partners. have been so connected ever since I knew them. their place of business is 70 Gold Street New York City - their firms name is Fancett, Deham & Co.

Answer to the Fourth Interrogatory. The plaintiffs were engaged in the Hides and leather business between the months of August 1855. and November 1856. their place of business during that time was at 70 Gold Street New York City. I was connected with them as their general Clerk and Post Office.

Answer to Fifth Interrogatory. I am acquainted with Pratte H. Stevens and the Defendant Fletcher Stevens, and was acquainted with both of them in August 1857. they were engaged in the Tanning of Hides, and was connected in business as partners. their firms name was P. H. & F. Stevens. and they

carried on business at Stevensville Sullivan County
New York.

Answer to Sixth Interrogatory. I as of my own know-
ledge know about an agreement made by the said plain-
tiffs and the said Stevens. in relation to the tanning
of hides. it was made August 7th 1838. it was in writing.
it was executed in my presence - I annexed it to my
deposition taken under a commission issued in a
certain action pending in the Court of Common Pleas
of the State of Illinois, in which
Frederick Faunt and others are plaintiffs and
William Osborn and others are defendants. I was
the subscribing witness to the execution thereof said
agreement was executed in duplicate. I have already
answered as to the one taken by plaintiffs, it is the
same one. I annexed to my said deposition, and
was delivered to me by the plaintiffs. I have a copy
of it. I know it to be an exact copy, and copied it
from, and compared it with the original, and
I attach such copy to this my deposition, and
it is marked "Exhibit A".

I Give the plaintiff and in evidence the following a-
greement in connection with said evidence

It is this day agreed between Faunt & Shaw & Co. of
the City of New York and W. C. F. Stevens of
Stevensville Sullivan County New York. that

Exhibit A. A copy
of Commission

said Fancett & Shaw & Co shall send to said W. H. & F. Stevens what hides they may require for the purpose of being tanned & manufactured into sole leather in their tannery at said Stevens mill for three years from this date. The number of hides is not to be less than fifteen thousand each year nor more than six thousand each year unless both parties in writing hereinafter agreed to increase or lessen the amount.

W. H. & F. Stevens during the said three years are not to take hides for any other party. W. H. & F. Stevens agree to receive the hides at a dock in the City of New York to pay all expenses of transportation to their tannery to tan and manufacture them into sole leather in a good and workmanlike manner to make leather of a quality and of a gain in weight equal to that made by all first class tanners and to return the leather so tanned to said Fancett & Shaw & Co at a dock in the City of New York clear of all expenses of transportation.

For all which services Fancett & Shaw & Co. agree to pay said W. H. & F. Stevens, Six (6) cents per pound for each pound of leather so tanned and returned which shall be due at the average time of the receipts of each invoice. It is further agreed that the profit or loss on all the leather manufactured under this contract shall be equally divided between both parties which shall be determined as follows. After said Fancett & Shaw & Co. shall have sold the leather manufactured from each invoice

of hides they shall deduct from the Gross amount
of such sales, the cost of the hides with five per cent
and there, the amount paid or payable for
tanning, all costs & charges of tanning, Centage on
both Hides & leather inspection, & charges and interest
on all these amounts till the sales are due by
awards: also six per cent on the gross amount
of the sales, and the balance or difference being gain
or loss, shall be equally divided between said Fancett
& Co. and said W. H. & F. Stevens. Fancett
& Co. are to take the sole risk of all sales made
on credit.

W. H. & F. Stevens agree to return the leather
from each invoice of hides within eight months from
the time they leave the City of New York provided
that each invoice shall not exceed One thousand
Hides, in such case, they agree, to return them in a
fair proportionate time & provided further that in
case hides are sent faster than they can be worked
in allowance shall be made in proportion.

Fancett, Deham & Co. shall procure what insurances
against fire they may think necessary on half of
the cost of which shall be paid by W. H. & F. Stevens.
New York August 7. 1855

Witness

Signed

W. H. & F. Stevens

J. Cumming

Signed

Fancett Deham & Co.

The Defendant by his Counsel thereupon objected to the reading of the remaining part of the deposition of said witness, and the reading of the other and remaining depositions of the plaintiffs' witnesses taken in said Cause, and to any evidence being given to the jury for the purpose of showing a conversation of parties ^{of parties manufacturing and buying agreement by Walter H. and Elchus Stevens.} by the Defendant Elchus Stevens, on the ground that it appeared from the evidence already given to the Jury that the plaintiffs and the said Walter H. and Elchus Stevens were interested as copartners in such leather and as copartners had a community of interest therein. But the Court overruled said objection and allowed the remaining portion of the deposition of said witness, together with the deposition of the other witnesses taken out the part of the plaintiffs in said Cause, to be read, to which decision of the Court, in overruling said objection and allowing the remaining portion of said deposition and the deposition of such other witnesses to be heard, the Defendant by his Counsel has and there accepted.

And thereupon the plaintiff by his Counsel read to the jury the remaining portion of the deposition of said witness which is as follows.

Answer to the Seventh Interrogatory. I do swear that said plaintiffs furnished Hides to the said Stevens to be manufactured into Leather in pursuance of said agreement, between the day of the state thereof.

and the month of September 1856. They furnished
18,815 Sides as follows.

August 13 th 1855	—	1051 Sides
September 13 th "	—	938 "
October 3 rd "	—	787 "
October 13 th "	—	2000 "
November 5 th "	—	1000 "
November 13 th "	—	600 "
November 28 th "	—	1405 "
December 18 th "	—	375 "
December 31 st "	—	2000 "
January 15 th 1856	—	2152 "
January 22 nd "	—	2000 "
March 18 th "	—	517 "
March 22 nd "	—	911 "
April 23 rd "	—	1000 "
May 22 nd "	—	430 "
June 10 th "	—	1375 "

Total. 18,815 Sides

a portion only of the Sides so furnished by the said
plaintiffs to the said Stores was returned to the plain-
tiffs by the said Stores in accordance with said
agreement, manufactured into leather then was
to returned 16,496 Sides of leather, equal to 8248
Sides, and now to returned as follows.

April 15 th 1856	—	569 Sides
April 17 th "	—	531 "
April 22 nd "	—	2441 "

April	25	"	"	538	"
May	1	"	"	1362	"
May	8	"	"	245	"
May	15	"	"	188	"
June	2	"	"	894	"
June	11	"	"	664	"
June	18	"	"	614	"
June	25	"	"	252	"
July	2	"	"	293	"
July	5	"	"	523	"
July	11	"	"	211	"
July	17	"	"	277	"
August	23	"	"	704	"
August	29	"	"	663	"
September	2	"	"	749	"
September	9	"	"	852	"
September	11	"	"	431	"
September	17	"	"	612	"
September	22	"	"	332	"
October	9	"	"	861	"
October	16	"	"	335	"
October	17	"	"	884	"
October	22	"	"	369	"
October	29	"	"	1157	"
November	2	"	"	311	"
November	7	"	"	314	"
November	12	"	"	309	"
November	18	"	"	824	"
December	5	"	"	111	"
			Total	16,496	6

On the 16th day of September 1836 there remained unaccounted for 1/2 Hides delivered to said Stevens by said plaintiff 18. 52 1/2 Hides - I have already answered that there was Leather sent by said Stevens to said plaintiff after September 1836. The said Stevens manufactured Hemlock Sole Leather & Hide is usually tanned in two parts, and each part is called a side, the value of the Leather per side, in the months of September October and November in the year 1836. was about \$4⁰⁰ per side.

Answer to the Eighth Interrogatory -

There were payments on account of said agreement made, to my knowledge, by the said plaintiff to the said Stevens, between the date of said agreement and the 16th day of September 1836. a particular account of such payments, and what they were made. I am prepared and am to this my deposition, and it is marked "Exhibit B" All the Sides and cups named mentioned in said "Exhibit B" have been paid by said Plaintiff. The payments so made were invariably in advance for work done or done by said Stevens under said agreement, and which Leathers have not yet been returned to Plaintiff.

Answer to the Sixth Interrogatory. "Exhibit C" which I have annexed contains a full statement of the account between said plaintiff and said Stevens

as it stood on the 16th day of September 1836.

J. Cumming.

Answer to Tenth Interrogatory. I have been acquainted with Walter H. Stevens and the defendant Fletcher Stevens since the month of August 1833. and also including that month, they were then engaged in the business of Tanning Hides, they were then connected together in business as Partners, their firm name was W. H. & F. Stevens, and they did business at Stevensville, Sullivan County, and State of New York.

J. Cumming

Answer to the Tenth Interrogatory - I am not interested in the business of the plaintiffs at all - I am not interested in the result of this suit, I am not interested in the property spoken of in this examination, I am to receive no proportion of the profits, nor any proportion as compensation in said employment, nor was I to receive any, nor am I to receive any.

Answer to the Tenth Interrogatory - I am the general clerk and Bookkeeper of the plaintiffs, and have been since 1833, and by means of knowledge as to the number of hides

furnished to Defendant and how many were returned
manufactured into Leather, to Plaintiff, and how
many derived from the Books of Plaintiff, where
the number of Hides received were entered by the plain-
tiff's receiving Clerk and by comparing the num-
ber of Hides which I know to have been sold with
the entries made by the receiving Clerk in the plain-
tiff's Books. And I know the number of Hides was
corresponded with the number of Hides entered as
received, and I am accustomed to pay the freight
Bills, and I always ascertain that the Leather has
been received before I pay the freight Bills: as to the
number of Hides furnished to Defendant, my former
affidavit and now also derived from the
Books of the Plaintiff. And I have seen some of
the Hides delivered to the Cartman to be delivered
to the transportation Company, and I have also seen
all of the Receipts for said Leather signed by the trans-
portation Company. I also know the Plaintiff bought
the said Hides and they could not have disposed of
them in any other way without my knowing of it.
I have already in answer to my former direct inter-
rogatory, stated the different times that Hides were
delivered to Defendant, the exact number might
not in all cases have been fully delivered on the day
named, as the delivery of a lot would not sometimes
be completed in one day, but it was always on or
about the time I have named - The Hides were always

delivered at a dock in New York. I did not myself see the delivery of all the Hides.

Answer to Third Cross Interrogatory -

The value of the Hides was \$81,627⁰⁰/₁₀₀ and that was their cost to the plaintiffs -

Answer to Fourth Cross Interrogatory.

I do not know what was the difference in value between the Hides in Raw and manufactured state, and their manufactured state - The agreement will show what per cent the Defendant was to receive on the profits, but he was not to receive a per cent of the Sales. The amount of such sales from the date of said Agreement and the month of September 1836. was \$35,097⁰⁰/₁₀₀ - I know of no Agreement made by the plaintiffs to make advances of money from time to time to said Defendant in order to enable him and his Copartners in the Firmery to keep up their establishment. The advances were made from time to time as they applied for them, and they were not discontinued until they ceased to return the Leather. I have stated all I know of said advances and their discontinuance to said Defendant.

Answer to Fifth Cross Interrogatory -

Said advances were made to the Defendant from the Books of the plaintiffs, and drawing

most of the notes, charging them, and taking receipts
from the Defendant for the most of them. The
drafts drawn by H. C. or J. Stevens out to the plaintiffs
were mostly entered by me out the Books of Plaintiffs
and I also saw all the notes and acceptances after
they had been paid by plaintiffs. These advances
were made on account of work done to leather.
I have already answered as to their discontinuance.

Answer to the Sixth Cross Interrogatory.

I do not know of said Defendant being refused
advances of money by said Plaintiffs nor do I
know of Defendant being owing an account
of sales made, nor the amount due him, nor his
being refused - there never was anything due him -
I don't know how otherwise he was refused such
account of sales, nor why.

Answer to the Seventh Cross Interrogatory.

I know of my own knowledge that such sum
of money, note or acceptance set forth in the account
hereto annexed marked "Exhibit D" was paid
to the said Stevens, except the item August 9 1836.
their check on Union Bank \$102.75 dated May
17 1836. and interest to Geo. Sears the times
of payment are contained in said account, they
were all paid in New York City except the said item
of August 9 1836. I don't of my own knowledge know

when it was paid. My means of knowledge are that with the exception of the said item of August 9th 1856. I paid or can pay all the items charged as such. I drew all the Notes & delivered them & cash or charged in the account June 3rd 1856. I know the former acceptance on all the Drafts of said Stevens on said Plaintiffs (without the plaintiffs signature) except two, charged in the account August 28. 1856. On September 8. 1856. and I know of my own knowledge that all said notes and Drafts were paid at maturity by Plaintiffs to said Stevens on their order.

Answer to Eighth Cross Interrogatory.

I got the statement of the account I annex to my Deposition from the Books of the Plaintiffs, that account was kept by double entry. Myself saw the items charged or set down in the books are in the handwriting of one of the Plaintiffs, or that of John W. Luch, their receiving Clerk or myself. The most of them were in my handwriting this applies to the Cash Book, the account in the Ledger is exclusively in my handwriting the items were not communicated to me by any one. I drew of the items notes and entered them. I refer to three entered by me I have answered by whom they were set down in the Books of the Plaintiffs.

Answer to Smith Craft Interrogatory -
There was a Journal, Cash Book and Ledger
The Ledger and Journal were kept by me. The
Cash Book by Thomas Fancutt one of the Plaintiffs
this Account is taken from the Cash Book and Ledger.
I have looked at the several Items as Charges origi-
nally and as first set down in the Cash Book of said
Plaintiffs - These Items were first set down in the
Cash Book of said Plaintiffs in the hand writing
of either one of the Plaintiffs, said John A. Duch or
myself. All the entries on the Debit side of the account
are in my hand writing except the following - the
entry of June 3^d 1856. August 25th 1856. and Sep-
tember 8th 1856. they are in the hand writing of Thomas
Fancutt one of the Plaintiffs - and also except a
portion of the original entries which go to make
up the Item Charges in the account without
date which reads as follows "to leather for
Leather to Sept 16/56 averaged due June 27 \$296.11"
which was in the hand writing of said John A. Duch.
As to the Credit side of the account, the leather
never having been wholly returned, the account
could not be written up, and therefore the Item
"Hanning 79.37 1/2 @ 5 due Aug 11/56. \$396.72"
was never entered upon any of the Books of Plain-
tiffs. All the other Items on the Credit side of the
Account are in the hand writing of Thomas Fancutt
one of the Plaintiffs.

All the items of Interest charged both on debit and credit sides of the Account were now of them entered in the Books. but were placed on this account by me. I know of my own pen on all these - hence the items charged to the Stevens Defendant are correct.

Answer to the Sixth Copy Interrogatory.

The accounts and Plaintiffs Books were kept in the name of Dr. H & J. Stevens for all notes, drafts and cash paid, and all the bills for Farming and all the Notes sent them to Jan in and said agreement were charged to an account called on the Books of the Plaintiffs "H. H & J. Stevens Contract account"

Answer to the Eleventh Copy Interrogatory.

I have examined the Books of the Plaintiffs and have stated which of the entries were made in the hands writing of some of the Plaintiffs - The number and names of Books kept by Plaintiffs in their business are as follows. Four or Five Books in which the weight of each side of leather is entered as soon as it comes in the store. One Account Sales Book. One Day Book. One Journal. One Ledger. One Book in which the Balances of Cash are made up by Cash Book, one Note Book, One Bill Book. One Receipt Book, One Debit account Book, One Letter Book, One Farming Register - One Trial Balance Book - Shipping Receipt Book. Five Check Books.

Four Blank Pass Books. One Borrowed and
Lent Account Book - One Card Book, One
Note Ledger - One Account Current Book, One
Reference Book, One Insurance Book, One Tanning
Calculating Book. One Register of Tanners, One
Book containing a card of Correspondents.
That is all I think of.

Answer to Fifth Cross Interrogatory.

It was not the business of the Plaintiffs to buy
Hides, to be manufactured and then sell them on
Commission for the manufacturer. They making
advances of money in the purchase of Hides and
selling for a profit after deducting a Commission
to be paid the manufacturer - Such transactions
have not been of frequent occurrence, or occas-
ional occurrence - I never knew it to occur in
Plaintiffs business.

Answer to the Tenth Cross Interrogatory.

There is no name of any firm on Plaintiffs Books
for whom the Hides in question were purchased to
be manufactured into leather. They were delivered in
the name of James & Son of Gt St J. Street
They were delivered by Custom and Lightmen to
the Transportation Company. I have already an-
swered as to my means of knowledge - The Hides
were charged on the Books of the Plaintiffs to

"W. H. & F. Stevens Contract Account" The heading on Fancett Books (if you mean by that Fancett & Scham & Co's Books) is "W. H. & F. Stevens Contract account" Hetchu Stevens was not alone charged but the firm of which he was a member was named in the heading "W. H. & F. Stevens Contract Account."

Spens Commission

Exhibit B.

