No. 14735 A

Supreme Court of Illinois

Reeves

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vs.

Ayers

71641 7

1865

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 187

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

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To all to whom these Presents shall come, Greeting,

Know Ye that we having caused to be inspected the Records and proceedings now remaining in the office of the Clerk of the Circuit Court of Iroquois County Illinois in the case of Mark E. Reeves Et al Complainants and Mark Ayres & al Defendants, Do find therein certain Records and proceedings in the words and figures following, To wit;

State of Illinois, }
County of Iroquois, } ss.

Pleas before the Hon Charles R. Starr Judge of the 20th Judicial Circuit of the State of Illinois, at the Term of the Circuit Court of said County begun and held at the Court house in Middleport on Monday April 20th 1857.

Present Hon Charles R. Starr Judge of the 20th Judicial Circuit
States attorney,
James K. Karr Sheriff &
Thomas Denman Clerk.

Be it remembered that on the third of January in the year of our Lord one thousand Eight hundred and fifty seven there was filed in the office of the Clerk of the said Iroquois County Circuit Court a Bill in Chancery, which reads in the words and figures following, to wit;

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State of Illinois } ss.
Iroquois County }

Iroquois County Circuit Court
of the April Term AD 1857.

To the Honorable S. W. Randell Judge of the Eleventh Judicial Circuit of the State of Illinois, In the Iroquois County Circuit Court In Chancery Sitting.

Humbly Complaining Show unto your Honor your orators Mark E. Reeves, James E. Reeves Isaac Stephens, Francis C. Goode, and William R. Phipps merchants and Copartners of the City of Cincinnati doing business under the name Style and firm of Reeves Stephens & Co. and Kenny Falls a merchant of the City of Cincinnati – And Martin Stadler & Max Stadler merchants and Copartners also of the City of Cincinnati doing Busines under the name Style and firm of Martin Stadler & Brother – And Robert Mitchell and Fred Rammelsberg merchants and Copartners also of the City of Cincinnati doing business under the name Style and firm of Mitchell & Rammelsberg – And Calvin B. Leamy a merchant also of the City of Cincinnati – also your orators John Perdue and Fitch B. Stacy of Lafayette in the State of Indiana and Edward H. Reynolds & William H. Hatcher also of Lafayette in the State of Indiana – also Samuel B. Haggard & Daniel O. Bradley of Chicago and Eber Dunning of the County of Iroquois and State of Illinois; that Mark Ayres and Theodore Ayres brothers merchants and Copartners in business, on or about the year AD 1851. Engaged in the mercantile business at the Town of Concord in the County of Iroquois and State of Illinois, as such partners, and the said

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Mark Ayres and Theadore Ayres as such partners under the name style and firm of Ayres & Co did there and then and from that time until on or about the day of AD 1855. Carry on the business of merchandizing and during all that time they as such Copartners transacted a very large amount of business in the buying and selling goods Wares and merchandize and the buying and Entering Land as hereinafter stated.

And your orators would further show that during the time aforesaid and while the said Mark and Theadore Ayres were so Engaged in the Mercantile business as aforesaid they purchased a Large amount of their Stock in Trade in the City of Cincinnati and transported the same from thence to the said Town of Concord they also purchased a portion of their Stock in Lafayette & Chicago and other places and in like manner conveyed the same to said Town of Concord where they stored the same, and retailed out said Goods wares and Merchandize to their customers. And while they were so engaged they became & were indebted to diverse and sundry persons, at Cincinnati Lafayette and Chicago in all to the amount of about fifteen Thousand Dollars they principally purchased on Credit, and seldom paid for any thing they purchased of the nature of goods wares and merchandize; and further that out of the proceeds of said goods wares and merchandize they purchased and entered a Large amount of Land in the County of Iroquois and State of Illinois as well as in the State of Indiana and took the titles to said Lands in the name of Mark Ayres as hereinafter stated for the purpose of defrauding their creditors, as hereinafte

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stated. And your orators would further show unto your Honor that during the time the said Mark and Theadore Ayres wer carrying on the mercantile business as aforesaid they as such partners became indebted for Goods Wares and Merchandize Sold by your orators to them as such partners as aforesaid to your orators the said Reeves Stephens & Co in the sum of five hundred and three dollars and Eighty Cents, and to your orator the said Henry Falls the said Mark Ayres became indebted in the sum of one hundred and forty nine dollars and sixty three cents - and the said Mark Ayres and Theadore Ayres then and there became indebted to your orators Martin Stadler & Brother in the sum of five hundred and thirty dollars and fifty nine cents. and to your orators Mitchell & Rammelsberg they the said Mark & Theadore Ayres became indebted in the sum of two hundred and seventeen dollars and seven cents - and to your orator Calvin B. Camp they the said Mark & Theadore Ayres became indebted in the sum of three hundred and thirty five dollars and fifty cents - and your orators would further show that the said Mark & Theadore Ayres in like manner became indebted while they were so engaged in the mercantile business as aforesaid to your orators the said John Perdue & Fitch B. Stacy in the sum of nine hundred and forty seven Dollars and Eighty six cents - and in like manner they became indebted to your orators the said Edward K. Reynolds and William K. Keatches in the sum of two hundred and forty six dollars and ninety seven cents. and in like manner they became indebted to your orators the said Samuel

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Haggard and Daniel O. Bradley in the sum of one hundred and fifty two dollars and forty seven Cents — And in like manner they became indebted to your orator the said Ester Dunning in the sum of two hundred and fifty six Dollars and ninety cents —

And your orators would further show unto your Honor, that out of the proceeds of the sales of the Goods wares and merchandize of the said Mark Ayres and Theadore Ayres, sold by them while they were so Carrying on the business of Merchants at the town of Leonard as aforesaid the bout & purchased of divers and sundry persons by & with the consent and request of the said Theadore Ayres the following described pieces & parcels of Land and took the titles thereto in the name of the said Mark Ayres instead of the name of himself and the said Theadore Ayres in order to Cheat, delay, wrong and defraud your orators out of their said just demands which they then held and do now hold against the said firm of Ayres & Co That is to say the said Mark Ayres purchased of William Hollingsworth the West half of the South West quarter of Section No Nine (9) in Township No Twenty seven (27) North of Range No Eleven (11) west, on the 18th day of May AD 1854, and paid therefor the sum of three hundred dollars. And in like manner the said Mark Ayres purchased of Zebulon Hollingsworth on the 19th day of September AD 1854 the North East quarter of the South East quarter of Section No Eight (8) in Township No Twenty seven (27) North of Range No Eleven (11) west. for the sum of two hundred and twenty dollars — And in Like manner the said Mark & Theadore Ayres — purchased of Asmus Devalt on the 7th day of December

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AD 1853, the North East quarter of the South West quarter of Section No four (4) and took the deed therefor in their joint names - and in like manner the said Mark Ayres purchased of Ezekiel Hollingsworth on the 14th day of January AD 1854, the West Half of the North West quarter and the North East quarter of the North West quarter and the North West quarter of the North East quarter of Section No Eight - and in like manner the said Mark Ayres purchased of William Hollingsworth on the 15th day of December AD 1853, the South East quarter of the north East quarter of Section No Eight (8) and the South West quarter of the North West quarter of Section No Nine (9) - and in Like manner the said Mark & Theodore Ayres Jointly purchased of Lenard Hoagle on the 21st Day of March AD 1854, the North half of the South half of the South East quarter of the North West quarter of Section No twenty one (21) and in like manner the said Mark Ayres purchased of Samuel Warrick the South East quarter of the North West quarter of Section No Eight (8) - and in like manner the said Mark Ayres claims to have become the purchaser and owner of the South East quarter of the South West quarter of Section No four (4) also the South West quarter of the South East quarter of Section No four (4) all of the said described Lands are situate Lying and being in Township No twenty seven (27) North Range No Eleven (11) West in the County of Iroquois and State of Illinois -