W. H. & F. Stevens
 In ac^t with Fancett Scham & Co.
 Interest to Sept 16 1856

Date	Items	Amount	Balance
1855			
Nov 17	100 lbs. and Cedar leather 1 year 2000 th for	2000 th	20
	add interest from Nov 17, 55 to Sept 16, 56. 303 th 27 th		1 42 th
27	sent by mail our note Dec 5 at 4 mo	2000	2000
1856	add interest from Dec 5, 56 to Sept 16, 56	161 th 87 th	41 76
Jan 24	sent by mail our note Feb 5 at 4 mo	2000	2000
	add interest from Jan 24, 56 to Sept 16, 56	101 th 27 th	57 52
Feb 12	paid on India & tea in their tannery for		30
	add interest from Feb 12, 56 to Sept 16, 56	216 th 27 th	1 24
27	our note March 5 at 4 mo	2000	2000
	add interest from July 9, 56 to Sept 16, 56	70 th 27 th	40 27
Mar 29	our note April 5 at 4 mo	2000	2000
			1500
			5969 28

(Over)

Date	Items	When due		Amount
1856	To Am't Paid Over			9697 28
	add interest from Aug 2/56 to Sept 16/56	Sept 16/56	27 days	11 22
Apr 3	" p ^r Sherman on coming 1 year for 5000	Apr 13 "		125
	add interest from Apr 13/56 to Sept 16/56	Sept 16/56	166 days	3 99
7	" " on India leather 1 year for 3000	Apr 7/56		30
	add interest from Apr 7/56 to Sept 16/56	Sept 16/56	162 days	98
26	" On note May 5 at 4% interest by mail	Sept 8 "		1500
	add interest from Sept 8/56 to Sept 16/56	Sept 16/56	8 days	2 34
June 3	" " June 5 at 4% int	Oct 8,	2500	
	deduct interest from Sept 16/56 to Oct 8/56	Oct 8/56	11 58	2489 45
26	" p ^r to Prom't Sherman bill Bank Miller Castro June 26 "	June 26 "		98
	add interest from June 26/56 to Sept 16/56	Sept 16/56	82 days	1 46
July 1	" On note July 5 at 4% int sent by mail	Nov 8 "	5000	
	deduct interest from Sept 16/56 to Nov 8/56	Nov 8/56	30 30	2969 70
Aug 9	" p ^r this check on Union Bank to Get Jan dated Aug 9 "	Aug 9 "		102 20
	add interest from Aug 9/56 to Sept 16/56	Sept 16/56		74
20	" Draft Aug 14 at 60 days date	Oct 14 "	700	
	deduct int from Sept 16/56 to Oct 16	Oct 16	2 52	697 98
28	" " Aug 21 at 60 days date	Oct 23,	500	
	deduct int from Sept 16/56 to Oct 23/56	Oct 23/56	37 55	462 45
Sept 1	" Draft Aug 30 at 60 days date	Nov 1/56	500	
	deduct int from Sept 16/56 to Nov 1/56	Nov 1/56	2 41	497 57
9	" Draft Sept 5 at 60 days date	Nov 7 "	1000	
	deduct int from Sept 16/56 to Nov 7/56	Nov 7/56	9 98	990 02
	" Cash p ^r for our leather to Sept 16/56 by draft June 27			296 11
	add interest from June 27/56 to Sept 16/56	Sept 16/56		4 07
				<u>20005 99</u>

Credit

By Drawing 35484 lbs cost inv# 1 due April 25/56 less as per agreement \$1125 47/100	448.51		
add. int from April 25/56 to Sept 16	12.41	461.21	
" " 29900 lbs cost inv# 2 due April 29/56	1495.02		
add. int from April 29 to Sept 16	41.14	1535.76	
" profit on above invoices as per agreement due April 23/56	304.88		
deduct int from Sept 16 to Oct 31	2.80	302.08	
" Drawing 27621 lbs cost inv# 4 due July 11/56	1391.05		
add. int from July 11 to Sept 16	15.	1399.05	
" profit on above invoice due Aug 29/57	90.39		
deduct int from Sept 16/56 to Jan 29/57	24.	88.70	
" Drawing 79394 lbs cost due Aug 11/56	3969.72		
add. int from Aug 11 to Sept 16	27.39	4007.11	7883.31
and S. I. & Co. on Sept 16/56			\$ 12,122.68

C. J.

New York

Fancett, Strawn & Co.
per C. (Drawing)

The Plaintiff by his Counsel then asked read
to the Jury the deposition of Salma Hill which
was follows.

Answer to First Interrogatory. Salma Hill,
aged 45. Tanner by occupation and am at present
engaged in cutting Hides and Leather, reside in New-
York.

Answer to Second Interrogatory.
I know the parties plaintiff and defend ant in
the title of the said Interrogatory named. I have
known the Wm Faneck for over twenty years
I have known Mr Deham for over ten years, and
I have known Mitchel Stevens the defend ant
since the first part of August 1835.

Answer to Third Interrogatory.
I am a Tanner by trade, and I have been con-
nected with the tanning business since I was six-
teen years of age, have worked in Tanneries, in
various capacities, running liquors, working in
the yard, and within the last fifteen years I have
occasionally had supervision of various Tanneries
I am at present engaged in cutting Hides and Leather
and have been for over twenty five years. I
occasionally leave to superintend Tanneries,
but keep my carts going in New York all the
time. I am accustomed to the handling and

inspection of leather. I have already stated for how long. Have been employed by Quackenbush Wyncrop & Co. William P. Micor, Henry Gange, Wright & Knapp, the Plaintiffs and various leather dealers in the City of New York. I have been and am in the employment of the plaintiffs. said employment commenced & I have been employed by the plaintiffs since October 1835. The business of Plaintiffs in that time has been dealing in Hides and leather. I was in the employment of the plaintiffs between the month of August 1835 and November 1836. They commenced to employ me exclusively in October 1835, but I had been frequently employed by them before that time. In the capacity of Carman also calling Hides, shipping Hides and attending to Tanneries.

Answers to Fourth Interrogatory. The said defendant Fletcher Stevens was engaged in the Tanning business, and was connected in business with Walter H. Stevens between August 1835 and November 1836. The name of the firm with which he was connected was W. H. Stevens, their place of business was at Stevensville Sullivan County, New York.

Answers to Fifth Interrogatory. I do not know of the Plaintiffs furnishing Hides to W. H. Stevens.

J. Stevens, to be tanned at their Tannery, at
Stevensville, Sullivan County New York, between
the months of August 1835 and November 1836.
I know by Carting them, Shipping them, and
taking receipts of them. I do not know the number
of the Hides furnished by said plaintiffs to the
said Stevens within the time mentioned - They
were sent by the Merchants and Farmers Ltd on
the Delaware and Hudson Canal, and when
the Canal was closed they were sent by the
New York and Erie Rail Road Company.

Answer to the Sixth Interrogatory. I understand
Sole Leather was the kind manufactured by
said Stevens. I have been accustomed to seeing
and handling Leather manufactured by them.
I am very familiar with the quality and ap-
pearance of the Leather manufactured by them.
And I was and am so familiar with it as to be
able to distinguish it from Leather manufactured
by other Farmers, out of the same quality of
Hides. They were accustomed to mark and stamp
the Hides tanned by them, in such a way as to
distinguish them from others. One of the marks
they placed on their Hides, was an arrow which
placed on each side consisting of numbers from
1 to 7. This was done before the Hides were tan-
ned, and the process of tanning would not obliterate

at three marks. There was also a stamp placed upon each side after it was tanned, which consisted of the words "Stevensville".

Answer to Seventh Interrogatory. I do not of my own knowledge know what number or proportion of the Hides sent by the Plaintiffs to the said Stevens were returned to the Plaintiffs manufactured into Leathers. I did see some so returned, what I saw so returned came by the said Merchants and Farmers Line. Sometime in 1836. I can't remember the precise date or date. I could tell by referring to my account Book. But I have not that with me. They were numbered with the Invoice mark I have spoken of and marked with the Stamp "Stevensville". It is Customary for Hides and Sole Leather Tanners to stamp Leathers manufactured by them. The said Stevens were accustomed to stamp the Leather manufactured by them "Stevensville" and to place on them the Invoice Marks as I have before mentioned.

Answer to Eighth Interrogatory. The means of Conveyance employed in the transportation of Hides from the said Plaintiffs to the said Stevens, and of Leathers from the said Stevens to the Plaintiffs were by the said Merchants and

the Hides, and coloring of the Leather. And by the
 kind of Hides from which it was made. I recognized
 the same Service Marks on it as I had seen at
 the Tanning of the said Stevens. And at the Store
 of the Plaintiffs on Leather received from the said
 Stevens - there was no stamp of the Tannery or
 Tanning on the Leather Draw. Such as is usually
 placed on Leather by Tanners, after it was tanned.
 except on one side which drew in the Store of
 Root & Carol in Chicago. Illinois in one of
 the lots of Leather I before spoke of. In
 Cleveland the Leather was all in the Store of
 J. H. Crittenden & Co. In Chicago drew it
 in the Store of Osborn Adams & Co. About
 800 sides in the Store House of Beck & Co. and
 about 800 sides in the Store House of Root &
 Carol. In Montreal the Leather was all
 in the Store of Hugh Thompson & Son.
 I do not know of any other knowledge who took
 the Leather to the place or places draw it. I was
 sent to these various places by the Plaintiffs.
 for the purpose of identifying this Leather, the
 said Plaintiffs having ascertained that said
 Leather was a portion of the Leather manufac-
 tured by the said Stevens out of Hides sent
 them by said Plaintiffs and I identified the
 Leather as I before stated.

11
Answer to Sixth Interrogatory.

In answer to the Sixth Interrogatory the witness says. I do not.

Salmon Hill.

And being cross examined said witness testified as follows. which was also read to the Jury.

Answer to the First Corp Interrogatory.

I have already answered that I do not know the number of Hides sent to defendant to be tanned but I have a particular knowledge of 3280 of said Hides which I shipped to said Stevens myself. I have not with me here any original Tally or Memorandum of the amount, character or quality of these Hides. I never saw them exhibited at the Dammery of the said defendant.

Answer to the Second Corp Interrogatory.

I do not know where the Hides I said were purchased, nor at what price per Hide, nor what was the Cash Cost of the whole number.

Answer to the Third Corp Interrogatory.

In answer to the Third Corp Interrogatory, this witness says I have no knowledge of the matters

and things therein enquired about.

Answer to the Fourth Crap Interrogatory.

I alone had the Supervision of Cutting all the Leather received by plaintiffs from said Stevens, or from any other person since October 1835. As to the matters and things enquired about in the residue of said Fourth Crap Interrogatory said witness says I know nothing.

Answer to the Fifth Crap Interrogatory.

In answer to the Fifth Crap Interrogatory said witness says I do not know.

Answer to the Sixth Crap Interrogatory.

I know of the arrival of the last lot of leather because the Cutting of said Plaintiffs is all made under my Supervision, and no leather could be delivered to the Plaintiffs without my knowing it.

Answer to the Seventh Crap Interrogatory.

In answer to the Seventh Crap Interrogatory witness says I know nothing of the matters and things enquired about in said Crap Interrogatory.

Answer to the Eighth Crap Interrogatory.

The only Book & Book is a Leather Book I keep in my cash house that I can

for. I keep a separate one for the Plaintiffs
I had Contingent Books then with three other
persons besides the Plaintiffs. I do not under-
stand what is meant by "Leather either to be
manufactured or manufactured."

Answer to the Sixth Direct Interrogatory.
I have already stated in answer to my
Sixth Direct Interrogatory how I can tell
from the length the mark or identity of the
particular Hide from which it was manufac-
tured. And I would also state that I am ac-
quainted with the particular skins of Hides
which come from different places so that I
can easily recognize after the Hide is tanned where
it originally came from. before the tanning.
This rule does not always apply to Hides grown
in different States in the United States for they
are not so readily recognized as to the particular
part of the United States. But I can as a ge-
neral Rule and with very few exceptions recog-
nize a foreign Hide after it has been tanned.
The Stamp or mark on the Leather I have
already answered about. There were several
Arabic numbers, as I have already stated.
The marks which I have described were not
such as were put on after the Leather was man-
ufactured except the one side which I have

before stated was stamped "Stevensville" that stamp was put on after the Leather was manufactured. Without the stamp I can't identify the Hide from which it was manufactured, or at least the Country from which the Hide came, with the exceptions above stated. But I can't tell one Hide from another that came from the same Country, for they would be never if tanned in the same tannery. I can't state the particular Animal from which a Hide was taken but I can't tell whether a Hide was one that has been taken from a Horse, or an Ox or an Ass, or a Hog.

Answer to the Tenth Corp Interrogatory.
 In Cleveland I identified the Leather map of without its being pointed out. In Chicago the Plaintiff Frederick Francis and a Mr Clinton pointed out some of the leather. I don't remember who pointed out the rest. In Montreal I went into the store of Hugh Thompson & identified the leather without its being pointed out to me. I saw no one convey it to those places, except in Cleveland. I recognized some of the leather on the cart going to Cuthbertson's Store.

Answer to the Eleventh Corp Interrogatory. Saw Hibbard in answer to the Eleventh Corp Interrogatory, with J. do not
 Salmon Hill.

The Plaintiffs by their Counsel thereupon read to the Jury the deposition of John A. Leach, which is as follows.

Answer to First Interrogatory. My name is John A. Leach. I am nineteen years of age, and am Clerk for Faneutt Deham & Co. New York City. And I reside at Brooklyn, Kings County New York.

Answer to Second Interrogatory. I know the parties, both Plaintiffs and Defendant in the Title of these Interrogatories named. I have known Plaintiff since March 1853. and I have known Defendant since the first part of August 1855.

Answer to the Third Interrogatory. I am not, nor was I have been a practical Tanner, or in any manner connected with or concerned in the manufacture of leather. I am at present employed as Clerk by Plaintiff. I have been so employed since March 1853. I am accustomed to the handling and inspection of leather, since March 1853. and with Plaintiff as Clerk. My employment by Plaintiff commenced in March 1853. and since that time they have been engaged in the business of Dealers in Hides and Leather - I was in the employment of the Plaintiff between the months of August 1855. and November 1856, as Clerk

Answer to the Fourth Interrogatory. The defendant
 Alschu Stevens was engaged in the Tanning business
 and was connected in business with Walter H. Stevens
 between the months of August 1835 and November 1836.
 the name of the firm was "W. H. & J. Stevens." its place
 of business was Stevensville, Sullivan and County, New York.

Answer to Fifth Interrogatory. I do know of the
 plaintiffs furnishing Hides to "W. H. & J. Stevens"
 to be tanned at their Tanning at Stevensville
 Sullivan and County New York. between the months
 of August 1835 and November 1836. I know
 by my familiarity with plaintiffs Books being
 their general receiving and delivering Clerk, and
 I also superintended the weighing and saw the
 delivery into to the Carman or Lighter of the
 most of said Hides. I also wrote the Blank Receipts
 for them and delivered same to the Carman or
 Lighterman, and I saw the same receipts afterwards
 returned signed by the Transportation Company.
 The number of Hides furnished by the Plaintiffs
 to said Stevens within the time mentioned was
 18,815. They were sent to the said Stevens by
 Plaintiffs by the Merchants and Farmers Line
 via the Delaware and Hudson Canal, or by
 the New York and Erie Rail Road.

Answer to the Sixth Interrogatory. The kind of

Leather manufactured by the said Stevens was
Hemlock Sole Leather. I have been accustomed
to seeing and handling the Leather manufac-
tured by them. I am and was familiar with
the quality and appearance of the Leather man-
ufactured by them. I am and was so familiar
with it as to be able to distinguish it from leather
manufactured by other Tanners, out of the same
quality of Hides. They were accustomed to mark
and stamp the Hides tanned by them in such
a way as to distinguish them from others. They
used a stamp which they were accustomed to
place on leather tanned by them it consisted of
the word 'Stevensville'. They also placed on
Hides tanned by them an Service mark which
consisted of figures from II to 7 inclusive.
The same would not be obliterated by the process of
tanning. For I saw it on the Leather after it was
tanned.

Answer to the Seventh Interrogatory. Of the
Hides to my knowledge sent by the Plaintiff
to the said Stevens 16,496 Hides equal to 8,248
Hides were by the said Stevens returned to the
Plaintiff's manufacturer into Leather. I did
see some so returned. They were returned with
very few exceptions by the merchants and Tan-
ners living on the Delaware and Mason found the
Hides were as follows.