And in like manner the said Mark Ayres did on the third day of January AD 1855 became the purchaser of the following described Lands, to wit; The East half of the South East quarter of the South West -

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quarter of Section No twenty nine (29) in Township No twenty Seven (27) North of Range No Twelve (12) West. also the West half of Section No thirty five (35) in the Township and Range last aforesaid – also the East half of the North East quarter of Section No Thirty five (35) in the Township and Range last aforesaid – also the the East half of the South East quarter of Section No thirty four (34) in the Township and range last aforesaid all said pieces or parcels of land are situate Lying and being in the County of Iroquois and State of Illinois. and contain in all of said described pieces parcels or tracts of Land about one thousand and seventy two acres and fourteen one hundredths of an acre.

And Your oratos would further show unto your Honor that it was the intention of the said Mark and Theadore Styrs when they were so Engaged in the said Mercantile business to purchase all the goods they could upon Credit and sell them out in manner and form aforesaid and out of the proceeds thereof to purchase the Lands aforesaid in the name of Mark Styrs only in order the better to place the same out of their hands and beyond the reach of their creditors, as hereinafter stated, and to this End they invested the proceeds of the sales of said goods wares and merchandize in the Lands aforesaid and took the titles thereto in the name of Mark Styrs only instead of Mark and Theadore Styrs although they were Equal partners in the consideration paid for said Lands, Except, Except the said NE¼ of the SW¼ of Sec No 4. and the N½ of the S½ of the South East of the NW¼ of Sec 21 all in Town 27 N R 11 West aforesaid Which they as such partners purchased and took the title thereto in their names Jointly!

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but afterwards to wit on the 9th day of February A.D. 1855 the said Theadore Ayres in order to carry out their purposes fully deeded his interests in said Lands last above described to the said Mark Ayres, so that it might appear to your orators and their other Creditors of the said firm of Ayres & Co the said Theadore had no interest in any of said Lands, in order the more Easily & effectually to accomplish their fraudulent purposes. Which they afterwards carried out as herein after Stated—

And your orators would further Show unto your Honor When the said Mark and Theadore Ayres discovered that your orators and their other Creditors became alarmed for fear they the said Ayres & Co intended to cheat them out of their just Demands which they held against them as aforesaid To wit, on or about the 3rd day of Janu 1855— they sold out the remnant of their Stock of Goods at Concord to one Charles Sherman together with their Store house and dwelling house, and all their Farm property in Concord and invested the proceeds of said sale in a portion of the Lands aforesaid To wit the said East half of the South East quarter of the South West quarter of Section No 29. and the West half of Section No 35— and the East half of the NE quarter of Section No 35— and the East half of the South East quarter of Section No 34 all in Township No 27 North of Range No 12 West in said County of Iroquois and took the title thereto in the name of Mark Ayres as aforesaid.

And Your orators would further Show unto your Honor that on the Nineteenth day of September —

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A.D. 1854. the said the said Mark Ayres
fearing that your orators and their said other Creditors
might discover the fraudulent designes and thereby
became uneasy Concerning their demands which they
then held against them the said Mark & Theadore
Ayres. the said Mark Ayres was determined that all the
said Lands which they then held and owned in the
name of Mark Ayres as aforesaid should be put and
placed beyond the reach of their Creditors, and to
this End he the said Mark applied to one Timothy
B. Mason the father in Law of the said Mark Ayres and
Solicited him to take receive and accept a mortgage
upon said Lands from the said Mark Ayres and Alma
M. Ayres his wife with a sufficient Considevation Expres-
ed therein to cover up entirely said Lands and
place the same beyond the reach of the Creditors
~~aforesaid~~ of the said Mark & Theadore in order that the
Creditors aforesaid might be hindered, delayed and
defrauded in Collecting the just Demands which they
held against them — And further that the said
Mark Ayres and Alma M. his wife did then make
to the said Timothy B Mason without any good
and sufficient Considevation a mortgage to the
said Lands Which they then had on hands to wit
The said South East qr of the South West quarter
of Section No 4. & the South West qr of the South East
qr of Sec No 4. and the South East qr of the North
East qr of Sec No 8 and the South West qr of the
North West qr of Sec No 9. and the West half of the North
West qr of Sec No 8. and the North East qr of the
North West qr of Sec No 8. and the North West qr of the
North East qr of Sec No 8. and the West half of

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the South West qr of Sec No 9. and the South East qr of the North West qr of Sec No 8. all in Township No twenty seven (27) North of Range No Eleven (11) West. in the County of Rogers aforesaid, which will more fully ~~appear~~ and at large appear reference being had to the the said Mortgage or the Record thereof in the office of the Recorder of said County, a copy of which is herewith presented marked "A" and made a part of this Bill of Complaint — And further the said Timothy B. Mason took accepted and received the said Mortgage, with a full knowledge that the said Mark & Theadore were in partnership in the said ~~Merchandise~~ Mercantile business, and with the full knowledge that said Lands were purchased with the proceeds of their said partnership property - and all the fraudulent circumstances connected with their trade as aforesaid; and as your orators are informed and believe and do expressly charge the fact to be that he took said Mortgage without paying any good or valuable consideration therefor although there is expressed in said Mortgage a consideration of ten thousand dollars, in order to delay hinder, wrong and defraud your orators out of their said just demands —

And your orators would further show unto your Honor that soon after the said Mark Ayres had — acquired title to wit on the 9th day of February A.D. 1855 to said Lands which he purchased of Charles Sherman as aforesaid he and his said wife mortgaged the same to the said Timothy B. Mason, to wit, the East half of the South East qr of the South West qr of Section No 29 - also the West half of Section No 35 als

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the East half of the North East qr of Section No 35 — the East half of the South East qr of Section No 34 all in Township No 27 North of Range No 12 west in Iroquois County aforesaid. also the North East qr of the South West qr of Section No 4. and the North half of the South half of the South East qr of the North West qr of Section No 21 — and the North East qr of the South East qr of Section No 8 all situate lying and being in Township No 27 North of Range 11 West in said County of Iroquois, which will more fully and at Large appear reference being had to the said Mortgage or the Record thereof in the Recorders office in said County a certified copy of which is herewith presented marked "B" and made a part of this bill of Complaint and further the said Mason took said Mortgage with full Knowledge of the said partnership Existing between the said Mark and Theadore Ayers. and that said Lands were purchased with the proceeds of the said Goods Wares and Merchandize of the said Ayers & Co and that all and singular said Lands were in equity the Lands of the said Theadore as well as the said Mark, as well as every other circumstance of a fraudulent nature as aforesaid Existing between the said Mark and Theadore; And took the same as your Orators are informed and believe and do charge the fact to be without having paid any good or valuable consideration therefor although there is ~~Existing~~ Expressed in said Mortgage a consideration of ten thousand dollars, in order to delay, hinder, cheat wrong and defraud your orators out of their just claims aforesaid —

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And your orators would further show unto your honor that about the time the said Mark Ayres made the said last mentioned Mortge to the said Mason, and about the time the said Ayres & Co sold out their said Goods Wares & Merchandize to Charles Sherman your orators Reeves Stephens & Co & your orator Kenny Falls; and your orators Mitchell & Rammelsberg, and your orators Martin Stadler & Brother, and your orator Calvin B. Camp, commenced their several suits for the said claims which they then held against Mark and Theadore Ayres as aforesaid in the Iroquois County Circuit Court, And further that afterwards to wit, on the 26th day of April AD 1855 at the April Term of the said Iroquois County Circuit Court in the year last aforesaid your orators Reeves Stephens & Co Recovered a Judgment against the said Mark Ayres and Theadore Ayres as such Copartners as aforesaid then doing business under the name Style and firm of Ayres & Co, as aforesaid upon their said demand against them as such Copartners in business for the sum of four hundred and fifty three Dollars and Eighty cents, Damages and the further sum of twelve Dollars and Eighty five cents costs, as will more fully and at Large appear Reference being had to the Record of said Judgment a copy of which is herewith presented Marked "C" & made a part of this bill of Complaint.

And further that on the said 26th day April AD 1855, at the April Term of said Circuit Court in the year last aforesaid, your orator Kenny Falls recovered a Judgment before said Court against the said Mark Ayres for the sum of one hundred & forty nine Dollars and Sixty three cents damages and the further sum

of ten dollars & forty five cents costs as will more fully and at large appear refference being had to said Judgment a copy of which is herewith presented marked "D" and made a part of this bill of Complaint —

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And further that on the said 26th day of April A.D. 1855 at the April Term of said Court in the year last aforesaid Your orators Martin Stadler & Brother before said Court — recovered a Judgment, against the said Mark Ayres and Theadore Ayres as such Copartners in business upon their said Demand which they held against them as aforesaid for the sum of five hundred and thirty dollars and fifty nine cents damages. and the further sum of $ 12.85 Costs as will fully appear refference being had to the Record of said Judgment, a Copy of which is herewith presented marked "E" and made a part of this bill of Complaint —

And further on the said 26th day of April A.D. 1855, at the april term of said Court for the year last aforesaid, and before said Court Your orators Robert Mitchell and Fred Rammelsberg recovered a Judgment against the said Mark and Theadore Ayres as such partners as aforesaid upon the said demand which they held against them as aforesaid for the sum of Two hundred and seventeen Dollars and seven cents damages and the further sum of twelve dollars & Eighty five cents costs, as will more fully appear refference being had to the Record of said Judgment, a Copy of which is herewith presented marked "F" and made a part of this bill of complaint.

And further on the said 26th day of April A.D. 1855, at the april term of said Court for the year last aforesaid and before said Court your orator Lealon B. Leamy recovered a Judgment against the said Mark &

Theadore Ayres as such partners in business as aforesaid upon the said demand which he held against them as aforesaid for the sum of three hundred and thirty five dollars and ~~Eighty~~ fifty cents damages, and the further sum of twelve dollars and eighty five cents costs, as will fully appear by reference being had to the record of said Judgment a copy of which is herewith presented Marked "G" and made a part of this bill of complaint.

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And your orators Reeves Stephens & Co would further show at the time of the rendition of said Judgment in their favor and against the said Ayres & Co there was a mistake made by the Clerk of said Court in rendering up said Judgment of fifty dollars, the said Judgment should have been $553.80, instead of $453.80, and in order to correct said mistake the said Mark Ayres did on the 24th day of November AD 1856, confess a Judgment in favor of your orators Reeves Stephens & Co for the said sum of fifty dollars before Henry L. Bryant a Justice of the peace in and for said County, to which Judgment your orators pray that he may be allowed to refer for greater certainty a copy of which is herewith presented marked "H" and made a part of this bill and he prays that he may be allowed to attach said Judgment so rendered before said Justice to the said Judgment so rendered in the Circuit Court in favor of your orators Reeves Stephens & Co. and make it a part thereof.

And your orators would further show that afterwards, to wit; on the 1st day of August AD 1855, an Execution was issued upon the said Judgment in favor of your orators Reeves Stepens & Co for the said sum of $453.80 and five dollars and Eighty five Cent

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Costs. by the Clerk of said Court in due form of Law. and placed in the hands of Asa B. Roff who was then Sheriff of said County to be executed according to law, which said Execution was afterwards returned into the Clerks office of said Court with the following Endorsement thereon towit: "Received this writ August 2d 1855 at 2 oclock PM and served same by reading to Mr & T. Sypes the 9th of August. No property found wherein to Levy and no money made A.B. Roff Sheriff 1855 Fees 4 $ 2.00 36 m T 1.80 Ret 10 $3.90 which will more fully and at large appear reffrence being had to said Execution, a copy of which is herewith presented marked "I" and made a part of this bill of Complaint —

15th

And further that in like manner, there was by the Clerk of said Court in due form of Law an Execution issued upon the Judgment aforesaid in favor of your Orator Henry Falls on the said 1st day of August 1855 for the said sum of $ 149.63, and $ 4.55 Costs. which was likewise placed in the hands of A B Roff Sheriff as aforesaid to be executed according to law, which was also afterward returned by him into the office of said Clerk with the following endorsement thereon towit, "Recd this writ August 2d 1855 at 2 oclock PM and served the same by reading to Mr Sypes August 5th 1855. No property found wherein to Levy and no money made." "A B. Roff Sheriff" — — "Fees 2 $ 1.00 3 m T .15 Ret 10 $ 1.15" all of which will fully appear Reffrence being had to said Execution and the endorsement thereon, a copy of which is herewith presented marked "J" and made a part of this bill of Complaint —

And further that in Like manner there was on the said 1st day of August AD 1855 by the Clerk of said

Court in due form of Law an Execution issued upon the said Judgment in favor of your orators Martin Stadler & Brother for the said sum of $530.59 and also the further sum of $5.80 costs which was ~~in like manner~~ likewise placed in the hands of said Sheriff to be executed according to law — which was also afterwards returned by said Sheriff into the office of said Clerk with the following Endorsement thereon to wit. "Rec^d this writ August 2 1855 at 2 oclock PM and served the same by reading August 9th 1855 — no property found wherein to Levy and no money made — A.B. Roff Sheriff" "Fees 4 Sec 2.00 36 m T 1.80 Ret 10. $3.90" all of which will fully appear Reference being had to said Execution and the Endorsement thereon, a Copy of which is herewith presented marked "K" and made a part of this bill of Complaint —

16th

And further that in like manner there was on the said first day of August 1855 by the Clerk of said Court in due form of Law an Execution issued upon the said Judgment in favor of your orators Mitchell & Rammelsberg for the said sum of $217.07 also the sum of $5.85 Costs. which was likewise placed in the hands of said Sheriff to be executed according to Law — which was also afterwards Returned into the said Clerks office with the following endorsement thereon to wit "Recivd this writ August 2^d 1855 at 2 oclock PM and served the same by reading to M & T Ayres August 9th 1855 No property found wherein to Levy and nothing made A B Roff Sheriff 4 S $2.00 36 M T 1.80 Ret 10 3.90"

Which will fully appear Reference being had to said Execution and the said Return thereon, a Copy of

Which is herewith presented marked "L" and made a part of this bill of Complaint —