April	15	1856	569	Lines
"	17	"	531	"
"	22	"	441	"
"	25	"	525	"
May	1	"	1362	"
May	8	"	245	"
"	15	"	158	"
June	2	"	394	"
"	11	"	667	"
"	18	"	614	"
"	25	"	252	"
July	2	"	273	"
July	5	"	543	"
July	11	1856	288	Lines
"	17	"	277	"
August	23	"	704	"
"	29	"	663	"
September	2	"	749	"
"	8	"	854	"
"	11	"	430	"
"	17	"	612	"
"	22	"	332	"
October	29	"	881	"
"	16	"	335	"
"	17	"	334	"
"	22	"	369	"
"	29	"	1157	"
November	3	"	811	"

"	7	"	314	"
"	12	"	309	"
"	18	"	864	"
December 5		"	111	"

11496 Sidegates to 8243 sides
 They were marked with the Invoiced Mark I have mentioned and stamped "Stevensville" It is customary for Henslock Sole Leather Manufacturers to stamp Leather manufactured by them. The said Stevens were accustomed to stamp the Leather manufactured by them. I have already answered what was the Stamp and marks used by them.

Answer to the Eighth Interrogatory. The means of conveyance employed in the transportation of Hides by the Plaintiffs to said Stevens and of Leather from said Stevens to the Plaintiffs, was principally by Canal by the Merchants and Farmers Line from and to Westboro Sullivan County. When the Canal was closed by the New York and Erie Rail Road Company. The date of the arrival of the last lot of Leather sent by said Stevens to Plaintiffs was December 5th 1836. The number of sides of Leather which at that time were due to said Plaintiffs from said Stevens was 21,134 sides. And their value was about \$40⁰⁰ per side. Hides are usually tanned in two parts and each part is called a

sides - The average value of the Hides furnished by the plaintiffs to the said Stevens when manufactured into Leathers in the Months of September, October and November 1836 respectively was from \$4 to \$4⁵⁰ a side.

Answer to Smith Interrogatory. I did afterwards see some of the Leather manufactured from the Hides sent from the Plaintiffs to the said Stevens which were not returned to said Plaintiffs by said Stevens. I saw some of it in Cleveland on the 5th of December 1836. there was 99 sides of it I then saw. I saw part of it on a Cart part of it in a forwarding Store on the 10th part of it in Crittenden's Store, and afterwards the whole of it in Crittenden's Store - on December 11th 1836. I saw a lot in the Warehouse of Peck & Co in Chicago, Illinois. a lot of about 800 of said sides. the same day I saw in the Store of Osborn Adams & Co. in said Chicago. a lot of about 400 sides. the same day I saw in the Store of Bond & Deval in said Chicago 799 sides. In St. Louis Missouri in the Store of John Dean on the 17th day of said December I saw about 1000 of said sides, and on the 26th of said December I saw at Illinois Town on the opposite side of the Mississippi from St. Louis. a lot of about 1000 sides. I afterwards

saw the same Lot Counted in the Store of said
John Hunt. it was 1006 sides. I recognized
the Leather by its general appearance, its
color and style of tanning. and I found
upon it the Invoice Marks same as what
had been put on the Leather returned to us
by Stevens manufactured out of Hides sent
them by Plaintiff. and I also knew that it
was made from the same kind of Hides as had
been sent by Plaintiff to said Stevens. the
Numbers I saw on the Leather all corresponded
to the numbers which Stevens had told
Plaintiff would be put on the Hides. I have
already Certified as to the Store I saw the Leather
in - I have named the quantity and places as
nearly as I can recollect - I do not know how
and by whom it was conveyed to the place or
places where I saw it, except as I have already
stated. I saw some of it on a Cart in Cleveland
going to Cruttenber's Store. The Plaintiff sent
me to Cleveland for the purpose of identifying
Leather which they supposed to be their Leather
manufactured by said Stevens. I first went to the
Store of Cruttenber & Co. and was there informed
that there was about 1000 sides of Leather in a
Warehouse on the West. and told me to go look
at it, and while on my way there I saw some
Leather on a Cart. which I missed entirely recog-

nized as leather belonging to Fancett. I then
 returned by said Stevens. I then went to the
 Store named and identified about 800 sides
 as leather belonging to the Plaintiff tanned
 by said Stevens. I then returned to said Cit-
 tizens Store where I saw 998 sides which
 I also recognized as the same leather, this was
 now left with Mr. Crutchen by Mr. Fancett
 Fancett one of the Plaintiffs. To go on to Chicago
 where Mr. Fancett had gone to identify some
 more leather. When I got there I saw Mr. Fan-
 cett and he told me to go to the place named
 named. I went there and identified the leather
 there. I have testified to. I, in company with
 Palma Hill, who was one of Plaintiff's Car-
 man, went into several stores for the purpose of
 looking for the leather. Among the others we
 went into the Store of Osborn Adams &
 and after entering I immediately recognized
 a lot of about 400 sides of leather, which
 was in the Store, as leather belonging to the Plam-
 tiffs, and manufactured by the said Stevens.
 Afterwards when we were overhauling the leather
 in the Store of Ross & Co. we found
 one side with the Stamp "Stevens made" on it, and
 it was the same stamp as I had seen on the
 leather sent by said Stevens to Plaintiff.
 Mr. Fancett told me to follow him to St. Louis.

when he had gone and accordingly went.
I first went to the Store of Peter Hoad and
identified as I have before stated about 1000
sides of leather, afterwards I identified 1006
sides on the other side of the River at Minnie's Store.

Answer to First Interrogatory. In answer
to the Sixth Interrogatory. The Witness says.

I do not.

John A. Litch.

And being Cross examined said Witness
testified as follows. which was also read to
the Jury.

Answer to the first Cross Interrogatory.

I have already answered as to how and what
particular knowledge I possess of the number
of Hides sent to Defendant to be tanned. I
have an original memorandum Book of
the amount, Character and quality of the most
of these Hides. I never did see them delivered
at the Tannery of the Defendant.

Answer to the second Cross Interrogatory.

The Hides I saw were purchased in the City of
New York, at about 74⁰⁰ per side and the

Cash cost to Plaintiffs was \$11.62 7/8 For.

Answer to Third Cross Interrogatory.
The Plaintiffs bought the Hides for themselves to be sent to said Stevens to be tanned, and we were purchasing Hides for ourselves to be tanned, and also to be sold without being tanned. the number of Tanners employed by Plaintiffs varies, but I think at the time spoken of they employed five or six.

Answer to Fourth Cross Interrogatory.
I was absent about two weeks in August 1856. And excepting that time I received all the Leathers manufactured, between the months of August 1855. and November 1856. and received by Plaintiffs, I know by the Books that during my absence the Leathers was received by Spurr Cumming - Spurr Cumming and G. H. Vanderpool and Plaintiffs two Porters were employed in same business, but with the exception of the two weeks of my absence it might not and did not become at any time the business of any one except myself to receive and keep an account of Leathers received or manufactured for or by Plaintiffs. Plaintiff did not manufacture Leathers themselves.

Answer to the Fifth Cross Interrogatory.
It was not usual for Plaintiffs to purchase Hides on Commission to be tanned into leather and then be returned to be sold on a Commission for the manufacturer or Tanner.

Answer to Sixth Cross Interrogatory.
I know that the arrival & export of at the last arrival of leather from Stevens to Plaintiffs was such, because after that time the Stevens did not return any leather to Plaintiffs. There might not leather have arrived without my knowledge after the time mentioned.

Answer to the Seventh Cross Interrogatory.
It was no further account between Plaintiffs and Defendants as to the State of their accounts than to keep an account of the Leather received from, and Hides sent to said Stevens. I know the terms on which they dealt. I have both seen and read their agreement. The Plaintiffs was not to receive a Commission they was to receive all the sales for they was to sell the Leather, the Defendants was to receive five cents per pound for each pound of Leather tanned by them for Plaintiffs and one half the profit if

any was made after deducting from the gross sales the cost of hides to plaintiffs, with five per cent added there to gether with all charges for Cartage, Inspection &c. and six per cent on the gross amount of the sales, and the amount payable or paid to Stevens by Plaintiffs for financing. I do not know the amount of money and upon what terms advanced by Plaintiffs to said Stevens. I do not know that the refusal of Plaintiffs to advance money or to furnish an account sales had occasioned a misunderstanding in their dealing. I never knew there was a refusal of Plaintiffs to advance money or furnish an account sales. never knew of any misunderstanding in their dealing. I know that all the leather which have stated came from the Stevens to Plaintiffs, ^{namely 16,496 sides - trans page copy by the plaintiffs} I sold for Plaintiffs of leather manufactured or tanned by said Stevens 10000 sides which the plaintiffs had taken possession of at St. Louis. I also know that about 14000 sides were sold by or for the Plaintiffs which they had upleined at Chicago. I also know that about 10000 sides were also sold by Plaintiffs which they had upleined at Cleveland, Ohio. I also know that Plaintiffs sold or received the proceeds of about 6000 sides of such leather which they had seized in Cincinnati, Ohio.

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Answer to the Eighth Cross Interrogatory.
If you mean the Books of the Plaintiffs, and
I keep no others. I kept and keep the Books
in which I keep and enter the weight of each
side of Leather received by plaintiffs. I
transfer their weights with the number of sides
to the Sales Book - and I enter in the Sales Book
on the opposite side from the receipts the sales
of Leather which I copy from the day Book
If you mean how many other persons I was
then keeping accounts with of Leather sent
and received by the Plaintiffs, I answer
that the Plaintiff received Leather from a
great many persons, and I have not seen
the Books before me to be able to tell the num-
ber, there were five or six Tanners that Plain-
tiffs were regularly receiving Leather from.
The others were more or less transient, the
Leather we received was all manufactured
Leather

Answer to Ninth Cross Interrogatory.
I have already answered in answer to my
Ninth Direct Interrogatory how I could tell
from the Leather which had been sent
Defendant as Hides in a raw and unman-
ufactured state, the mark or identity of the
particular Hind from which it was manu-
factured. The Stamp "Steven's old" was put

Recognized the Leather in Cleveland without
its being pointed out to me. In Chicago Mr
Frederick Gault pointed out one lot to
me. The other lots in Chicago I recognized
without any one pointing them out to me.
The Leather which I first saw in the Store
of John Hew at St. Louis was pointed out
to me by some person in Mr Hew's Store, on
my asking for it. The Lot at Illinois Town
I recognized without its being pointed out to
me. I saw no one convey the Leather to the
places I first recognized it.

Answer to Eleventh Crap Interrogatory.
In Answer to the Eleventh Crap Interrogatory,
the Witness says. I do not.

John A. Galt.

The Plaintiff by their Counsel then upon
read to the jury the deposition of Richard
H. Broadhead which is as follows.

Answer to the First Interrogatory.
My name is Richard H. Broadhead

my age is forty eight I am forever and by
 occupation - I reside at Ellenville Ulster
 County State of New York, & during the Season
 of Navigation I reside in the City of New York.

Answer to the Second Interrogatory.

I know President Faunce & the
 other two plaintiffs by sight. I know the
 defendant Fletcher Stevens usually
 called "Doc" I have known plaintiffs
 for past two or three years. I defend out for
 four or five years.

Answer to the Third Interrogatory.

I was during the year 1856 one of the
 owners of a line of Canal Boats running
 in the Delaware & Hudson Canal between
 Hurstboro & the City of New York. Joseph
 H. Tutbill was interested with me in said line
 of Boats. the name of the firm was Tutbill &
 Proakend, there were no opposition lines in
 Boats between these places during that year,
 or any boats besides these. I was interested in
 running between Hurstboro & New York during
 that year. the kind of freight my boats mostly
 carried between these places was Hides from
 New York & Leather to New York, we also car-
 ried some general merchandise & some lumber

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In Florence was the agent of the firm
at Puerto Boro.

Answer to the Fourth Interrogatory.

I was acquainted with the Defendant Fletcher
Stevens during the years 1855 & 1856. He was a Tan-
ner during said years & carried on his business at
said Stevens ville Sullivan County New York. He
had a partner his name was W. H. Stevens, &
the firm's name was W. H. & F. Stevens, their
place of business was said Stevens ville. Stevens
ville is about twenty miles from Puerto Boro.

Answer to the Fifth Interrogatory.

Our Boats were engaged in carrying Hides and
Leather to and from Puerto Boro for the tannery
of said Stevens. All the Hides taken on board our
Boats for said Stevens during & after the month
of August 1855 were sent by Fancett, Deham & Co.
The Leather manufactured by Stevens was taken
on board our Boats at Puerto Boro, the leather
was carried to the City of New York & delivered to
Fancett, Deham & Co. from the opening of naviga-
tion in the year 1856. up to the month of September
in that year.

Answer to the Sixth Interrogatory.

The Defendant did during the period named

make application to me for a Boat to take leather to pens or places other than the City of New York. He wished to engage the Boat & hands by the day & to be under his direction, to go wherever pleased to Albany or farther West. He wished it not to be known that he was shipping - not to be known to any person - He wished particularly that it should not be known in the "Swamp" by "Swamp" is meant the place where the whole Sale hides & leather dealers are located in New York City. The application of Defendant was made to me at my place of business in the City of New York at the foot of Ventry Street where our Boats come in. I agreed to let him have a boat in pursuance of his, said Stevens request and referred him to my Agent at Hutzboro.

Answer to the Seventh Interrogatory.

A boat was furnished by my firm to said Defendant according to his request, the name of the boat was the "William C. Rose" the master name was Edwin J. Bailey, it was hired by the day for one or more trips, as the Defendant wanted her. It made three trips for the Defendant, the Boat went from Hutzboro to Albany & on further West, the Captain had the management of the Boat, but she was controlled by Fletcher Stevens, and a man that he put in charge of

Mr. Fletcher Stevens furnished the freight which consisted wholly of leather from Dutch boats. in one of his trips he brought back some lumber. Fletcher Stevens paid for the use of the Boat all but something less than two hundred dollars which is still unpaid. Fletcher Stevens agreed to pay for the use of it during the time it was so engaged

Answer to the Eighth Interrogatory.

Fletcher Stevens represented to me, when he hired the boat that plainiffs were trying to take advantage of him and cheat him & that the plainiffs had a large amount of money of his in their hands which he could not get of them, & he wanted to sell enough leather to make him whole & get a fair settlement. it was on the strength of these representations that I kept the matter secret as the transaction was an unusual one, but I believed the representations made

Richard H. Proadher.

The Plaintiffs by their Counsel thereupon read
to the Jury the Deposition of Edwin J. Bailey, which
is as follows.

Answer to the first Interrogatory.

My name is Edwin J. Bailey I am twenty nine
years of age, my occupation is that of Captain
of a boat on the Delaware and Hudson Canal
I was employed during the months of September
& October 1836, in freighting Leather & Merchand-
ises out that Canal except one trip down in
September on the Western Canal to Oswego.

Answer to the second Interrogatory

I know Frederick Faucett one of the Plaintiffs
I also know Mr Dehann another of the Plaintiffs.
I have known Mr Frederick Faucett since about
March 1837. and Mr Dehann since about July
in the same year. I also know Fletcher Stevens
the defendant and have known him since
September 1836. I don't

Answer to the third Interrogatory.

The circumstances under which I first
became acquainted with Fletcher Stevens was
his shipment at Herts bore in September 1836
of a load of Newbosc Sole Leather on board
of my boat the William C. Rose to go to Oswego.

I did know said Stearns in September & October 1836. He is commonly known by the name or addition of "Cooper".

Answer to the fourth Interrogatory.

I have been engaged as much as twelve years I think as Captain of a Boat on the Delaware & Hudson Canal. I commanded the William C. Rose in September & October 1836. prior to September 1836. I had been engaged in running the William C. Rose between New York & Wertzboro the Freight was in the habit of carrying wool Leather & Merchandise the owners of the Boat William C. Rose now Tenthill & Broadhead they resided at Ellenville, Ulster County New York, Dr. Corcoran acted as agent for the owners at Wertzboro.

Answer to the fifth Interrogatory.

The respondent was engaged in the Tanning of Leather between August 1835 and November 1836. His place of business was at Stevensville Sullivan County, New York. He was connected in business with his brother Abeline, under the firm name of H. H. & J. Stearns the firm Tannery was situated at Stevensville about twenty miles north from the Delaware & Hudson Canal. Wertzboro was the nearest place of

Shipment on said Canal to the said Farmers.

Answer to the Sixth Interrogatory.

During the year 1836. Said Carry hides from New York City to Wintzboro on the Delaware and Hudson Canal, they were delivered to me by several parties. I cannot name all. I cannot say to whom all were sent, during the year 1836. Admit I did carry hides to Wintzboro. for the firm of M. H. & J. Stevens I am unable to say from whom I received said hides.

Answer to the Seventh Interrogatory.

During the year 1836. and prior to the fifteenth day of September in said year I did take away on my boat leather manufactured by said M. H. & J. Stevens from Wintzboro on said Delaware & Hudson Canal. I received it at Wintzboro, and as ordered directed as to its shipment - I was directed to deliver it to Messrs. Fancett, Johnson & Co. the plaintiffs to whom it was consigned and to whom I delivered it. I did not in the year 1836 & prior to September in that year deliver any leather manufactured by said Stevens to any other person or at any other place than as before stated.

Answer to the Eighth Interrogatory.