And further that in Like manner there was by the Clerk of said Court in due form of Law an Execution issued upon the said Judgment in favor of your Orator Calvin B. Coup on the said first day of August 1855 for the said sum of $335.80 and also $5.85 costs. — which was also placed in the hands of said Sheriff to be executed in due form of law which was afterwards returned into the office of said Clerk with the following Endorsement thereon to wit, " Received this writ August 2 1855 at 2 oclock P.M. and served the same by Reading to M & T. Ayres August 9th 1855 no property found wherein to Levy, and nothing made" A. B. Roff Sheriff "Fees $ 2.00 — 36 M T 1.80 Ret .10 $3.90 — which will fully appear reffrence being had to said Execution and the return thereon a copy of which is herewith presented marked "M" and made a part of this bill of Complaint —

And your Orators would further show unto your Honor that afterwards To wit at the October Term of the said Iroquois County Circuit Court AD 1856 your Orators Perdue & Stacy Recovered a Judgment before said Court Against the said Mark & Theadore Ayres as such Copartners in business as aforesaid for the sum of Nine hundred and forty seven dollars and Eighty six cents debt, and the sum of $ as costs as will more fully and at Large appear Reffrence being had to said Judgment, a copy of which is herewith presented marked "N" and made apart of this bill of Complaint —

And further that afterwards to wit at the said October Term of said Court AD 1856 Your Orators Reynolds & Hatch Recovered a Judgment in like manner before said Circuit Court against the said Mark & Theadore Ayres

as such Copartners in business for the sum of Two hundred and forty six dollars & ninety seven cents and the further sum of $ as costs. which will more fully and at Large appear Reffrence being had to the said Judgment a Copy of which is herewith presented marked "O" and made a part of this bill of complaint—

18th

And further that at the September Term of said Circuit Court AD 1856 in like manner your Orator Haggard & Bradley recovered a Judgment against said Mark and Theadore Ayres as such partners for the sum of one hundred and fifty two dollars and forty nine cents, also for the sum of $ as costs. which will more fully and at Large appear reffrence being had to said Judgment, a Copy of which is herewith presented marked "P" and made a part of this bill of complaint—

Also at the said September Term of the said Circuit Court for AD 1856 your orator Eber Dunning did in Like manner recover a Judgment against said Mark & Theadore Ayres as such partners for the sum of two hundred and fifty six Dollars and ninety cents and the further sum of $ as costs. which will fully appear reffrence being had to said Judgment, a Copy of which is herewith presented marked "Q" and made a part of this bill of complaint—

And your Orators would further show that afterwards To wit on the 17th day of November AD 1856 an Execution was issued by the Clerk of said Court in due form of Law upon the said Judgment in favor of your Orators the said Perdue & Stacy directed to the Sheriff of said County to be executed in due form of Law, which was afterwards returned by said Sheiff with the following

Endorsement thereon To wit Rec'd this writ November 17th 1856. at 10 oclock AM and served the same by reading to Mark and Theadore Ayres Nov 18th 1856. no property found whereon to Levy A.B. Roff Sheriff which will more fully and at Large appear reffrence being had to said Execution and the said Endorsement thereon, a Copy of which is herewith presented marked "R" and made a part of this bill of Complaint —

19th =

And further and in like manner on the said 19th day of November AD 1856. there was by the said Clerk an Execution issued upon the said Judgment in favor of your orators Reynolds & Hatch for the said Sum of $ 246.97 and $ Costs directed to the Sheriff of said County to be Executed Which was by said Sheriff returned into the said Clerk's office with the following endorsement thereon To wit - "Rec'd this writ November 17 1856 at 10 oclock AM and served the same by reading to Mark & Theadore Ayres Nov 19 1856 no property found whereon to Levy A.B. Roff Sheriff which will fully appear reffrence being had to said Execution a Copy of which is herewith presented marked "S" and made a part of this bill of Complaint —

And further that in Like manner on the day of December AD 1856 there was by said Clerk in due form of Law an Execution issued upon said Judgment in favor of your orators Haggard & Bradley for the sum of $ also the sum of $ Costs and directed to said Sheriff to be executed as aforesaid which was by said Sheriff afterwards returned into the office of said Clerk with the following indorsement thereon To wit — Which will fully appear reffrence being had to said Execution and said Endorsement thereon, a Copy of which is herewith presented marked "T" and made a part of this bill of Complaint

And further that afterwards to wit on the 17th Day of November AD 1856 There was in like manner by the Clerk of said Court an Execution in due form of Law issued upon said Judgment in favor of your Orator Eber Dunning for the said sum of $256.90 and the further sum of $ Costs directed to the Sheriff to be executed as aforesaid, Which was afterwards returned by said Sheriff into the office of said Clerk with the following endorsement thereon to wit; Recd this writ November 1856 at 10 oclock AM and served the same by reading to Mark V Theadore Ayres November 18th 1856 and no property found wherein to Levy A.B. Roff Sheriff Which will more fully appear reffrence being had to said Execution & the Endorsement thereon a Copy of which is herewith presented marked "C" and made a part of this bill of complaint—

20th

And your orators would further show unto your Honor that heretofore to wit on the 7th day of April AD 1856 the said Mark Ayres and Alma M. Ayres his wife did by their Certain deed convey all and singular the said Lands so described in Township No 27 North of Range No 12 west in said County of Ingram Which they had before that time mortgaged to the said Timothy B. Mason as aforesaid, as will ~~more~~ appear reffrence being had to the said deed or the Records thereof in the Recorders office of said County, a Copy of Which is herewith presented marked "D" and made a part of this bill of complaint, and as your orators are informed & here expressly charge the fact to be, that said Conveyance was so made by the said Mark Ayres and his said wife without receiving any good or valuable consideration whatever from the said Jesse B. Ayres or any other person for him for the same

although there is Expressed in said deed a consideration of $ 2002.02 and here your orators most positively charge the fact to be that the said Mark Ayres & wife did make said deed and the said Jesse B. Ayres, did accept the same for the Express purpose of hindering and delaying your orators in the collection of their said demands which they had against the said Mark & Theadore Ayres, and to Cheat, wrong and defraud them out of the same—

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And further that on the said 7th day of April AD 1856 the said Mark Ayres & his said wife did in Like manner Deed all the said described Lands in Township 27 North of Range 11 West which they had so mortgaged to Timothy B. Mason as aforesaid to the said Jesse B. Ayres who is the father of the said Mark & Theadore Ayres, as will appear by reference being had to said deed, or the Record thereof in the recorders office in said County, a copy of which is hereunto presented marked "W" and made a part of this bill of complaint—

And your orators say that they are informed and believe and so charge the fact to be, that the said Mark Ayres & wife did make said last mentioned deed without having received from the said Jesse B. Ayres or from any other person for him any good or valuable consideration whatever for the same, and the said Mark Ayres and his said wife did deed as aforesaid, and the said Jesse B. Ayres did receive said deed for the purpose of hindering and delaying your orators in the collection of their said demands, and to cheat wrong and defraud your orators out of the demands as aforesaid