Said on or about the sixteenth day of September 1836. and subsequently to that time resides on board the Canal Boat Commanded by me, leather manufactured at the Factory of Mr. H. S. Stevens at Stevensville, Sullivan County New York, I received that Messrs. Ira Corrance directed me about its shipment I received three loads or cargoes about that time, the quantity in the first Cargo was Five Thousand five hundred & fifty five sides, the second Cargo contained five thousand eight hundred & twenty four sides, and the third Cargo contained two thousand, eight hundred & ten sides. I was directed to convey these sides to Albany & Fletcher Stevens was to meet me there & give me directions, I was so directed to take the Hides to Albany by Ira Corrance, I took the first Cargo to Oswego & the second to Albany and Iry and the third to Albany. The Leather was not stamped, Corrance when the leather was being put on board said we must not take any that was stamped I found some eight or ten sides of stamped leather & threw them out of the boat into the Store House.

Answer to the Ninth Interrogatory.

Said as the Defendant Fletcher Stevens

while the said leather was being put on board my boat, and also while same was on board I do saw him at Westport while we were receiving the leather; at Albany while the leather was on board, at Oswego while delivering the first load, I also saw him at Troy while I was delivering a part of the second load.

Merch Stevens was on board my boat while the leather was on board a man was with him introduced to me by Stevens by the name of Stratton. Stevens put a person on board my boat in charge of part of said leather. this was at Albany, this person remained on board until we got to Oswego I did not know the person so put on board by said defendant. I was introduced to him by defendant, he was introduced to me by the name of Stratton and passed by that name on board the Boat.

Answer to the Sixth Interrogatory.

I have seen the person so put on board my boat since he left my boat I think I saw him in July 1857. it was at Coxsack Centre that I saw him. this place is located in Sullivan County New York. I was then passing by the name of William H. Stanton. his true name

is William H. Stanton his place of business then
was Cocheton Centre

Answer to the Eleventh Interrogatory.

The places at which I delivered the Cargoes
of Leather manufactured at the Tannery of
said Dr W. H. Stevens which I received on
board my boat for transportation on & sub-
sequent to the sixteenth day of September 1856.
& during the Autumn of said year were as follows.
The first Cargo was all delivered at Oswego.
The second was all delivered at Albany. I left
something over One thousand sides which were
delivered at Troy - The third Cargo was all de-
livered at Albany - I delivered the Cargo taken
to Oswego to three Steamboats & sent out the dock
all by the Crew of Stratton alias Stanton; as
near as I can recollect I delivered the second
Cargo as follows: to Boat H. F. Atkinson of
Rochester One thousand sides; to Boat Troy
of Buffalo One thousand eight hundred sides
to American Transportation Company's Boat
One thousand sides; to Northern Rail Road
at Troy One thousand sides or more, to the
Central Rail Road at Albany One thousand
sides; the third Cargo was delivered as follows:
to the Central Rail Road One thousand sides,
to Seneca Falls via Boat One thousand sides.

to American Transportation Companies Boat
 Six hundred seas, to Peter Martin two hundred
 and ten sides; the two last boats were delivered,
 by order of Fletcher Stevens; I took the three
 Cargoes on board at New York. I know the Boat
 was employed by Fletcher Stevens but I don't
 know in what manner. Fithell & Broad had
 paid the Sails on the Delaware & Hazard (Cape)
 Stratton paid on the Erie; I had no instructions
 as to the payment of freight & services of Boat.
 My instructions from my owners were to deliver
 the leather according to Fletcher Stevens direction
 part of the leather was rolled up while on board
 of my boat by direction of Stratton. Stratton
 superintended the delivery of the leather at Oswego.
 Fletcher Stevens superintended the delivery of
 the leather at Albany & Troy.

Answer to the Smith Interrogatory.

I have already stated the directions
 Fletcher Stevens gave me he also enjoined me
 to Secrecy as to where the Leather came from,
 & the destination of the Boat. He told me
 Stratton knew how to clear the Boat out the
 Canal - I was present when the Invoice was
 made out it was made out by Stratton. Stevens
 was present & dictated to him, it was invoiced
 part Leather part dry goods I think & fer-

vices, Stratton was directed by Stevens to
clear the Cargo under that Invoice;
Stevens said he had more leather who called
by me. I said I wanted it kept still. Stevens
told me he had more than one cargo of
Leather to go by my boat. Stevens said he
wanted the matter kept still as the leather
belonged as much to him as to Juncett Shaw
& Co. & he had a right to sell it.
He said that if things went on as they had been
Juncett Shaw & Co would cheat him out of
a large amount & therefore he wanted it all kept
quiet. Such directions were first given at Albany
at the time the first load was taken there. These
instructions were accepted to me. Stratton was
present in hearing.

Answer to the third Interrogatory.

The leather which I carried which was man-
ufactured at the Tannery of H. S. Stevens prior
to the sixteenth day of September 1836. was
stamped Stevens ville. I never prior to the
sixteenth day of September 1836 had on board
of my Boat to my knowledge any leather
manufactured at the Tannery of the said
Stevens that was not stamped it is our custom
as far as my observation extends for us to
stamp the leather manufactured by them. I

Know this to be an inviolable custom.

Answer to the fourteenth Interrogatory.

After the first Cargo had left my boat I heard Stevens say I think they were going to Montreal with part of it - I know I heard Stratton say so. I saw Stevens on board of one of the Canada Mail Boats said to be bound to Canada the leather or part of it was on board of this Boat Stratton also was on board of her, all that I recollect of other matters enquired of in this Interrogatory I think I have answered before.

Answer to the (3^d) Fourteenth Interrogatory.

I have already answered the first enquiry of the Interrogatory I have receipts for two different shipments of the leather out of the third Cargo. one receipt from the Central Rail Road Agent the other ^{one} from the American Transportation Company, all the other leather I delivered without taking any receipt for it. I did not take a receipt for any of the rest of the leather. because Stevens came with the leather to Albany and Stratton to Oswego. & they did all the business I gave the two receipts at Stevens request because he was sick.

Answer to the fifteenth Interrogatory. I don't recollect anything else.

Edwin J. Bailey

And being Cross examined said Witness testified as follows - which was also read to the Jury.

Answer to the first Cross Interrogatory.

I recollect nothing more about the language used by Stevens than I have stated in answer to the direct Interrogatories. I therein stated all the Conversations I recollect.

Answer to the Second Cross Interrogatory.

I know that W H & T Stevens first carried on business at the same Tannery; W H & T Stevens carried on business there in 1855 & 1856. They carried on a large establishment in the Tanning business in Sullivan for in three years. I heard the Stevens Tannery was destroyed by fire in 1856.

Answer to the third Cross Interrogatory.

The Stamp used on the leather Draw, was "Stevens ville".

Answer to the fourth Cross Interrogatory.

I only know that leather for the plaintiff from Stevens Tannery was shipped by the Stevens to the plaintiff it was so shipped to plaintiff at Hartford & went by the Delaware & Hudson Canal. If you mean by the question whether I saw saw any of their other leather manufac-

tured you mean the plaintiffs leather I answer
I have seen other of the plaintiffs manufactured
leather than the three loads. it was all stamped
"Stevensville" & tanned at the Stevens Tannery.
It is usual with all Tanners to stamp sides of
leather tanned by them. the three loads shipped
by my boat were not stamped "Stevensville".

Answer to the Fifth Cross Interrogatory.

I did personally attend to the loading &
unloading of my Canal Boat containing the
three loads of sides shipped by Corrence for
Fletcher Stevens.

Answer to the Sixth Cross Interrogatory.

I think N. H. & S. Stevens began to carry on
the Tannery at Stevensville in 1853. They had a
large establishment I dont know the extent of
their operations, I do not know of their manufac-
turing for themselves or others besides Plaintiffs.
I did not even know Stevens to send leather to
any other places than New York - I dont
know whether it was sent there for sale I mean
I never knew Stevens to send leather to any other
place than New York except the three loads
shipped by me. I know the City of New York is
a usual & proper market to send leather for sale
I know nothing of any other.

Answer to Seventh Cross Interrogatory.

I recollect nothing having ever been said to me by Apendant other than I have before stated.

Answer to the Eighth Cross Interrogatory.

My Firm consisted of Eleven including five lumber Boats. They were usually engaged in transporting freight out the Canal. I don't know any of the Boats having been hired before for taking leather other than to the City of New York. I never know of any of our Boats being chartered to take manufactured articles to any place designated by the manufacturer for sale or delivery. There are various places along said Canal or near it at which manufacturing establishments are established from which it is usual to send for ward by Canal the products of their manufacture.

Answer to the Ninth Cross Interrogatory.

I know nothing of the matter enquired of in this Interrogatory.

Answer to the Tenth Cross Interrogatory.

The Boat was not employed in the usual course of the business of W. H. & J. Stevens nor for them. And the boat was employed

19.
I resided at Stevensville Sull Co, N.Y. whilst
as Clerk for O. T. & O. Stevens at Coe's Station (later
Sull Co N.Y.) also at the same place whilst Clerk
for O. & F. Stevens. O. T. & O. Stevens are brothers
of the Deft.

Answer to interrogatory 3.

I was acquainted with the Deft in the month of Sept
1836. He was engaged at that time in the tanning
business at Stevensville Sull Co N.Y. - He was
connected in business with Walter W. Stevens owner
the firm name of W. W. & B. Stevens.

I was in the employ of the Deft in Sept and a part
of Oct 1836. I was employed to sell a boat load
of leather. My employment commenced at Albany
I was to take charge of a Canal Boat, freighted
with leather & I was to ship & send the leather ac-
cording to the defendant's directions. My employment
terminated the fore part of Oct 1836.

Answer to interrogatory 4.

I assisted in the sale & removal of some leather
under the direction of the Deft but I cannot say
where it was manufactured during the months
specified - I know nothing about the removal
of the leather from the tannery; the first that
I saw of the leather was at Albany - It was taken
from that place by the directions of the Deft
& conveyed in the month of Sept 1836.

Answer to Interrogatory 5.

The tannery of W. H. & S. Stevens was about twenty two miles from the Delaware & Hudson Canal at Hartsborough was the most convenient shipping point on the Canal - I believe they were in the habit of sending their leather to that place for shipment.

Answer to interrogatory 6.

I was acquainted with Capt Edwin J. Bailey in the months of Sept & Oct 1836. My acquaintance with him commenced at Albany in Sept 1836. I was introduced to him by the Capt. He was in Sept & Oct 1836 master of the Canal Boat "W. C. Reed" I do not know where or by whom he was employed. He was at the time I became acquainted with him I was ~~employed~~ engaged in transporting leather from Albany to Oswego.

Answer to interrogatory 7.

I do not know whether any leather from the tannery of W. H. & S. Stevens was shipped on board the Canal boat commanded by Capt Bailey during the months specified.

I was on board the said boat in Sept 1836. I went on board at Albany - there was leather on board at that time in quantity about 2000 skins - I went to Oswego on said boat -

A part of the leather was rolled whilst
on board of said boat the Capt Thomas was
on board with me. The Capt came on board
at Albany but did not remain on board.
I was in the employment of the Capt as super Capt.
The boat was employed in transporting leather
from Albany to New York but by whom I do not
know. The leather was under my direction & con-
trol whilst I was on board.

Answer to interrogatory 8.

I was introduced to Capt Bailey by the name
of Stratton & passed by that name on board said
boat. I was introduced to him by the Capt. I was
not known to any other person than the Capt by
any other name than the one by which I was in-
troduced to Capt Bailey. Capt knew my real
name & had been acquainted with me four
or five years.

Answer to interrogatory 9.

I paid the tolls & Capt furnished the money
Capt Bailey & myself attended to the clearing
& entering of said boat at the Collector's office.
The cargo was entered as leather & merchandise
bearing the same rate of toll as leather. The
cargo consisted entirely of leather. It was entered
as part merchandise by the direction of the

defendant as being less likely to lead to action
how

Answers to interrogatory 10.

The leather was discharged at the port of Europe
from the boat. I attended to the discharge under
the direction of the Deft who was present

A part of the leather was sent to Montreal
a part to Toronto & a part to Chicago, by the
directions of the Deft

The leather sent to Montreal was sold to Hugh
Thompson & Son of that place. I do not know
what became of the leather sent to Toronto, of
the 2000 skins sent to Chicago, 1000 skins arrived
before I left Chicago, which I sold, the bal-
ance I sold to be received by the purchaser on
arrival

The leather sent to Montreal was sold by the
Deft I do not know who sold the leather
in Toronto (if sold)

Deft & I went with the leather that went
to Montreal I do not know who went with the
leather to Toronto (if any one) I shipped it &
took a receipt for it - and I say the same in
reference to the leather sent to Chicago.

All the leather was sold for the benefit of the
Deft the proceeds ^{of the sales made by me} were received by me & paid
over to the Deft & the proceeds of sales made by the Deft
in Montreal were rec^d by me and paid over accord

(The proceeds of the
sales made by me
I retained before
Deft)

ing to the directions of the draft.

The bill of sale of the leather sold in Montreal was made out in the name of L. L. Stratton & Co. (I think) - In Chicago, the bill of sale was made out in the name of A. Stafford & Co.

Answer to interrogatory 11.

I only know of one boat load containing about 500 hides. I do not know who shipped it - I only went out trip & I did not see more than one cargo.

Answer to interrogatory 12.

Left claimed to be the owner of said leather but did not tell me what it was tanned or I remember. He said he was going to sell it.

Answer to interrogatory 13.

Left advised me to take the name of Stratton, assigning as a reason that there were other persons who had an interest in the leather that he had had a difficulty with Francis Shaw & Co. & could not do business with them or get pay for his leather. That he wished to sell the same & pay off his debts that he had taken counsel upon the subject. & had been advised to do so. & if I passed under an assumed name it would be more difficult for the

owner to track him & break up his plant.
 This conversation took place in Albany in
 Sept 1836. In consequence of the assize
 assumed the name of Stratton.

Answer to interrogatory 14.

I have already stated to what places the leather
 was sent and the quantity sent each place
 except to Montreal which was about 270 skins.
 I have already stated who went with said
 leather as far as I know & who accompanied
 me. A left & myself went to Montreal & from
 there to Chicago. A left was in Montreal at
 the time I saw the leather there - the leather was
 seen there the 4th day of October (I think)
 I do not remember at what House I stopped
 in Montreal - it was near the Wharf & not
 far from the Custom House. I do not know
 on what Street it was - it was a public Hotel
 A left stayed at the same House -
 He registered our names (I think) I think the
 A left name was registered as Stafford & myself
 as Stratton - we were known in Montreal by
 these names.

Answer to interrogatory 15.

The leather in Montreal was sold for about
 two thousand eight hundred dollars. I do not
 recollect particularly about the prices. It

was paid for as follows. \$10,000 in drafts on
New York & the balance in money.

There were three drafts drawn by "Les Banques
Du Peuple" on the "Bank of the Republic" in
the City of New York. They were endorsed
to the order of L. Stratton, by Hugh Thompson
& were delivered to me & were endorsed by me in
the name of L. Stratton to Dennis Clifton & Co.
by direction of the Dept. I delivered them to
one of the firm of Dennis Clifton & Co. in
their old office in the City of Chicago, in the
month of October. The fore part by the direc-
tion of Fletcher Stevens.

Orders to interrogate No.

Whether the Dept or myself went with the leather
that was sent to Toronto or Chicago. No sides
were sent to Chicago. Toronto in one parcel
2000 to Chicago in two parcels of 1000 sides each
by two different routes. One parcel by the Col
Lindsay route & the other in a Steamship
to Chicago. We could not get it shipped alto-
gether - The leather to Chicago was consigned
to G. Stafford - and I think the lot to Toronto
was consigned to the same person - I did go
after the leather to Chicago - Dept went with
me. He passed by the name of G. Stafford & his
real name was Fletcher Stevens.

I was introduced to persons in Chicago. I was introduced by the raft to O. J. Rose by the name of Stratton, and to Osborn Adams & Co. by O. J. Rose under the same name. I saw 1000 sides of said leather in Chicago. I took it to Osborn Adams & Co. I made out the bill in the name of J. Stafford & Co. 1000 sides was sold at 22 cts + 10% (to arrive) at the same rate. I received pay for 1000 sides amounting to about \$2200 - the other 1000 sides I do not know the amount of.

I took a check on the Marine Bank for the 1000 sides delivered - all the leather sent to Chicago. About then arrived viz 1000 sides for which I gave an order to O. J. Rose with instructions to receive it & deliver it to Osborn Adams & Co. & receive the pay therefor at 22 cts per pound. I know nothing further in relation to it as I left Chicago with the raft before it arrived.

Answer to interrogatory 17.

I have already stated all I know in relation to the matter embraced in the 17th interrogatory.

Answer to interrogatory 18.

I do not remember anything else of benefit or advantage to the Pfls.

And being cross examined said witness testified as follows, which was also read to the Jury.

Answer to Cross Interrogatory 1st
I think It is J. Stevens & I have done business together as partners, & carried on a tanning business for about two years as near I can remember. They have been in the tanning business to my knowledge since 1857, but have not been partners all that time.

I think their business averaged about 3000 hides per year. They were in the habit of shipping this leather at the Canal I believe, but I know nothing as to the places to which it was sent except the load which I went with from Albany to Oswego.

Answer to Cross interrogatory 2nd
I know nothing as to the matter embraced in Cross interrogatory 2nd except as stated already.

Answer to Cross interrogatory 3rd
I am not a practiced tanner & could not undertake to do any such thing as is proposed in the 3rd Cross interrogatory.

Answer to Cross Interrogatory 4th
 I would not be able to identify a hide after it was manufactured into leather if I had no personal knowledge of the property tanned. I know of no test in the business to fix such identity aside from personal knowledge.

Answer to Cross Interrogatory 5th

I am not sufficiently acquainted with Aftco business to state what number of times & places leather has been transported by them from one place to another place in the usual course of their business.

I have no personal knowledge of the leather markets except Chicago & Montreal & all my knowledge of these markets is derived from the one transaction before stated.

My knowledge of the tanning business in general & of the business of the Aftco & H. H. Stevens in particular is so limited that I am unable to give any further answer to this ^{cross} interrogatory. I know nothing about the transportation of leather by Aftco except as I have already stated.

Answer to Cross Interrogatory 6th

I know that H. H. & B. Stevens were engaged in a large business of tanning, & that it was

receiving to dispose of large amounts of property
but I have no knowledge of the means of con-
veyance & disposition of their property except
as already stated.

I do not know of any other occasions besides
that or those enjoined of by the Deft. in their
interrogatories when Lincoln or other kinds of
leather was conveyed disposed of or stored
for shipment to reach the best markets.

Answer to cross interrogatory 7th

I know of nothing further to the benefit or
advantage of either the plaintiff or the Deft.
I have stated the substance of all the conversa-
tion that I had with the Deft. I do not re-
member whether he used the word "Old Juncett"
but as I have already stated he said that
Juncett, Wham & Co. would not pay him for
his leather (or more to that effect) & that he
wished to sell the leather to pay off his debts.
I do not remember anything further.

Wm. H. Stanton

The Plaintiffs by their Counsel thereupon read to the Jury the deposition of Ira Clarence which is as follows.

Answer to interrogatory 1.

Ira Clarence. I am 26 years of age, a farmer by occupation. I was employed as agent of the Merchants & Farmers Line of Canal Boats (owned by Tashiro & Boardman) running upon the Delaware & Hudson Canal and I was so employed at Westborough in the County of Sullivan N.Y.

Answer to interrogatory 2.

I was acquainted with the late Fletcher Stevens in the Fall of 1836. He was engaged in the tanning business at Stevensville in the County of Sullivan N.Y. twenty three or four miles from my place of business. He was in partnership with Walter W. Stevens under the firm name of W W & F Stevens.

Answer to interrogatory 3.

The said firm of W W & F Stevens was accustomed, to send away their leather by horse teams to the Delaware & Hudson Canal & thence by Canal to Roundout & thence by the Hudson River to the City of New York.

27
Wentworth was the nearest shipping point to
their tannery.

Their carrying to & from their tannery to the land
was principally done by their own teams.

(Crossed before
signing G. H. H.)

~~Leather and Skins~~ Between Wentworth
and the city of New York it was done by the
Merchants & Farmers Line aforesaid.

According to the best of my knowledge the
hides sent to them during and after August 1855
were sent by the plaintiffs, and between the
opening of navigation in the year 1856, and
the month of September in the same year they
sent the leather manufactured by them to the
plaintiffs at the city of New York.

Answer to interrogatory 4.

There was an arrangement made in August
1856, by the Defendant about storing leather.
The arrangement was this: All the stamped leather
was to be forwarded in the usual course of
business to the plaintiffs; the unstamped ^{leather} was to be
stored by me (in a separate store house) until
he gave me orders to forward it; the stamped
leather was to be forwarded in quantities of from
four to seven hundred hides.

Answer to interrogatory 5.

There was leather stored with me in pursuance

(4 of August 44
initials before
signing G.H.D.)

of said arrangement; between the latter part ^{of August} and Sept
the 16th 1856 then crew 351 sides or thereabouts
stored with me. Subsequently there was between
8 & 9000 sides stored at different times down to
Nov^r the 8th 1856. (All this was unstamped leather)
This leather was brought to my place of busi-
ness by Nova teams during the period above
mentioned I also received from them stamped
leather that was forwarded to the plaintiff
by direct of the Dept. The leather last referred
to was stamped "~~Stevensville~~ Stevensville".

*

Answer to interrogatory 6.

The Canal Boat received said Leather in three
separate loads. The first boat load left Sept
16 with 351 sides (or thereabouts) The second boat
left Oct 24th with 557 sides. (or thereabouts) the
third boat left Nov 8th with 213 sides (or there
abouts)

Answer to interrogatory 7.

I gave the Master of said boat instructions to
convey said leather either to Roundout or to
Albany at one of or both places the Dept would
meet him & give him further orders -
The Defendant authorized me to give such
instructions - No other instructions in relation
to said boat or leather were given by me or

* The unstamped leather was put in store & the same remained in store until it was sent
off in three boat loads. - the first boat load had been in store about three weeks
the second boat load about five or six weeks and the third from one to two weeks
it was removed out of the store by direct of the Dept. Stevensville. I have the time above stated
it was taken away by the Canal boat N. C. Rice, Captain S. Parley, Nov 10

(The deposition of
initials before signing
G.H.D.)

any other person at or about the time said
boat left to my knowledge -

Answer to interrogatory 8.

I never did prior to the month of September
1856 receive any leather from the raft or from
M H & S Stevens which was sent to any other
place than the city of New York, unless a portion
of the leather sent off to Round out or Albany
(as I have just stated) was received prior to that
time -

I never did prior to August or September 1856
to my knowledge receive any leather from
the defendant or the firm of M H & S Stevens
that was not stamped - the only stamp used by
them to my knowledge was "Stevensville" I
have seen numbers cut in the tides but did
not know what they were for.

Answer to interrogatory 9.

The boat W C. Row was owned by J. W. &
Broadhead of Ellenville Ulster Co N.Y. who
owned a regular line of boats of which
the W C Row was one. The boats were usually
employed between Hurtsborough & New York
City, but occasionally one was sent to some
other point if desired - Was this agent I
received instructions from the owners of said

line to send the "W. C. Rose" as the next directed.

Answer to interrogatory 10.

The next gave me directions in relation to the shipping of said leather. His directions to me were that immediately upon the arrival of the "W. C. Rose" I was to ship the unstamped leather on board of her with as little delay & as quietly as possible & direct the Master to go to Roundout or to Albany with said leather where the next would meet him & give further directions: and if any one enquired in reference to the destination of said leather I was instructed by him to say that it had been sent to the Mills at the City of New York. I had corresponded with the next & with his brother Alfred by his directions: the letters are destroyed to the best of my knowledge, except a note which I have not with me now.

The substance of the letters was merely in reference to the shipping of the leather from the tannery & in relation to the boat "W. C. Rose"

Answer to interrogatory 11.

The next is generally known by the title of Doctor. I saw the next in Oct 1836, at Northborough, and have never seen him since to my knowledge or recollection - I cannot say

(The undersigned
deposes that he is a
competent witness before
Saying 5th. 21)

23.
in Oct & November 1856.
I know of no other than I have already stated.

Answer to interrogatory 12.

I know of nothing further to the benefit or advantage
to the plaintiff except that the deff stated that his brother
Walter knew nothing about the shipment of the
leather west & therefore he directed me not to
direct my letter to W. H. Stevens, but to Alfred
Stevens. Furthermore he informed me that he
had an interest in the leather as well as Fou-
cett, Osborn & Co. & had a right to send it West
& dispose of it. that the plaintiff was trying to
defraud him & that it was necessary to take
this course to protect himself and get his pay
for tanning the leather.

And being cross examined said witness
testified as follows. which was also read to
the jury.

Answer to Cross interrogatory 1st
My knowledge of the fact that the leather was
shipped by the deff to W. H. Stevens is de-
rived from the statement of the deff himself and
also from the shipping receipts which I have
seen.

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Answer to Cross interrogatory 2^d

I have no personal knowledge in reference to the matter except as already stated.

Answer to Cross interrogatory 3^d

No.

Answer to Cross interrogatory 4th

The leather received on Storage was rec^d subject to the direction of the Dept - All property received in Storage is either to be delivered to the consignees at any place or forwarded at the direction of those storing it, by Canal or otherwise.

Answer to Cross interrogatory 5th

M & J Stevens were engaged generally in receiving property at Wartsborough - they were engaged in carrying on a large tannery & in the manufacturing of leather, but I never knew them to send leather to any place or places other than those I have mentioned.

Canal boats are a usual mode of conveyance for the transportation of all manufactured articles

Answer to Cross interrogatory 6th

I have no recollection of anything further which would be of benefit or advantage to the Dept or out.

Jas. Horrance

And the plaintiffs by their Counsel then upon
read to the jury the deposition of Walter H.
Stevens, which is as follows.

Answer to Interrogatory first
I know the Plffs. and defend ant. I have
been acquainted with the Plffs two or three
years. and the defend ant from a child.

Answer to Interrogatory second.
I was engaged in the tanning, farming, mer-
chandizing & other business connected with
it during the period specified -
I was connected with Mr. ^{Stephen} Stevens in the
tanning & mercantile business. The firm name
was W. H. & S. Stevens, the business was carried on
at Stevensville Sullivan Co N.Y.

(The word "affid"
written "Fletcher"
interline before
signing E.H.K.)

Answer to Interrogatory third -
During the period specified the greater portion
of the hides received by W. H. & S. Stevens were re-
ceived from Paucett Orham & Co of Saratoga
City. As far as the hides were received on
joint account. I considered that the leather
was manufactured for the Plffs & also for W. H.
& S. Stevens & that both parties were interested
in the leather - During the same time we were
manufacturing some leather for Small & Nealy

on a previous contract.

Answer to Interrogatory fourth.

The Piffers, Faucett, Dehams & Co did business in the City of New York. The leather was sent to them either by the New York & Erie Railroad or by the Delaware and Hudson Canal; and the hides were conveyed from their place of business in the same way, the leather & hides were taken to & from the Canal & Railroad by Horse teams.

Answer to Interrogatory fifth.

The firm of W N & F Stevens was in the habit of buying Country Hides during the time before mentioned but not to any amount.

The full names of the partners in the firm of W. N. & F. Stevens was Walter N. Stevens & John Fletcher Stevens; the Defendant was a member of said firm:—

The leather manufactured was usually stamped "Stevensville" (if stamped at all)

Answer to Interrogatory sixth.

I cannot tell what number of sides were manufactured during the times specified as I have nothing with me from which I can make an estimate.

So far as I know the leather so manufactured was put upon the wagons or sleighs & sent to the Canal or railroad. This is all I know in reference to it except that I have seen some of it & the store of Puffs, with the exception of some little that may have been sold at the tannery -

The Agent intended the removal of it, the principal part was shipped at Westboro, but I cannot say by what boat or boats, I do not know who owned the boat or boats. I cannot tell who had charge of the shipping of it at Westboro.

Answer to Interrogatory Seventh.

So far as I know the Defendant is called Joe For Stearns. I cannot tell how often he was at home occasionally during the months of September October & November 1836 & when he was away from home I do not know where he was. - All I can say about it is that a part of the time he was at home & a part of the time he was not. I cannot tell for what purpose he was away; so far as I know he was away on the business of the firm.

(Given before signing G.M.D.)

Answer to Interrogatory Eight.

I do not know of leather manufactured at the
at the tannery of W. N. & J. Stevens being
shipped to Albany N. Y., & thence Westward
at any time or to any other place.

Answer to Interrogatory No. 1.

I do not know of any other matter or thing
of benefit or advantage to the pliffs on the
trial of this cause.

And being cross examined said witness
testified as follows which was also read.

Answer to Cross Interrogatory 1st

The Contract was reduced to writing - not
showing the Contract before me, all I can
say is that the Sides now received on what is
known amongst tanners as joint account,
each party having an interest in the leather,
after it is manufactured. Mr Samuel Brown
(one of the Pliffs) stated that they were willing
to make reasonable advances - & that they
would be willing to advance seventy five cents
per Side - they would not consider that
unreasonable.

Answer to Cross Interrogatory 2^o

I thought that the pliffs did not make advances to us according to the contract or rather according to the understanding.

Answer to Cross Interrogatory 3^o

The plaintiff Frederick Francett did refuse to furnish an account of sales: this was after the delivery of the two first lots of leather containing I should think within 4 or eight thousand sides.

Answer to Cross Interrogatory 4th

I cannot get at the amount having no data or papers.

Answer to Cross Interrogatory 5th

They refused to furnish the accounts but how much was due at that time or how the account stood I am unable to say.

Cross Interrogatory 6th: Answer

In July 1836 I think we had sent forward from 10 to 12000 sides: about this time pliffs refused to accept our drafts & the consequence was that we got entangled in our business the result was very injurious to our business.

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Answer to Cross Interrogatory 7th

The sellers were advised of the necessity of making advances & what the consequences would be if they refused.

Answer to Cross Interrogatory 8th

There was a controversy & letters were written but it was between the sellers and Fletcher Stevens. I have no letters in my possession. I cannot state the substance of them.

Answer to Cross Interrogatory 9th

It was.

Answer to Cross Interrogatory 10th

It is the usual & ordinary arrangement so far as I am acquainted with the business for the seller to advance money on the hides sold & for the tanner to furnish the materials and labor in tanning the leather & then to be reimbursed by a profit or some certain sum on the sale of the article.

Answer to Cross Interrogatory 11th

It is about one third.

Answer to Cross Interrogatory 12th

As a general rule a hide manufactured

25.
into good leather is worth double its original
value, or nearly that.

Answer to Cross Interrogatory 13th

The price of hides vary so much that it is
impossible to give a general answer as to the
cost; as a general thing it costs about five
cents per pound to manufacture the leather.
The last clause of the interrogatory is covered
as supposed by the former answers.

Answer to Cross Interrogatory 14th

I have already said that I did not
know that any hides or leather were sent
away to be sold other than that sent to
the Yeff & I repeat the same answer now.

Answer to Cross Interrogatory 15th

The object of sending the leather to New York
or other places so far as I know was to get
it to market so as to realize money on it.

Cross Interrogatory 16th Answer

I am not a practical tanner, I am not an
expert I could not identify in a manufac-
tured state any particular hide of which
I had no personal knowledge.

Answer to Cross Interrogatory 17th

I do not think of any thing further
the Plaintiff was the operating man, so far
as the business of the Larnery was concerned

W. H. Stevens.

Now the Plaintiff closed their Evidence.

And the Defendant thereupon by his Counsel
asked the Court to instruct the Jury to find
for the defendant by way of non suit on
the ground that it appeared from the plaintiff
its own showing that the plaintiff, the
defendants and Walter H. Stevens were
interested as Copartners in the property for
the conversion of which the action is brought
and that they were so interested at the time
of said conversion - but the direct refusal
to so instruct the jury to which refusal and
decision of the Court the defendant by his Coun-
sel then and there excepted.

The defendant thereupon by his Counsel
thereupon entered his motion to exclude from
the jury the evidence given in behalf of the
plaintiff showing a tenancy to show a conver-

sion of the property in question by the defendant on the ground that it appeared from the plaintiffs own showing that the defendant at the time of such conversion was interested in said property as a copartner with said plaintiffs. And Walter H. Stevens and that the subject matter of the suit was the Copartnership property of the said plaintiffs, the said defendant and Walter H. Stevens. But the Court overruled said motion and refused to withdraw said evidence from the jury to which ruling and decision of the Court the defendant by his Counsel then and there accepted.

Thereupon the defendant by his Counsel read to the jury the deposition of Alfred L. Stevens which is as follows.

Answer to Interrogatory 1st
My name is Alfred L. Stevens, my age is about forty years - my occupation farming & I reside in Liberty Sullivan Co N. Y.

Answer to Interrogatory 2nd
I know Frederick W. Fancett & Samuel Shaw

plaintiffs but do not know the other Plff. I know the next Fletcher Stevens, I have known the said two plaintiffs about 3 years & the defendant as long as I can remember

Answer to Interrogatory 3rd

I do know of certain hides which the firm of W N & F. Stevens (the latter being the next in this cause) had of the firm of Francis B Shaw & Co. (the Plffs) in 1836. They were brought to the tannery of said W. & F. Stevens in Sullivan Co. to be made into sole leather. As was in their employ during the time, there was over 18,000 hides & under 19,000 hides. The precise number I can't state & they were principally tanned there although after the tanning of W N & F Stevens was burned some of the hides were taken to the tannery of A. T. & O. Stevens at Coe's Hook & to the tannery of Gildersleeve at Hortonville & to Palmer tannery in Fallsburgh. The hides were received from Plffs. at the wharf in the city of New York brought from thence to the tannery of W N & F. Stevens aforesaid.