And your orators would further show unto your Honor that for the purpose of placing the personal property of the said Mark Ayres out of his hands and getting

the same into the hand of his said father in Law Timothy B. Mason in order that the same might be placed beyond the reach of your orators the said Reeves Stephens & Co - Henry Falls - Martin Stadler & Brother - Mitchell & Rammelsberg - and Calvin B. Camp who were then about to recover their said Judgments against the said Mark & Theadore, did then to wit on the 18th day of April AD 1855, make Execute & acknowledge to one James W. Lawrence his certain Chattel Mortgage, and also his certain promissory note bearing even date with said Mortgage due and payable Eight months & 13 days after date (purporting to be for value received) and payable to the said J. W - Lawrence said note was given for the sum of Seven Hundred dollars with interest from date, and signed by the said Mark Ayres - and further that said note was described in the said mortgage; and the said Mortgage purported to have been given to secure the payment of the said note - and further that that by said Mortgage the said Mark Ayres did thereby grant, sell convey and confirm unto the said James W. Lawrence his heirs and assigns forever all and singular the following Goods and Chattels, viz: 1 Set of Harness - one saddle and bridle - one side saddle - one Piano - 3 bureaus - 3 Rocking Chairs - one center table - 2 Wagons - 5 Plows - one Sofa - one set of mahogany one set of Walnut Chairs - 6 bed steads - 5 Wash stands - 1 Extension dining table - one side table - also all his then growing Crops of oats and corn on his place - where he then resided the same being on the said Lands in T 27. NR 11 W aforesaid & other property therein mentioned which said Mortgage was to be void on the full payment of said sum of

22

money & interest in said Mortgage and note mentioned as aforesaid, all of which will more fully and at Large appear reference being had to the said Mortgage or the Record thereof in the office of the Recorder of said County a Copy of which is herewith presented marked "X" and made a part of this bill of complaint —

23 d =

And your orators would further show unto your Honor that the said property in the said Chattel Mortgage described was then worth two thousand dollars, which would have been sufficient to have paid off the said demands of your orators the said Rees Stephens & Co. Kenny Falls, Martin Stadler & Brother, Mitchell & Rammelsburg and Calvin B. Lamb — and your orators would further show unto your Honor, that there was no consideration whatever passed from the said James W. Lawrence to the said Mark Ayres for said note and mortgage, nor did the said Lawrence known that said note and mortgage was made to him, until the said Mark Ayres took said note and mortgage to him the said Lawrence; And further that when the said note and mortgage was presented to him the said Lawrence, he the said Mark Ayres requested him the said Lawrence to assign and transfer said note to the said Timothy B. Mason, which the said James W. Lawrence did according to the request of the said Mark Ayres, without any consideration — whatever for the same which said facts have very recently come to the knowledge of said complainants And further that the said James W. Lawrence then and there delivered back the said note and mortgage to the said Mark Ayres — and further that said arrangement was made on the part of the said Mark Ayres & the said Mason in order to cover up the

said personal property & place the same out of the reach of your orators, in order to hinder delay, cheat, wrong and defraud your orators out of their just demands aforesaid — and further that your orators last mentioned might have made the amount of their said Judgments out of the said personal property if said Chattel Mortgage had not been given soon after said Judgments were rendered

24th

And your orators would further show unto your Honor that the said described lands which were mortgaged by the said Mark Ayres and his said wife to Timothy B Mason are worth the sum of twenty dollars per acre making the whole quantity of Lands so mortgaged as aforesaid worth the sum of twenty one thousand four hundred and forty dollars; and the said personal property was at the time the same was mortgaged as aforesaid including the said Crop of oats and Corn so mentioned in the said Mortgage worth the further sum of two thousand dollars making in all the sum of twenty three thousand four hundred and forty dollars worth of property covered up by the said mortgage and places beyond any avoidable process of Law, so that your orators are prevented from making their said Judgment by Execution on the ground of said incumberances, that is to say that your orators Reeves Stephens & Co. Henry Falk, Martin Stadler & Brother, Mitchell & Rammelsberg and Calvin B. Camp are prevented from making their said Judgment on account of said Mortgages having been placed upon said property: and your orators Perdue & Stacy, Reynolds & Hatcher — Haggard & Bradley, and Eber Dunning ~~and~~ on

account of the said Mortgages and the said Deed from Mark Ayres & wife to Jesse B. Ayres, as your Honor can readily discover by referring to said Executions so issued upon said Judgments and the return of the said Sheriff thereon. And that said property is fraudulently ~~concealed~~ Covered up by said incumbrances, and placed beyond the reach of any available process of Law, and that Your Orators have Exhausted all the remedy which they have at Law in trying to collect their said demands which has proven to them wholly unavailable —

25th

Your Orators would further show unto your Honor that the said Theadore Ayres has an interest of one equal undivided one half of said Lands in Equity to Mortgaged and deeded as aforesaid which should be applied to the payment of your Orators Judgments aforesaid, which has in no way been deeded or transferred by him to any person whatever but in Equity remains in him, and should be applied for the Liquidation of said Judgments according to their priority in point of time when the same were Rendered, And further that the said Mortgages on said Lands to said Mason and the said Deed from the said Mark Ayres & wife to the said Jesse B. Ayres should be removed and declared null and void — And that your Orators said Judgments should be paid and satisfied out of said Lands according to their priority in point of time when they were rendered and respectively became a lien upon the Real Estate of the said Mark and Theadore Ayres — And your Orators would further show unto your Honor that the said Mark Ayres has removed from the County of Dooprins, and has taken with him all and singular the said personal property so

given in Mortgage as aforesaid, and you to Milwaka in the State of Wisconsin where the said Timothy B. Mason resides, and has left no property whatever Except said Lands with which your orators can make their said Judgments or any of them or any part thereof -

26th

And further that the said Theadore Ayres has no property whatever except his interest in said Lands out of which your orators can make their said Judgments or any of them or any part thereof -

And your orators would further show unto your Honor that they have frequently and repeatedly called upon the said Mark and Theadore Ayres and requested them to pay off and satisfy your orators said demands against them, and have repeatedly requested the said said Timothy B. Mason to release his said Mortgage and the said Jesse B. Ayres to release his said deeds upon said Land so held by them as aforesaid so that your orators might be enabled to make their said claim thereby

And your orators well hope that the said Mark and Theadore, and the said Timothy B Mason, and the said Jesse B. Ayres would have complied with such your orators reasonable request - But now so it is may it please your Honor that the said Mark Ayres combining and confederating with the said Timothy B. Mason and the said Jesse B. Ayres (all of whom your orators pray may be made parties Defendants to this their bill of Complaint) and with diverse other persons at present unknown to your orators, whose names when discovered your orators pray may be inserted in this their bill of complaint, with apt words to charge them as parties thereto, to injure and agrieve your

orators in the premises wholly refuse or decline to pay your orators their said demands or to release their pretended interest which they have upon said Lands as aforesaid — And for justification thereof sometimes the said Confederates pretended that the said Mark and Theadore Ayres have fully paid off the said Judgments so rendered against them. Whereas your orators charge that such allegations is wholly unfounded, and untrue, and that there is now justly due to your orators the full amount of all and singular the said Judgments respectively together with all and singular the interest which has accrued thereon, together with the said Costs so taxed as aforesaid, and at other times the said Mark Ayres and the said Timothy B Mason pretend... that the said Mortgages are based upon a valuable consideration the same having been for ten thousand dollars loaned by the said Mason to the said Mark Ayres soon after the said Mark Ayres was married to the said Alma M. Daughter of the said Mason as aforesaid. Whereas your orators charge that such is not the case, and state that such allegations is utterly false, and humbly insist that if the said Timothy B. Mason did let the said Mark Ayres have any money at any time the same was very small, and that such sum was given to the said Mark Ayres as a Marriage portion to his said wife, and not by way of a loan, and that such pretences are only made in order to make said transaction appear fair and honorable. Whereas your orators charge and insist that the whole of said transaction between the said Mark Ayres and the said Mason was with the fraudulent intention of delaying &