They were tanned and sent back, to Westboro & shipped there for the plaintiffs except those which were on hand at the

26.
burning of the tannery as aforesaid & except about
14,000 skins of leather which, I afterwards understood
were sent to other places, besides New York, to send
for the benefit of W. H. Stevens, many of which were
slaughter skins leather, the skins not received of Plffs.

Answer to Interrogatory 4th

A Mass of leather manufactured at said tannery
during the years 1833 & 1836, which was sent away
from the said tannery, for the purpose of going to the
plffs in New York, upon the account of the defendant
& his Copartner W. H. Stevens. I did not accompany
the leather to New York,

The book in which we kept the account of the leather
forwarded from the tannery to the Plaintiffs in New York
was burned in the tannery - It was sent by the way of
sleigh & teamsters of W. H. Stevens to the Canal
& Railroad, on the way to New York - I had par-
ticular knowledge of it at the time - there was between

"1

16,000 & 17,000 skins sent off to New York for plaint-
iffs - I do not know that Plffs received it all,
but on one occasion the Plff J. Fauntleroy came up
from New York to the tannery, & I heard him speak
of receiving the avails of certain invoices amount-
ing to some few thousand dollars. I can't state the
particular dates of sending the leather to the Plffs
except that it was before the tannery was burnt,
which took place on the 9th day of November 1836.

I know from the evidence that the Piffs bought the Sides sent to W N & J Stevens on 6 months time, & that the leather principally was finished & returned within 6 months -

Answer to Interrogatory 5th

I was present at the destruction of the tanneries on the 9th Nov 1836. at Stevens mill. In the course of a few days, perhaps in a week the agent of Piffs came up from New York & deponent, as agent for W N & J Stevens & the agent of Piffs who came up from New York to represent the said Piffs & take care of their interests agreed that the leather then in the yard & unfinished should be sent to other tanneries in the County to be finished, under which arrangement six thousand & fifty nine sides was sent to Patent tannery at Fallburgh; 3882 sides were sent to the other tannery in Liberty, 1727 sides were sent to the tannery of R T & A D. Stevens at Co Suction all these sides was partly manufactured by the said W N & J Stevens -

The leather sent to these respective tanneries to be finished ^{was finished} & sent to Plaintiff as follows, 659 sides were finished & sent from Patent tannery between the 12th & 16th March 1837.

3882. were finished at Gilchristons tannery & sent to the Piffs between Dec 9. 1836 & March 10th 1837. - 1727 sides were finished at tannery of

A. To C. D. Stevens & sent to Peffs between June 15.
1837 & Aug 15, 1837.

Answer to Interrogatory 6th

I have already answered that I know of leather sent to Peffs by W. H. & J. Stevens, to the number of 16000 or 17000 sides. besides what was finished after the tanning was burnt which was 6200. Some of which was very nearly fit for market at the time of the fire.

The value of the leather sent to the plaintiffs before & after the fire, was on an average of four dollars & fifty cents for each side and it was all manufactured at the tanning of W. H. & J. Stevens, except what was finished up after the fire, by the other 3 tanneries as before stated.

Answer to Interrogatory 7

I had a knowledge of the leather in the tanning of W. H. & J. Stevens before the fire & after, & to the best of my judgment there was over two thousand sides destroyed by the fire, in the lofts, on the Sealers all of which was tanned & some of which was finished. The quality of the leather so destroyed was good, merchantable leather, & it was of an average value of \$4.50 per side.

There was an insurance on the sides or leather & the Peff Ironick Bancroft, states in presence

of this deponent that he had received the money on
 on 3000 sides. but did not state the amount re-
 ceived; but stated he had received in insured
 money, the value of the leather insured

Answer to Interrogatory 8th

I have already stated the admission of Piff J.
 Faucett, as to receiving the value of 3000 sides
 in the insured money. He also states that he
 had rec^d the amount for which the tanning
 building was insured; the policy having been
 assigned to Piffs - the amount received on the
 tanning he stated to be \$3500. The Piffs had
 no interest in the buildings, but been the policy
 as a security for their interest in hides which
 W. H. & F. Stevens were tanning

Answer to Interrogatory 9th

I understood during the year 1856 that the
 Piffs would not furnish W. H. & F. Stevens with
 account of sales of leather tanned by the latter
 & forwarded to the Piffs; nor would the plaintiffs
 make advances of money to said W. H. & F. Stevens
 on account of tanning as was agreed on to make
 the debt W. H. Stevens to carry on their business.
 I know that the said W. H. & F. Stevens were much
 embarrassed in their business because such
 advances were not made. I understood that

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The skins of the leather made of the Slough twine
& the other leather not sent to New York from
Wurtsboro, but to other points & places, was applied
or a considerable part of it to the payment of debts
contracted by W & F Stevens in manufacturing
leather at their said tannery.

The process of tanning cost about one half to the
value of the skins: and a fair average compensation
for tanning & returning the leather to market,
is about one third. That when leather is high
in price, but the mechanical labor is generally
high also: so that the average cost of tanning is
about one third the value of the leather.

That the number of slaughtered skins made
into leather, which leather was put & passed
of the leather sent elsewhere than to New York
as alleged to in the answer to the 4th interrogatory
was about 750 skins or equivalent to 1500 skins of
leather, none of which skins were furnished
by P. P. but purchased elsewhere by W & F Stevens.

A. L. Stevens.

And being Cross examined said Witness
testifies as follows which was also read.

To the First Crap interrogatory deponent says.

I am a brother to the left, I have been in the employ of W & F Stevens at Stevensville Sullivan Co in the years 1835 & 1836 & nearly the whole of these 2 years, commencing in March 1835 & ending Decr 1836. My business was in & about the tannery, purchasing bark, wood & hiring men & using them & assisting generally as the agent of the said W. & F. Stevens. in their work which was extending & requiring the employment of many men & teams.

To the second Crap interrogatory deponent says.

that he has resided at the same place since Decr 1836: and since then have been in the employ of W. & F. Stevens generally & engaged in assisting in rebuilding the tannery.

I have had no conversation with W & F Stevens concerning my testimony in this cause. I had some general conversation with left but only once or twice, and those occasions were within a day or two last past.

To the 3^d Crap interrogatory deponent says.

that he was present & helped to count the sides which were taken away after the fire to be finished. I was employed by W. & F. Stevens at that time & assisted in the count as

their agent & employee.

I made memorandum at the time, as to the number of sides taken away; and have the same memorandum now with me in a book in which I then entered them - & this was the number of sides stated in my answers to the direct interrogatories.

I do not know of any other matter or thing of benefit or advantage to the Plffs.

A. L. Stevens

And I accepted the deposition by this counsel read to the Jury the deposition of Abner P. Bush which is as follows.

To the 1st direct Interrogatory he answers.

"My name is Abner P. Bush age 42.
occupation a tanner, residence in Bushville
Sullivan Co. N.Y.

To the 2^d direct Interrogatory witness answers
I know all the parties, not much acquainted
with Plffs. Known & left about 10 or 11 years.

To the 3^d direct Interrogatory witness answers that he
has no knowledge on the subject except by hearsay.

To the 4th Direct Interrogatory witness answers.

"I have no particular knowledge of the marks enquired of.

To the 5th Direct Interrogatory witness answers.

Shortly after the Stevensville Tannery was burnt, the Puff F. Faucett wished me to finish tanning some of the leather, which was in an unfinished state, at Stevensville. I went to Stevensville & made an examination into the condition of the leather, but could not make an agreement for the finishing - after this - Palmer & Co agreed to finish the leather I had been spoken to, to finish - after which I heard but little about it, & don't know it except by hearsay, when it was sent to

To the 6th Interrogatory the witness answers.

I don't know anything more than I have stated about the leather.

To the 7th Interrogatory the witness answers.

I don't know anything of my own knowledge as to the insurance matter

To the 8th Direct Interrogatory witness answers.

Mr. F. Faucett (Puff) said to me that the Policy of insurance on the tannery was \$5000

if it was assigned to them & they would get the money on it but I don't know that he did receive it

In 1836 leather was high. In my judgment the process of tanning adds one half to the value of the hides, and a fair compensation for tanning adds one half to the value of the hides is one third or two fifths. I have tanned hides & received one half for tanning -

Sides of sole leather will average from \$4.50 to \$5 each side -

A. P. Bush

Now being cross of examined said witness testified as follows - which was also read.

On his cross of examination, the witness to the first cross interrogatory says -

"I am not related to the deff & was never in his employ or in employ of W N & F. Stevens.

To the second cross interrogatory the witness says.

Since the month of December 1836. I have been employed at Bushville, mainly in the tanning ^{now owned by E. Fobel} of E. Fobel -

I have had no conversation particularly with deff or Walter H. Stevens about any testimony in this case -

To the 3rd cross interrogatory he answers -

I do not know anything of these matters particularly.

To the last cross interrogatory the witness answers.
I do not know of any thing to the advantage
of the plaintiffs.

A. F. Bunker

And then upon the defendant by his counsel
read to the jury the deposition of Thomas Gilders-
lard which is as follows.

To the first direct interrogatory he says.

Answer. My name is Thomas Gilderslard, my
age 35 years, occupation a tanner, and I
reside in Liberty Sullivan Co.

To the 2^d direct interrogatory he answers:

I know the dect partially & have for 12 or 15
years last past I do not know the Plffs. but
have seen Frederick Faucett.

To the 3^d direct interrogatory Depoent says.

In about a week or two, after the destruction
by fire of the tannery of W. H. & S. Stevens at How-
ville a number of skins of leather, was brought
from that tannery to our tannery to be finished.
The number was 3500. they were finished at

our tannery, and were brought there to be finished because of the destruction of the Stevensville tannery by fire.

J. Faucett & a man named Hill (acting as his agent) came there & made arrangements for finishing the leather -

The most of the sides brought to our tannery there to be finished, were tanned & only required scrubbing & rolling - about 150 or between that & 300 required one layer of liquor. The rest required no liquor. After they were finished, we sent three sides of leather to the plaintiff in New York via New York & Erie Rail Road.

I saw some of the leather partly tanned going towards Palen's tannery in Fallsburgh from Stevensville about the same time & understood from Hill (the agent of Peff) that he had made arrangements with Palen to finish it. - Saw several loads going towards Palen's -

To the fourth direct interrogatory deponent says that he knows nothing -

To the fifth direct interrogatory deponent says that he has made answer thereto in his answer to the 3^d direct interrogatory. -

To the sixth direct interrogatory deponent says.

that he has already stated that he knows of
 3882 sides of leather being sent to Peff. its value
 would be an average of \$4.50 to \$5.00 each side
 It was sent to Peff between Decr 1836 & April 1837.
 & was manufactured at St. H & F Stevens tannery,
 except as it was finished at our tannery, as
 before stated.

To the 7th Interrogatory deponent says he knows
 nothing

To the 8th Interrogatory deponent says he knows
 nothing -

To the 9th Interrogatory deponent says that he
 has no particular knowledge of the matter en-
 quired for, except as contained in former answers.

That the process of tanning adds about one
 half to the value of hides, and a fair compen-
 sation for receiving, tanning & returning leather
 to market is about one half, although tanners
 dont often get it.

As a general thing when leather is high
 the price or value of mechanical labor is also
 high. - I have tanned at the half & my
 father also who is a practical tanner.

Thomas Gilchrist

And being Cross examined said Witness testified
as follows, which was also read.

To the first Cross interrogatory deponent says,

There is no relationship between me & the de-
fendants. I have never been in his employ
or in the employ of W. H. & J. Stevens.

To the second Cross interrogatory deponent says,

I have been in the employ of J. W. Gildersleeve
since Decr 1856. as foreman in their tannery -
Have had no conversation with Craft or Walter
H. Stevens respecting my testimony.

To the third Cross interrogatory the deponent says,

I assisted in counting the sides of leather that
was brought in an unfinished state from the
Stevensville tannery, after the fire, to our tannery
to be finished: The account was entered in
a book at the time & I know this was \$842.
as stated in my direct examination -

To the last Cross interrogatory deponent answers,

I do not know of any other matter or thing
of benefit or advantage to the Plffs herein.

Thomas Gildersleeve

The Defendants have stated
 Then upon the Plaintiffs by their Counsel read to
 the jury the deposition of Spens Cunningham, which
 is as follows.

Answer to the First Interrogatory.

My name is Spens Cunningham. I reside in the
 City of New York, am twenty one years of age,
 & am Book Keeper by occupation.

Answer to the Second Interrogatory.

I am acquainted with the parties Plaintiff and
 Defendant in the Caption of these Interrogatories
 mentioned, I have known the Plaintiff since the
 year 1853 and the Defendant since August 1855.

Answer to the Third Interrogatory.

I have before been examined as a witness
 in this cause, it was in January 1858, in the
 City of New York before George A. Hoey Com-
 missioner. I have been employed since that time
 by Francis Dehan & Co. and J. H. Dehan
 and my business has been that of Book Keeper.

Answer to the Fourth Interrogatory.

I never was at Stevensville Sullivan Co.
 New York in the month of November 1856
 nor at any other time.

Answer to the Fifth Interrogatory.

I know nothing of the matters & things enquired of in this interrogatory.

Answer to the Sixth Interrogatory.

I know nothing of the matters and things enquired of in this interrogatory.

Answer to the Eighth Interrogatory.

As before stated I never was at the Tanning
of Mr W & C. Stevens, and never took charge of
any leather there. I know by the Books of
Fancett Isham & Co. that Hides sent by the
plaintiff to the Defendant to be tanned were
subsequently tanned by other parties, sent
over by W T & O. Stevens, to N. Gildersleeve
Palen & Plager & Co. Fancett Isham & Co. paid
these several firms the expense of Tanning and
finishing: The plaintiff received the leather man-
ufactured from said hides: it was received by
plaintiff from December 1856. to March 1857.
and was all credited to W T & C. Stevens con-
tract account. as follows. The proceeds of
all the leather from Gildersleeve also from
Palen & Plager amounting to Eighteen thou-
sand three hundred and twenty six dollars
& ninety four cents was credited to W T & C
Stevens account, and the value of the Hides

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and leather then remaining there for the plaintiff
is subsequently turned by W. H. & P. Stevens
amounting to Four thousand five hundred
and eight dollars and ninety nine cents
was also credited to said Stevens account.

The leather was all disposed of by being sold
by the plaintiff. The sales were made from
time to time in small parcels and each sale
was credited either to Paley & P. Leger or
J. St. Gildens and were noted under the
head of their contract accounts. when
the sales were all closed the full net proceeds
of the sales for the amounts I have before
stated were credited to W. H. & P. Stevens. I
have already stated the allowance on said
leather was made by W. H. & P. Stevens by
said plaintiff in their accounts.

Answer to the Aitch Interrogatory.

There was leather received by Plaintiff
manufactured by W. H. & P. Stevens out of the
Hides sent to them by plaintiff, other than
that at the Tannery or manufactured out
of Hides at the Tannery at the time of the
fire. it was received by plaintiff at several
places after said fire. the plaintiff received
at St. Louis the proceeds of One thousand and
sixty six dollars and leather sold to John Howe of

20.
that City, from Chicago the plaintiffs received
the proceeds of five hundred and fifty one sides
of leather sold to Osborn, Adams & Co. also two
hundred and twenty nine sides sold to J. Kettle
also. Seven hundred and ninety eight sides
sold to P. L. Gault & Co. also from Cleveland the
proceeds of five hundred and ninety nine
sides part of which was sold thru an agent
in New York: also from Cincinnati the proceeds
of six hundred sides of leather: the proceeds of
these several lots of leather was credited to the
account of W. H. & F. Stevens contract, on plain-
tiff's Books, at the prices at which they were
sold. In part of the net proceeds, the leather
from the four places last mentioned named
was disposed of for eighteen thousand and nine
hundred and thirty eight dollars & twenty
five cents: I have answered it was all credited
to W. H. & F. Stevens.

Answer to the Sixth Interrogatory.

"1" I know all leather now received from
said W. H. & F. Stevens by the plaintiffs or
manufactured by said W. H. & F. Stevens out of
sides sent them by the said plaintiff in any
manner recovered by the plaintiffs now credited
to the account of W. H. & F. Stevens on said plaintiff
Books and as remain credited to this day

as the books of plaintiffs will show.

Answer to the Eleventh Interrogatory.

I do of my own knowledge know of Insurances
 money received by the plaintiffs for losses sustained
 by the burning of the St. H & F. Stevens Tanning
 the plaintiffs received from the Astor Insurance
 Company One Thousand dollars for loss by
 fire on said Tanning being the full amount
 of the Policy, said Policy was in the name of said
 Stevens but has been assigned to Plaintiffs as part
 security for their advances: the plaintiffs also received
 from the Clinton Insurance Company also from
 the Rutgers Insurance Company, also from the
 Washington Insurance Company, also from the
 Excelsior Insurance Company, also from the Phoenix
 Insurance Company - One thousand five hun-
 dred dollars each, that being one half the face
 of the Policies; also from the Market Insurance
 Company One thousand dollars, and from the
 Williamsburgh Insurance Company One thousand and
 two hundred and fifty Dollars being one half
 of the face of the two last Policies, said last
 named eight Policies being against loss or dam-
 age by fire on Hides & Leather in said Tanning
 made by the Plaintiffs all the said sums were
 credited to the account St. H & F. Stevens.

Answer to the twelfth Interrogatory.

I do ~~not~~ know the present condition of the account between plaintiffs & W. H. Stevens the account on this fourth day of May 1859. stands as follows. The said W. H. Stevens are indebted to plaintiffs in the sum of Ten thousand three hundred and sixty six dollars and eighty one cents: I know said account to be correct from my position as Bookkeeper I made up the account myself and examined it carefully, and examined all the items charged and credited in said Account, which I find correct. The transactions of that account grew out of a Contract made between plaintiffs & W. H. Stevens and which I have before mentioned. Every item of that account grew out of that transaction.

Answer to the last Interrogatory.

I think of nothing more.

Specs Cumming

And being cross examined said witness testified as follows. which was also read

Answer to the First Cross Interrogatory.

In January 1858. I testified and submitted or furnished several statements - one was a statement of Hides furnished to W. H. F. Stevens by plaintiffs and changed to an account on plaintiffs' Books called Contract account to be Darned: another was a statement of all the leather which had been returned by W. H. F. Stevens to the plaintiffs: another was an account of money paid in advance to said Stevens and a credit for all leather received at five cents per pound for Darning up to the fifteenth day of September 1856: I was not asked to furnish any account of the last, later than that date.

Answer to the Second Cross Interrogatory.

The statements made out before were not all personally against the Stevens, the Hides sent on the Contract were not changed individually to them, by crediting all the leather received from the Stevens, or leather received by the plaintiffs from other sources and since credited by them to said account - so much of that account would be more favorable, but the whole account as it now stands including the value of the Hides never returned to the plaintiffs as well as the personal account between said Stevens & plaintiffs would not be more favorable

to the defendants, or to W. H. & J. Stevens, besides I repeat that I did not make up the personal account between the plaintiffs & W. H. & J. Stevens up to the time when I was before examined, but only to the sixteenth day of September 1836.

Answer to the Third Cross Interrogatory.

The statements I made up before, were full & correct, at the time of my deposition so far as the number of hides sent by plaintiffs to W. H. & J. Stevens except Q. I & O. Stevens and so far as the number of skins of Leather which W. H. & J. Stevens had returned to plaintiffs: The personal account between W. H. & J. Stevens & the plaintiffs was not a full account up to that time, but only up to the time I was called by the question asked me viz: to the 16th day of September 1836. to that time it was full & correct, though as I believe I before stated in my former Cross Examination there was one item placed to the credit of the account in my statement of it which did not appear on the plaintiffs Books, because all the Leather had not been returned; the account was intended to show how much the Stevens had received on that day and how the account stood then, if they were formerly credited with five cents per pound on the

Leather they had returned and the plaintiffs
had received on that day.

Answer to the fourth Cross Interrogatory.

Part of the additional items accruing after
the 16 day of September 1856 were not put
not on the books of the plaintiffs, when I
made up the former accounts, attached
to my deposition, those which were not on
the Books at the time I made up the for-
mer accounts are as follows: I don't know
the exact time when I made up the former
account but believe it to have been between
the first & 15th of January 1857. I do know
to that time that account was made was
made up. I believe the following items
were not on the Books when I made up
the account but have been placed there
since. The following were so placed on
the Books at the dates I now give & by myself
except the two latest Debits were not entered
by me but by Mr J. Fancett.

Debits

1857	January	17 th
"	"	31 st
"	February	21 st
"	"	23 ^d
"	"	24 th

" 28th (1837)
" March 3^d
" March 6
19
31
Apr 2
" Aug 12
1838 May 27
1839 Jan'y 17 (1839)

Credits
1837 Feb'y 2nd
1838 " 26
1839 Jan'y 17

The two first items of the Credits were entered by me the last item was entered by Mr Bancett. Besides the items of the Credit of the Ticket sent to W. H. & F. Stevens under their Contract were not on the books so far as a person at charge of them W. H. & F. Stevens is concerned, though since March 1839 all the accounts are merged into one by entries made by myself with the exception of one item by Mr Bancett, and the present condition of the account as I now state it represents all the money paid by plaintiffs on account of transactions growing out of the

Contract and the value of the Hides that were not returned deducting all sums of money received by plaintiff arising from all transactions growing out of the Contract, and also deducting the net proceeds of all leather recovered by plaintiff from other sources than the Stevens which had been made from Hides sent by plaintiff to W. H. & J. Stevens under their Contract.

Answer to the Fifth Cross Interrogatory.

At the time up to which I made up the last account (16 Sept 1856) there were no such credit items, but at the time I made it out there were —

Answer to the Sixth Cross Interrogatory.

I have not furnished W. H. & J. Stevens with any full statement of the account between them & plaintiff since my former account.

Answer to the Seventh Cross Interrogatory.

I have a knowledge that at the time I made up my former account there were credits on the books of the Plaintiff for certain hides of leather & Hides turned into leather and received after September 8

December 1856. from Palmer Danning at Falls-
burgh, Giddens Lewis Danning at Liberty &
A. J. O. B. Stevens Danning at Cochester Md.
York & this is a receipt now for such receipt
to the defendant and plaintiffs Porters, it was
put on to the credit of Defendant in August
1857. when the account sales were finally
made up. by defendant I mean H. W. F
Stevens

Answer to the Eighth Cross Interrogatory.

I do know of the receipt of Insured
money received by plaintiffs it was before I
was last examined as a witness in this case.

Answer to the Ninth Cross Interrogatory.

The Policies when paid by the several Insur-
ance Companies were kept by them as is the
Custom in this City in all cases therefore I
cannot answer them to my objection.

Answer to the Tenth Cross Interrogatory.

I stated in my direct examination
I never was at Stevensville.

Answer to the Eleventh Cross Interrogatory.

I only know that the property was put
into the hands of the other Danners from

the fact of its being returned to plaintiff by Palms
 Hager & Co. Hildersheim & W. & O. Stevens and
 as to the Leathers from the fact that the hides
 had been originally charged to W. H. & J. Stevens
 Contract account but were at the time of my
 last deposition charged to W. H. & O. Stevens
 contract - omitted to W. H. & J. Stevens Contract
 and did not appear in my statement of hides
 sent by plaintiff to W. H. & J. Stevens. -

Spencer Cummings

And thereupon by their counsel the plaintiff
 read in evidence the deposition of Talmas Hill
 which is as follows.

Answer to the first Interrogatory.

My name is Talmas Hill, I am forty
 five years of age & by occupation a Cartman
 & place of residence in the city of New York.

Answer to the second Interrogatory.

I have known the Plaintiff Foucett over
 twenty years & the plaintiff Wham about ten
 years and the Defendant Fletcher Stevens some
 three or four years.

Answer to the third Interrogatory.

I have been examined before as a witness in this cause, before George A. Halsey at the City of New York in the Winter of 1834. Since that time I have been employed by Plaintiffs & others as a Cartman & looking after Tanneries.

Answer to the fourth Interrogatory.

I was at Stevensville in Sullivan County New York in the month of November 1836. after the destruction of W. N. F. Stevens Tannery by fire, it was a few days after said fire. I went there by direction of the Plaintiffs to take care of their interests, the premises were all burnt down, tannery buildings & everything but the vats and the building occupied for Leaches and Bark Mill. Something little had been done towards removing the rain nothing had been done else except taking out a few of the hides from the sweat pits and spreading them on the ground. Walter H. Stevens was the only person in charge.

Answer to the fifth Interrogatory.

I do take charge of the Hides and Leathers remaining there for the Plaintiffs. I found a quantity of leather in the vats.

partially tanned, some of the rats were frozen
 over with ice. I found some of the hides ~~had~~
^{upstanned} ~~been~~ in a suffering condition & becoming
 damaged very fast. there were about Four
 thousand five hundred sides of partly tanned
 leather in the rats. which I took out and sent
 to have the Tanning completed to the premises
 of J. St. Yickers Lane & Pelaw Hayart Co.
 The hides I sent to the Tanning of C. P. & O.
 Stevens to be tanned for the Plaintiff. I also
 found in the Store House of W. N. P. Stevens about
 one thousand sides of finished sole leather
 which I sent to New York to the plaintiff.
 There were no hides on the premises which I
 did not take charge of, but there were two
 sides of leather made from some slaughtered
 cattle which were in the rats and which
 I did not take charge of, but left it in the
 rats; the reason I left these two sides of
 leather in the rats was that I noticed they
 were made from slaughtered hides different
 from those I knew the plaintiff had sent.
 I notified Walter W. Stevens & he told ^{that} ~~me~~ ^{them}
 two sides had been made from an Ox which
 had been killed about ~~or upon~~ the premises
 & I said that was all they had except those
 belonging to the plaintiff and that was the rea-
 son I did not take charge of the two sides.

Answer to the Sixth Interrogatory.

No one assisted me in taking charge of said leather or hides. I hired men to do the labor, it all was done under my direction. I did take an account of said leather. Hides I have not my men or any man I know had ^{forty five hundred pieces} of leather and about ^{present} but I know there was about seven to eight hundred hides. No one assisted me in assorting or counting said hides or leather. I did that unaided & counted all the leather myself except some few hundred hides which were counted by Mr. Gildersleeve none one was present acting for or pretending to represent said O'H + F Stevens except O'H + Stevens & he took no part in it. He did nothing but occasionally would come & look on but do nothing. I knew Alfred or Alfred L. Stevens he is a brother of said defendant he was on one occasion present while I was taking out the hides & leather. He did nothing nor did he give any directions or account of said hides & leather was taken by him or by either of the Stevens, if there had been I would have known it as I was there all the time with the exception of four hours in two weeks. I mean in working hours.

Answer to the Seventh Interrogatory.

I saw the man Palma Hill who in a former examination before George W. Hayes testified in manner enquired of I saw ditto which leather manufactured from slaughter hides from that manufactured from other hides, the term Slaughter Hides means Hides taken from Domestic Cattle & have now been dried, I can also tell the leather made from Slaughter Hides because the grain is softer & thicker & the trim is different from those made from any Hides. A Slaughter Hide, that is a Hide from a Domestic Animal shows a cut in the throat and the pate is left on also the ears & the hooves are generally left on, and are longer. There was not amongst the leather identified by me at Cleveland, Chicago or Montreal any leather which had been manufactured from Slaughter Hides. I repeat there was no Slaughter Hides of leather among any of that.

Answer to the Eighth Interrogatory.

The Hides which were examined were sent to the Tannery of A. T. & C. Stevens. The leather partly tanned was sent to the Tannery of J. S. Vidersburg & Calvin Hager & Co. I know they were subsequently

tanned & finished by a bone tanner on account
of plaintiffs. & at the expense of plaintiffs.
I know these things because I made the bar-
gain with said tanner on account of said
plaintiffs. I know the plaintiffs received
the said leather but the time or times I can
not now state. I know nothing of the
remaining matters & things suggested of
in this Interrogatory.

Answer to the Ninth Interrogatory.

I know the plaintiffs seized a quantity
of leather which had been manufactured
by P. H. & F. Stevens from hides which had
been sent them by plaintiffs at Cleveland
Montreal & Chicago. These were not at the
January at the time of the fire. I do not know
now how much was seized or recovered
it was seized & replevied. I do not know to whom
or for how much it was disposed of. I sold
two hundred hides of it in Cleveland by di-
rection of the plaintiffs but did not collect
the price or know how much they sold for.
I do not know to whom it was credited or
for what price.

Answer to the Tenth Interrogatory.

I know nothing whatever of the matter

& things enquired of in this Interrogatory.

Answer to the Eleventh Interrogatory.

I know nothing of my own knowledge of the matter & things enquired of in this Interrogatory.

Answer to the Twelfth Interrogatory.

I know nothing whatever of the matter enquired of in this Interrogatory.

Answer to the Thirteenth Interrogatory.

I recollect nothing further now.

Palma Hill.

And being cross examined said Witness testified as follows, which was also read.

Answer to the First Cross Interrogatory.

I saw the same Palma Hill who before testified in this Cause, and I think the last letter received direct from the Stevensville January by the Plaintiff was in December 1836, or thereabouts, I have not my book here present or I could let

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tify exactly to the date. but I now dis-
tify that I know that the last arrival of leather
tanned out of hides which had been sent by
the plaintiff to W. H. & J. Stevens was in De-
cember 1836. because I know that the plain-
tiff did receive leather tanned out of such
hides subsequent to December 1836. from
other sources than the Stevensville Tannery
as I have testified to in my answers to the
Direct Interrogatories.

Answer to the Second Cross Interrogatory.

I do know that leather was received
in 1837. by plaintiff from the Tannery
engaged of made from hides sent by the
plaintiff to W. H. & J. Stevens. I know
the fact because I sent said hides & leather
from the Stevensville Tannery after the fire
as I have before testified and received
the same in New York from the Tannery
of W. H. & J. Stevens. J. S. Gieseler
& Palen Flager & Co. as also before testified
to in my answers to the direct Interrogatories.

Answer to the Third Cross Interrogatory.

I was present after the destruction of the
Tannery of W. H. & J. Stevens by fire in 1836.
as I have before stated when arrangements

were made by myself in behalf of plaintiffs -
with said Giddens & Co. Patons & Co. \$1000
Stevens for the finishing of hides & leather
which was on the premises of W N & J Stevens
after the fire. I did then identify hides which
I knew were sent by plaintiffs to said Stevens.

Answer to the fourth Cross Interrogatory.

I do know that the same hides & leather
which I sent from the Stevensville Factory
after the fire were afterwards received by
the plaintiffs & I do know the same fact
when I was before examined as a witness in
this cause.

John Hill

And the undersigned said Plaintiffs by their Coun-
sel read to the jury the deposition of John
A. Leach which is as follows.

Answer to the first Interrogatory.

My name is John A. Leach, my age is
thirty my place of residence is Brooklyn
New York, occupation is that of General
Clerk.

Answer to the second Interrogatory.

I know the parties Plaintiff and Defendant, I have known Plaintiff since March 1853. and the Defendant since August 1853.

Answer to the third Interrogatory.

I have been before examined as a witness in this Cause. it was in January 1854. in the City of New York before George W. Hedges the Commissioner, I have since that time been employed by Talcott Debow & Co. & J. & S. Talcott and my business has been that of Clerk.

Answer to the fourth Interrogatory.

I now was at Stevensville Sullivan County New York.

Answer to the fifth Interrogatory.

I know nothing of the matter or things enquired of in this Interrogatory.

Answer to the Sixth Interrogatory.

I know nothing of the matter and things enquired of in this Interrogatory.

Answer to the Eighth Interrogatory.

I know by the Books of Plaintiffs, that their Sides turned out armed & partly tanned which were at the Service of said St. H & J. Stevens after the Sides were subsequently turned by Palen Flager & Co. J. St. Gildersleeve & R. T. O. Stevens and on Plaintiffs account, and the proceeds of said Sides were credited by Plaintiffs to the account of St. H & J. Stevens. The leather manufactured from said Sides was received by the Plaintiffs as follows. Viz. from.

Palen Flager & Co.	21 March 1857	559 Sides
J. St. Gildersleeve	23 October 1856	404 "
"	10 Jan'y 1857	243 "
"	12 Feby "	576 "
"	20 " "	260 "
"	28 " "	1848 "
J. St. Gildersleeve	12 March 1857	544 Sides
R. T. O. Stevens	25 June "	359 "
"	24 July "	259 "
"	3 Aug "	531 "
"	11 " "	89 "
"	19 " "	487 "

As I do not keep the Plaintiffs Books I am unable to answer this Interrogatory further.

Answer to the Sixth Interrogatory.

There was Leather recovered by Plaintiffs
manufactured by W. H. & F. Stevens out of
the hides sent them by Plaintiffs other than
that at the Danbury of W. H. & F. Stevens or
manufactured out of hides at the said Dan-
bury at the time of the fire. This leather
Plaintiffs recovered after the fire as follows
viz:

At Cleveland Ohio	998 hides
Chicago Illinois	799 "
St Louis Missouri	1006 "
Cincinnati Ohio	605 "

all these hides now recovered in the month
of December 1836.