27 ½

hindering and defrauding your Orators in the Collection of their said Judgments — and at other times the said Confederates pretend: that the said Jesse B. Ayres purchased the said Lands for the consideration set forth in the said deed from the said Mark to him. Whereas your Orators charge and insist that no consideration 28th of a valuable nature whatever was given to the said Mark by the said Jesse B. Ayres for said Lands but that said deed was made by the said Mark and his said wife for the purpose of delaying and hindering and defrauding your orators in the Collection of their said Judgments — And the said Confederates at other times pretend: that the consideration from the said Mason to the said Mark was not only ten thousand Dollars but that a less quantity of Land so mortgaged would not secure him in said sum Whereas your orators charge and humbly insist that there was no consideration whatever paid or loaned by the said Mason to the said Mark, but whatever money was given was as a marriage portion as aforesaid, and that if said small sum was loaned at all, the whole amount of said Lands are more than sufficient to secure whatever sum was loaned if any at all —

And at other times the said confederates pretend that the said Theadore Ayres had not nor has he no any interest in said Lands, but that the whole of the were owned by and belonged to Mark only — Whereas your orators charge and humbly insist that the proceeds of the sales of said goods wares and Merchandize went into the purchase of said Lands, and that the said Theadore Ayres is an equal partner with the

said Mark in said Lands, and that in equity he owns one equal undivided one half of said Lands of which the said Mason had notice at and before the time he took his said Mortgages thereupon; and of which the said Jesse B. Ayres had notice at and before the time said deed of said Lands was made to him all which actings doings and pretences are contrary to Equity and good conscience and tend to the manifest wrong and injury of your orators - in tender consideration whereof and for as much as your orators are <u>remediless</u> in the premises by the strict rules of the Common Law, and can only obtain relief in this honorable Court, where matters of this nature are properly Cognizable and Relievable.

29th

To the End therefore that the said Mark Ayres, Theadore Ayres, Timothy B. Mason and Jesse B. Ayres, and their Confederates, may severally and respectively, true, full, direct, and perfect answer make to all and singular the matters herein before stated and Charged (your orators hereby waiving pursuant to the Statute, the necessity of the answers of such defendants being put in under the oaths of such defendants, or the oath of either of them) and that as fully and particularly as if the same were here repeated and they thereto severally and Specifically interrogated and that they shall so answer, not only to the best of their respective Knowledge and remembrance, but also to the best of their several and respective hearsay information and belief - and that the said Mark Ayres and Theadore Ayres shall be decreed to pay to your orators, the full amount of the said several Judgments so rendered against them and in favor of your orators respectively. Together with all and singular the interest which has accrued thereon, and all the

Costs made in and about said suits. according to the priority of said Judgments; That is to say that the said Judgments so rendered in favor of your Orators Reeves Stephens & Co, Kenny Falls, Martin Stadler & Brother, Mitchell & Rammelsberg and Kenny Falls, shall be first paid; and then the said Judgments so rendered in favor of your Orators Perdue & Stacy, Reynolds & Matcher Haggard & Bradley, and Ebas Dunning in like manner shall next be paid; and that it may be decreed that the said Theadore Ayres is in Equity Entitled to one Equal undivided one half of all and singular the said Lands. and that the same may be sold to pay and satisfy your orators Judgments as aforesaid together with the interest and costs therein, or such portion of them as the same when sold will be sufficient to pay according to their priority as aforesaid - and that the said Mortgages so given by the said Mark Ayres and his said wife to the said Timothy B. Mason, may be decreed to be null and void in whole or in part, and that the said interest of the said Mark Ayres in and to said Lands may also under a decree of this Court be sold to satisfy your orators said Judgments interests and costs therein in manner and form aforesaid and that said deed from the said Mark Ayres wife to the said Jesse B. Ayres may be set aside and declared null and void And that your orators may have such further relief, or may have such other relief as the nature of their case may require, and shall be agreeable to equity - May it please your Honor to grant unto your orators the writ of Summons in favor of your orators, and against the said Defendants, according to the Statute in such case

30th

made and provided, and your orators as in duty bound will ever pray &c

James Fletcher &
George B. Joiner
Solicitors for Complainants

31 cts

State of Illinois
Rogers County } ss Rogers County Circuit Court
of the April Term AD 1857.

Mark E. Reeves, James E. Reeves, Isaac Stephens
Francis Goode, and William Phipps, doing business
under the name style & firm of Reeves Stephens & Co
and Henry Falls - and Martin Stadler & Max Stadler
doing business under the name style & firm of Martin
Stadler & Brother - and Robert Mitchell & Ford
Rammelsberg doing business under the name
style & firm of Mitchell & Rammelsberg and Isaiah
B. Lamp. Also John Perdue & Fitch B. Stacy,
and Edward H. Reynolds & William H. Hatcher,
& Samuel B. Haggard & Daniel O Bradley &
Eber Dunning - Complainants -

vs

Mark Ayres. Theadore Ayres, ~~Theadore~~
Timothy B. Mason & Jesse B. Ayres
defendants -

The clerk of said Court will please
issue a summons in the above Entitled - in favor
of said Complainants and against the said Defendants
in Chancery - according to the Statute in such Case
made & provided & oblige yours &c

James Fletcher & George B. Joiner
Solicitors for Complainants

And the said Exhibits Filed in the office of the Clerk of said Court February 10th AD 1857 and referred to in the original Bill of Complaint in said Cause marked from A to H both inclusive - Read in the Words and figures following - to wit — —

32d

Exhibit A.

Know all men that Mark Ayres and Alma M his wife of Iroquois County State of Illinois in consideration of ten thousand dollars to them paid by Timothy B. Mason of Cincinnati State of Ohio the receipt whereof is hereby acknowledged do hereby bargain sell and convey to the said T. B. Mason his heirs and assigns forever the following Real Estate viz - Lots No two (2) three (3) four (4) five (5) six (6) seven (7) Eight (8) and nine (9) in Block No twenty five (25) also Lots No ten (10) and three (3) in Block No forty three (43) in the Town of Concord Iroquois County Illinois with store house dwelling house and all other buildings and appurtenances thereto belonging - also the South East quarter of the South West quarter of Section No four (4) Forty acres (40) and the South West quarter of the South East quarter of Section No four (4) forty (40) acres both in Town twenty seven North of Range No Eleven west - also the South East quarter of the North East quarter of Section Eight (8) Town twenty seven (27) North of Range Eleven (11) west - and the South West quarter of the north west quarter of Section nine (9) in Town twenty seven (27) north of Range Eleven (11) west Eighty (80) acres - also the West half of the North West quarter and the North East quarter of the North West

33 d =

Quarter of Section Eight (8) Township twenty seven (27) North of Range Eleven (11) West and the North West Quarter of the North East quarter of Section Eight (8) in Town twenty seven (27) North of Range Eleven (11) West — one hundred & sixty (160) acres - also the West half of the South West quarter of Section nine (9) Eighty (80) acres also the South East quarter of the North West quarter of Section Eight (8) Town twenty seven (27) North of Range Eleven (11) West forty (40) acres: Together with all the privileges and appurtenances to the same belonging. To have and to hold the same to the said heirs and assigns forever. the grantor their heirs and assigns hereby covenanting with the ~~said~~ grantee his heirs and assigns, that the title so conveyed is clear free and unincumbered and that they will warrant and defend the same against all claims whatsoever - Provided Always that if the said Mark Ayres and Alma M. Ayres his wife shall cause to be paid unto the said Timothy B. Mason his heirs and assigns two certain promissory notes both dated Oct 15 1853. and signed by M. Ayres one at three years after date for the sum of Five Thousand dollars with interest at the rate of ten per cent per annum the other one year after ~~date~~ date for the sum of Five Thousand four hundred and forty seven 47/100 dollars with interest at the rate of Six per cent per annum both payable to the order of T B Mason and dated at Cincinnati, then these presents shall be void - In Witness Whereof the said Mark Ayres and Alma M Ayres his wife who hereby relinquishes all her right and claim of dower in the premises hereunto set their hand and seal this fifteenth day of September in the year Eighteen hundred and fifty four -

Signed Sealed and acknowledged in presence of

Robey J. Strickler

Mark Ayres (Seal)

Alma M. Ayres (Seal)

State of Illinois,
Iroquois County. ss. Be it remembered that on this nineteenth day of September in the year of our Lord one thousand Eight hundred and fifty four before me the subscriber a justice of the peace in and for said County personally came Mark Ayres and Alma M Ayres his wife the grantors in the above conveyance and acknowledged the signing and sealing of the same to be their voluntary act and deed for the uses and purposes therein mentioned. and the said Alma M. Ayres wife of the above named Mark Ayres being at the same time examined by me separate and apart from her said husband and the contents of said deed being by me made known and explained to her then declared that she did voluntarily sign seal and acknowledge the same and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned. In testimony whereof I have hereunto subscribed my name and affixed my seal on the day and year last aforesaid

Jonas Strickler Jp (Seal)

Filed for Record Sept 20th 1854 at 4 oclock PM and Rec Sept 22 1854. Jesse Bennett Recorder

34th

Exhibit "B."

Know all men that Mark Ayres and Alma M Ayres his wife of Iroquois County State of Illinois in consideration of ten thousand dollars to them paid

by Timothy B. Mason of Cincinnati State of Ohio the receipt whereof is hereby acknowledged do hereby bargain sell and convey to the said T. B. Mason his heirs and assigns forever the following Real estate viz: the East half of the South East quarter of the South West quarter of Section number twenty nine (29) in Township number twenty seven (27) North of Range number twelve (12) west containing twenty (20) acres more or less Also the West half of Section number thirty five (35) in Township number twenty seven (27) North of Range twelve (12) west containing three hundred and twenty acres more or less - also the East half of the North East quarter of Section number thirty five (35) in Township number twenty Number thirty five (35) in Township number twenty seven (27) Range twelve (12) West - Containing Eighty acres more or less also the East half of the South East quarter of Section number Thirty four (34) in Township twenty seven (27) North of Range twelve (12) west - Containing Eighty acres (80) more or less - also the North East quarter of the South west quarter of Section number four (4) in Township number twenty seven (27) North of Range number Eleven (11) west containing forty acres (40) - also the North half of the South half of the South East quarter of the North West quarter of Section twenty one (21) Town twenty seven (27) North of Range Eleven (11) west or all of said lying north of the Ohio river containing twelve 12/100 acres (12 11/100) more or less - also the North East quarter of South East quarter of Section Eight Town twenty seven (27) north of Range Eleven west Containing forty acres Together with all the privileges and appurtenances to the same belonging. To have and to hold the same to the said T. B. Mason

35 - 7th

his heirs and assigns forever. The grantors their heirs and assigns hereby covenanting with the grantee his heirs and assigns that the title to conveyed is clear free and unincumbered and that they will Warrant and Defend the same against all claims whatever, Provided Always that if the said Mark Ayres and Alma M. Ayres his wife shall cause to be paid unto the said T.B.Mason his heirs or assigns two certain promissory notes bearing date Oct 15 1853. one at three years after date for the sum of five thousand Dollars with interest at the rate of ten per cent per annum the other one year after date for the sum of five thousand four hundred and forty seven 47/100 Dollars with interest at the rate of six per cent per annum both payable to the order of T. B. Mason and Signed by Mark Ayres at Cincinnati Ohio. then these presents shall be void—

36 7h

In Witness Whereof the said Mark Ayres and Alma M. Ayres his wife who hereby relinquishes all her right and claim of Dower in the premises hereunto ~~to~~ Set their hand and and Seals this ninth day of February in the year Eighteen hundred and fifty five

Signed sealed and acknowledged
in presence of Terrena Baldwin

Mark Ayres Seal
Alma M. Ayres Seal

State of Illinois
Iroquois County ss

Be it remembered that on this ninth day of February in the year of our Lord one thousand Eight hundred and fifty five

Before me the subscriber a Justice of the Peace in and for said County personally came Mark Ayres the grantor in the above Conveyance and acknowledged the signing and sealing the same to be his voluntary act and deed for the uses and purposes therein mentioned. and the said Alma M. Ayres wife of the ~~said~~ Mark Ayres being at the same time Examined by me separate and apart from her said husband husband and the contents of said deed being by me made known and explained to her then Declared that she did voluntarily sign seal and acknowledge the same and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned—

In Testimony Whereof I have hereunto subscribed my name on the day and year last aforesaid

Jonas Stricklen J.P. Seal

Filed February 26th 1855 and Recorded March 2d 1855

Isaac Bennett Recorder

Exhibit "C"

Mark E. Reeves. James E Reeves
Isaac Stephens. Francis C. Goode
v William R. Phipps
vs
Mark Ayres & Theadore Ayres
} Assumpsit

And now comes the Plaintiff by their attorney Fletcher and also comes the Defendant by Bovie his attorney and confesses Judgment herein which Judgment amounts to the sum of Four hundred & fifty three Dollars 00 Cents

Whereupon it is ordered by the Court that the Plaintiff have and recover of the Defendant the said sum of four hundred and fifty three Dollars & 80 cents and that they have and recover of and from the Defendant their costs and charges in their behalf laid out and expended and that Execution issue therefor

38 Th

Exhibit "D"

Henry Falls
vs
Mark Ayres } Assumpsit —

And now comes the Plaintiff by his attorney Fletcher and also comes the Defendant by Bovie his attorney and confessed Judgment herein which amounts to the sum of one hundred and forty nine & 63 cents — Whereupon it is ordered by the Court that the Plaintiff have and recover of the Defendant the said sum of one hundred and forty nine & 63 and his costs and charges in this behalf laid out and expended and that Execution issue therefor

Exhibit "E"

Martin Stader & Mat Stader
vs
Mark Ayres & Theadre Ayres } Assumpsit

Come the Plaintiff by Bovie

& the Defendants by Bovie their attorney & by permission withdraws his demurre herein & ales his appearance & it appearing by the return of the Sheriff on the Summons that Defendant has been duly served with process herein more than ten days prior to the 39th first day of this Court it is ordered that Defendant be called and being three times solemnly called did not appear but wholly make Default whereupon the plaintiff have Judgment & the Clerk is ordered to assess the damages which are founded on promissory note which he reports at $530,59 It is therefore ordered that plaintiffs recover of defendants the said sum of five hundred & thirty dollars & 59 cents & their costs herein expended & have execution therefor —

Exhibit "F"

Robert Mitchell &
Fred Remmelsberg
vs
Mark Apps & Theadore Apps } Assumsit

And now comes the Plaintiff by their Attorney Fletcher and also comes the Defendant by Bovie their attorney and confess Judgment which Judgment amounts to the sum of two Hundred and Seventeen dollars and seven cents whereupon it is ordered by the Court that the Plaintiffs have and recover of the Defendants the said sum of Two Hundred and seventeen dollars and seven cents and his costs and charges in this behalf laid out and expended and that Execution issue therefor

Exhibit "G."