I traced the leather to the several places
above mentioned and seized it for Plaintiffs
with the exception of the six hundred hides at
Cincinnati which Mr Deane followed
& seized. The leather recovered at Chicago
& Cleveland was by a suit & the interven-
tion of the Sheriff all this leather was dis-
posed of & credited to W. H. & F. Stevens: I
don't know the price now.

Answer to the Sixth Interrogatory.

I know all the leather received from said
W. H. & F. Stevens by the plain tiff or manu-
factured by said W. H. & F. Stevens out of

Hides sent them by said plaintiffs & in any manner recovered by plaintiffs was credited to the account of W H & F Stevens on said Plaintiffs Books & remain so credited on said Books to this day.

Answer to the Eleventh Interrogatory.

I do of my own knowledge know of Assurance Money received by the plaintiffs for losses sustained by the burning of W H & F Stevens Tannery. I don't remember the amount nor how it was received or upon what policies - I do know that it was credited to the account of W H & F Stevens.

Answer to the Twelfth Interrogatory.

I do not know the present condition of the accounts between plaintiffs & W. H. & F. Stevens.

Answer to the Thirteenth Interrogatory.

I am the same John A. Leach who some time since gave a deposition in this cause, before George S. Hayes, Commissioner & testified to identifying leather at Ireland, Chicago & other places as leather manufactured by said W. H. & F. Stevens out of hides sent to them

by said plaintiffs: Leather manufactured from Slaughter Hides can easily be distinguished by me from that manufactured from other Hides. I can so distinguish it by the manner in which it is Stripped & its general appearance having been so accustomed for the past six years to handle leather made from Slaughter Hides & other kind of Hides. I can distinguish it readily from other Hides & without any difficulty, there was no sleight to leather whatever among the leather so identified by me, none whatever - I handled almost every side of the said leather, & if there had been any amongst it I would have easily distinguished it from the other leather.

Answer to the fourth Interrogatory.

I know of nothing else that I now remember.

John A. Leach

And being cross examined said Leach testified as follows, which was also read.

Answer to the first Cross Interrogatory.

By Plaintiff Books known as before stated. by me in answering the direct Interrogatories that the Hides and leather at Stevensville was taken possession of by plaintiffs after the destruction by fire of the Tannery of W. H. & J. Stevens in 1856: as I also stated in answer to the direct Interrogatories. I was not at Stevensville after the fire and of course did not then recognize any Hides sent by plaintiffs to defendant.

Answer to the Second Cross Interrogatory.

Did not state in my former examination that the last arrival of leather made from hides sent by plaintiffs to W. H. & J. Stevens to be tanned was in December 1856. but stated that it was the last arrival from W. H. & J. Stevens of such leather. But from other sources there were receipts of leather by plaintiffs in 1857. tanned from hides which had been sent by plaintiffs to W. H. & J. Stevens as particularly stated in my answer to the eighth direct Interrogatory.

Answer to the ^{Third} Cross Interrogatory.

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I did on my former examination know of receipts of leather by plaintiffs turned out of hides sent by them to W. H. & F. Stevens previously in the year 1857 from other Tanners. I was not then requested to confine my knowledge in answering any questions to the year 1856: I did know when it was inquired that some of the said Hides sent by plaintiffs to W. H. & F. Stevens to be tanned had arrived manufactured into leather by other Tanners and was received by plaintiffs & identified by me. As that examination I was not asked if leather had arrived from other Tanners, but was merely asked when the last leather arrived from W. H. & F. Stevens, and which I properly stated was on 5th December 1856.

Answer to the Fourth Cross Interrogatory.

Object stated I did know of such receipts by plaintiffs after 1856. I did identify in the lots received leather made from hides spoken of in my former examination as having been sent by plaintiffs to W. H. & F. Stevens Tannery.

Answer to the Fifth Cross Interrogatory.

I know of the several arrivals of leather to plaintiffs - in 1857, from the Tanneries of John Plag & Co. Wilder & Co. & W. H. & F. Stevens. I do not know that plaintiffs have

denies that defendant was entitled to any credit upon account of such receipts, always regarding such arrivals as upon account of said W. H. & F. Stevens, and to be credited such.

Answer to the Sixth Cross Interrogatory.

I have not been requested to make any changes or additions on any Books since my last examination or at any time in relation to matters affecting defendant or W. H. & F. Stevens or the said John Leathers. I know of entries having been made in regard to receipts from Palen Hays & Co. & T. O. & Stevens & Gildersleeves, such receipts were those particularly set forth in my answer to the Eighth Direct Interrogatory, & on the several days there in specified, and were then entered on the Invoice Book of plaintiff as having been received from said Palen Hays & Co. Gildersleeves & T. O. & Stevens, but the net proceeds of the said several lots were credited to W. H. & F. Stevens. I know of no other transactions having been made between plaintiff & said Palen Hays & Co. Gildersleeves & T. O. & Stevens since that time. I have not for this occasion been requested to refresh my recollection or remember certain things. I have not been talked to by plaintiff concerning this suit or the giving of testimony therein, the only persons

have spoken to at all was Speers (examining) in
applying to him to see the entries in Plaintiffs
Books: testified to in this Examination.

Answer to the Seventh Cross Interrogatory.

I know of no other matter or thing of benefit
or advantage to the defendant.

John A. Leach

Now the plaintiffs voted -

The above being all the evidence given in
the case.

The plaintiffs by their Counsel asked
the Court to give to the Jury the following
instructions

If the Jury believe from the evidence that
the leather in question was manufactured by
W. H. & T. Stevens out of hides furnished by the
Plaintiffs to be tanned under the contract of
the 7th August 1855. offered in evidence - and
that the same was tanned by said W. H. & T. Stevens
under said contract, and that after said leather
was manufactured, and whilst the same was on
the way to the plaintiffs in the city of New York the

Given

Defendant Fletcher Stevens, without the knowledge or consent of the Plaintiff or his partners, W. H. Stevens, intercepted the ^{or any part thereof} same, and forwarded converted it to his own use. And the Plaintiff are entitled to recover in this action for such conversion.

If the Jury believe from the evidence that the defendant and W. H. Stevens received of the Plaintiff under the Contract of the 7th of August 1835. given in evidence, hides to be tanned into leather and returned to the Plaintiff that after such hides or a portion of them were received and tanned into leather, the defendant fraudulently and maliciously took or caused to be taken, the said leather or a portion thereof to places other than the City of Newport and without the consent of the Plaintiff or either of them sold and converted the same or any portion thereof to his said defendant's own use, the Plaintiff are entitled to recover of the defendant in this action, the value of such leather or converted ^{and which has not been disposed of by them} at the time of such conversion ^{and the Jury may give} interest on such value from the time of such conversion by way of damages.

And the defendant by his counsel thereupon

then and then objected to the giving of each of said instructions to the Jury, but the Court overruled said objections and gave and read each and all of said instructions to the jury, to the decision of the Court in overruling said objections and the giving of said instructions and each of them the Defendant by his Counsel then and then duly accepted.

And thereupon the defendant by his Counsel asked the Court to give the following instructions to the jury:

Superior Court of
the City of Chicago

J. F. Stevens
and
Fauett & Shaw & Co

Instructions for Defendant.

1st If the Jury should believe from the evidence, that the Contract offered in evidence by Plffs and entered into between them and J. F. Stevens covered the property in the Leather or sides of Leather carried away from the Tannery by Defendant then the interest in said property being a joint or copartnership interest only and owned by defendant in common with

Refused

Plff. the plff. cannot recover damages for the conversion thereof by defendant and the verdict should be for the defendant.

2.nd The measure of damages (if any) in this case is the value of the aliquot share or proportion owned by Plaintiff in the property in controversy - subject to all deductions on account of the property recovered after the time of said conversion, to all deductions on account of insurance money received by plaintiff, after the destruction of the tannery by fire for the property destroyed thereby, and also to all deductions to which said defendant with W. H. Stevens might be entitled upon a statement of the accounts to set off against the value of said property converted as his share of the interest therein against the claim of the plaintiff, as well as for the leather received by Plaintiff after the destruction of defendant's tannery -

3.rd The defendant in this case, is entitled to recoup or set off to the amount of plaintiff's claim, all the damages or matters of claim to which he would be entitled, upon a statement of the accounts between the plaintiff and defendant J. Stevens and W. H. Stevens such as the money received on insurance

Refused

Refused

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Refused
policies, after the fire, the property after that time returned to and received by Plaintiff; the property recovered by Plffs. the amount due to W. H. & J. Stevens by Plffs under the Lumbering Contract, or defendants proportion thereof, and all matters of account arising under the Contract as between the said Plaintiff, and the said W. H. & J. Stevens and that subject to these matters the injury of the Plaintiff is only the value of their interest in the property consuted.

4th Under the contract given in evidence by the Plaintiff - there is such a copartnership in relation to said property embraced in said Contract as prevents the recovery of said Plaintiff in this action and if the Jury believe from the evidence, that the property sued for in this case is the same property or any portion thereof embraced by the provisions of the Contract that as to such property the verdict should be for the Defendant

5th If the Jury believe from the evidence that the Defendant consuted any part of the leather claimed to have been manufactured under the Contract, yet if they believe the leather to have been enhanced in value by the Labor & materials of W. H. &

Refused
 F. Stevens, in tanning under the Contract they should make such deduction from the value of the leather as is equal to the cost of the tanning thereof under the Contract offered in evidence, between Plaintiff and Dr. H & F. Stevens and the verdict should only be for the difference or balance remaining.

Refused
 6th The Jury are only to find as damages the value of the interest of the Plaintiff in the leather subject to all deductions arising by a fair and equitable adjustment of the accounts existing at the time of the conversion between said Plaintiff and said defendant & W. H. Stevens under the Contract given in evidence by the Plaintiff, if the jury shall believe that the leather in controversy was manufactured under that Contract.

Refused
 7th The Jury are only to assess as damages the value of the interest of Plaintiff in the property under the Contract, and not the value of the leather "prima facie" but they should take into consideration the value of the interest also of defendant F. Stevens and the interest of W. H & F. Stevens making allowances for the manufacture of the leather under said Contract and all profits or losses.

8th The Defendant is allowed to recoup or set off
all matters of account arising out of said
Contract as between the said Plffs and the
said W. H. Stevens and to have just & equita-
ble allowances for whatever would be due to
said W. H. Stevens upon a settlement of
the Contract or joint account.

Refused

9th The true measure of damages in this case
is the value of whatever balance of accounts
may have been shown to be due by Defendant
(if any) to Plaintiff by taking into considera-
tion all the dealings between the Defendant
together with W. H. Stevens and Plaintiff
under the Tanning Contract offered in evidence
by said Plaintiff, with such other charge
or damage as the Plaintiff may have sus-
tained by reason of the Conversion.

Refused

Wynne Miller & Lewis
for Defence

Exceptions taken to ruling of Court on refusing the instructions.

We think the within instructions are substantially as asked
on the trial of this Cause, on the part of the Defendant & re-
fused by the Court.

Leate Mc Allister & Smith
atty for Plffs

But the Court refused to give any or either of said instructions to the Jury, to which refusal of the Court to give any or either of said instructions to the jury the defendant by his Counsel then and then duly excepted.

And the said case having been submitted to the Jury upon the evidence and instructions given as aforesaid.

The jury having retired, returned into Court with the following verdict—

That the jury find the Defendant guilty, and assess damages—Thirty three thousand six hundred ninety Dollars and eighty cents.

John Newport Foreman.

And thereupon the defendant by his Counsel entered his motion for a new trial of said cause which is as follows.

Superior Court of Chicago.

J. F. Stevens

vs

Saucey & Shaw & Co

Troner

And now comes the said defendant and moves the Court for a new trial on the following among other grounds viz

1st The Court erred in refusing the instructions of said defendant.

2nd The Court erred in giving the instructions of said Plaintiff to the Jury.

3rd The Verdict is against Law.

4th The verdict is against the evidence in the case.

5th The Court erred in excluding the testimony of the defendant as to all matters of account between the parties.

6th The Court erred in refusing to exclude the testimony of Plaintiff as to the conversion of the property by defendant after the proof of the Contract, which was offered in evidence by Plaintiff showing a copartnership as to profits and losses as to the said property.

7th The Court erred in refusing to instruct the Jury that an action could not be maintained at Law because of the Contract of-

acting between plaintiff W H & J. Stevens. under which the said defendant obtained and held the possession of the property and sold the same.

8th Because the Court instructed the Jury that defendant was not entitled under said Contract to recoup or set off to plaintiff claim all matters of account arising between W H & J. Stevens. and said Plaintiff.

9th Because the Court held that the measure of damages in the action was the value of the property converted without any regard to the actual state of the accounts, the return of property - the labor & materials furnished under said Contract by W H & J. Stevens. the amount of Insurance money received by Plaintiff on said property or the property destroyed by fire. and the amount of profits accruing or accrued under said Contract.

Boyer Miller & Lewis
 Atty

But the Court overruled said motion and refused to grant a new trial of said Cause. To which ruling of said Court in overruling said motion and refusing to grant a new trial of said Cause the defendant by his Counsel then and there accepted -

And then upon said defendant by his Counsel entered his motion in arrest of Judgment, but the Court overruled said motion, to which ruling and decision of the Court in overruling said motion the defendant by his Counsel then and there accepted - And the defendant prayed an appeal which was granted, and for as much as the matters aforesaid do not appear of Record in said Cause the defendant by his Counsel prays that this bill of exceptions may be signed and sealed by the Court and incorporated into the record of said Cause which is done this 23rd day of March A. D. 1860.

Grant Goodrich
Clerk

The within Bill of Exceptions is Correct.
Scoble McAllister & Smith
Attys for Def^t

And afterwards to wit: on the day & year last
aforesaid, the said Plaintiffs by their attorneys
filed in the office of the Clerk of said Court
their certain stipulation, in the words & figures
following, to wit:

Superior Court of Chicago

Fletcher Stevens

vs

Francis Tancet et al

It is hereby stipulated
and agreed on the part of the Plaintiffs in this suit
that in case the Defendant's attorneys shall on
or before the third day of the next term of the Su-
preme Court file therein a certified transcript of the
record in this case, & assign error thereon and
shall at least ten days before the first day of
the said Term give the Plaintiffs attorneys ten
days notice in writing of the intention of the
Defendant to file such transcript and assign error,
then the Plaintiffs attorneys hereby stipulate to waive
the issuing of writ of Error or Scire Facias from
said Supreme Court and to appear therein the
same as if such writ of Error were issued and
such Scire Facias served according to the rules and
practice of said Supreme Court

Dated March 23^d 1866

Seals McAllister & Smith
Attys

State of Illinois }
County of Cook } S. S.

I, Walter Kimball Clerk of the Superior Court of Chicago, in and for said County (formerly the Cook County Court of Common Pleas) do hereby Certify that the foregoing is a full true and complete transcript of all the pleadings on file in my office, and of the proceedings and judgment entered of record in said Court, in a certain suit wherein Frederick Faneutt, Samuel Shaw & Thomas Faneutt, are plaintiffs and Fletcher Stevens and Walter H. Stevens are defendants.

In testimony whereof I hereunto subscribe my name, and affix the Seal of said Court at the City of Chicago, in said County this 15th day of April, A.D. 1860.
Walter Kimball Clerk



Supreme Court

Hitchcock Stevens

Plff in Error

vs.

Fredrick Hancock

Danial Johnson &

Thomas Hancock

Def in Error

and now comes the said plaintiff in
Error Hitchcock Stevens & Henry Smith &
Lewis his attorney and says there is
manifest error in the record and
proceedings aforesaid and prays
it following as grounds of error

1. The error void in overruling defendants
objection to the reading to the jury the remaining
portion of the deposition of Spens Cumming
and the remainder of plaintiffs depositions
after the contract between the plaintiffs
the defendant Walter H. Stevens was read
in evidence to the jury and to the jury

of any evidence to the jury for the purpose
of showing a commission of the crime -
-act of Boston Manufacturers under
said contracts. -

2. The court erred in refusing to instruct the
jury to find for its defendant by way of
verdict as desired by defendants counsel
after the plaintiff had rested. -

3. The court erred in refusing to instruct the
jury to find for its defendant by way of
verdict as desired by defendants counsel
after the plaintiff had rested.

4. The court erred in giving to the jury the
first and second instructions as desired
of plaintiff counsel -

5. The court erred in refusing to give to the
jury the instructions from one to three
inclusive written of them as desired of
defendants counsel

6. The court erred in overruling defendants
motion for a new trial
whereby the said Matthew Stevens of

his attorney general says that said
judgment may be reversed

Wm. M. M. M. M.
for plaintiff in error

And the said Defendants by Scates
McAllister & Jewett and say that
in the record & proceedings a-
foresaid and in the recitation
of the judgment aforesaid
there is no error - wherefore
they pray the affirmance of
said judgment in all things
&c

Scates, McAllister & Jewett
of Counsel for Defendants

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Fancett et al

vs
Stevens

Filed April 18 1860
L. Leland
Clerk

\$10.00 pt

1860