Calvin B. Camp
vs
Mark Ayres & Theadore Ayres } Assumpsit

And now comes the Plaintiff by Fletcher his attorney, and also comes the Defendant by their attorney Bovie and confess Judgment herein which Judgment amounts to the sum of three hundred & thirty five Dollars and 80 cents - Whereupon it is ordered by the Court that the Plaintiff have and recover of the Defendants the said sum of three hundred and thirty five Dollars and 80 cents and his costs and Charges in this behalf laid out and Expended and that Execution issue therefor. -

40th

461 Bryant Docket

Exhibit "H"

Reeves Stephens & Co
of Cincinnati
vs
Mark Ayres } Demand $50.00

Nov 24th 1856 Plaintiff appeared by James Fletcher his attorney - and Defendant in person - and Defendant confessed judgment for fifty Dollars - It is therefore considered that Plaintiffs have and Recover of and from Defendant fifty Dollars damages and costs taxed at 62 cts W. C. Bryant J.P.

I. James Fletcher do hereby enter myself security for

all Costs that may accrue in the above cause No 24 1857
James Fletcher —

Execution issued Jan 2 1857. to Kay
Execution returned endorsed levied on property and sold for seventy dollars, money applied to two executions older this, with the Exception of nine dollars and thirty five cents which was applied on the above execution which I received

41 Sts & Cays

H. L. Bryant D.C.

Rec'd my fees of H.C. Bryant W.S. Kay ($1.90 Kays fees)
Rec'd of H C Bryant Six dollars & fifty Eight cents
James Fletcher
atty for Plff

Exhibit "I."

State of Illinois }
Jasper County } ss

The People of the State of Illinois to the Sheriff of said County — Greeting;
Whereas, Mark E. Reeves, Jas E. Reeves, Isaac Stephens Francis L. Goode & Wm R. Phipps lately, on the 26th Day of April in the year of our Lord one thousand eight hundred and fifty-five in the Circuit Court of said County, — recovered Judgment against Mark Aspes & Theo. Aspes for the sum of Four hundred & fifty three dollars and Eighty cents. And also the further sum of five dollars and 85 cents Costs, which was adjudged to them the said M.E. Reeves et al for their damages Costs and Charges in that behalf laid out and expended as appears to us of Record

You are therefore hereby Commanded, that of the goods and Chattels, Lands and tenements of them the said Mark Aspes & Theadore Aspes you cause

to be made the said sum of Four hundred & fifty three dollars and Eighty cents and fifty dollars and 85 cents Costs aforesaid, by distress and sale, and have that money ready in ninety days from the date hereof, to render to the said Mark E Reeves, etal for their Damages and Costs aforesaid. Hereof fail not and make return of this writ according to law, with an endorsement thereon as to the manner in which you may execute the same.

Circuit Court Seal

Witness Jesse Bennett, Clerk of our said Court, and the Seal thereof hereto affixed at my office in Middleport, this 1st day of August A.D. 1855.

J. Bennett Clerk

The Endorsement on the forgoing writ reads as follows —

"Received this writ August 2d 1856. at 2 o'clock P.M. and served same by reading to Mr & T. Aypes the 9th of August — no Property found wherein to Levy and no fast money made

A. B. Roff Sheriff

Exhibit "J"

State of Illinois
Iroquois County ss. The People of the State of Illinois to the Sheriff of said County — Greeting:

Whereas, Henry Falls lately, on the 26 day of April in the year of our Lord one thousand eight hundred and fifty five in the Circuit Court of said County recovered Judgment against Mark Aypes for the sum of One hundred & forty nine dollars and sixty three Cent

And also the further sum of four dollars and 55 cents Costs, which was adjudged to him the said H. Falls for his damages costs and charges in that behalf laid out and expended as appears to us of Record.

43 50

You are therefore hereby commanded, that of the goods and Chattels, lands and tenements of him the said Mark Aspes you cause to be made the said sum of one hundred & forty nine dollars and 63 cents and four dollars and 55 cents costs aforesaid, by distress and sale and have that money ready in ninety days from the date hereof, to render to the said H. Falls of his damages and costs aforesaid. Hereof fail not and make return of this writ according to law, with an endorsement thereon as to the manner in which you may execute the same.

Circuit Court Seal

Witness Isaac Bennett Clerk of our said Court, and the seal thereof hereto affixed at my office in Middleport, this 1st day of August A.D. 1855.

Clerk.

And the Endorsement on said writ reads in words and figures following towit.

"Rec'd this writ August 2d 1855 at 2 o'clock P.M. and served the same by reading to M. Aspes August 5 1855 — no property found wherein to Levy and no money made

A. B. Roff Sheriff

Exhibit "K"

State of Illinois } ss. The People of the State of Illinois
Boone County } to the Sheriff of said County, Greeting

Whereas, Martin Stadler & Mat Stadler lately, on the 26th Day of April in the year of our Lord one thousand Eight hundred and fifty five in the Circuit Court of said County, recovered Judgment against Mark Eppes & Theadore Eppes for the sum of Five hundred & thirty Dollars and 59 Cents and also the further sum of five Dollars and Eight Cents Costs which was adjudged to them the said Plaintiffs for their damages Costs and Charges in that behalf laid out and expended as appears to us of Record.

44th

You are therefore hereby commanded, that of the Goods and Chattels, Lands and Tenements of them the said Mark Eppes & Theadore Eppes you cause to be made the sum of Five hundred & thirty Dollars and 59 Cents and four Dollars and Eight Cents Costs aforesaid, by distress and sale - and have that money ready in ninety days from the date hereof, to render to the said M Stadler etal for their damages and costs aforesaid. Hereof fail not and make return of this writ according to law, with an endorsement thereon as to the manner in which you may execute the same.

Witness Jesse Bennett, Clerk of our said Court, and the seal thereof hereto affixed at my office in Middleport, this 1st Day of August AD 1855

Seal

J Bennett — Clerk

Endorsement as follows to wit

"Rec'd this writ August 2nd 1855 at 2 o'clock PM and Served the same by reading August 9 1855 No property found wherein to Levy and no money made

A.B. Roff Sheriff

Exhibit "L."

45th

State of Illinois
Boyeni County } The People of the State of Illinois
to the Sheriff of said County, Greeting:
Whereas Robt Mitchell & Fred Ramelsburg lately, on the
26th day of April in the year of our Lord one thousand
Eight hundred and fifty five in the Circuit Court of
said County, recovered Judgment against Mark Ayres
& Theadore Ayres for the sum of two hundred & seventeen
dollars and seven cents and also the further sum of Five
dollars and 85 cents costs, which was adjudged to
them the said Plaintiffs for their damages costs and
Charges in that behalf laid out and expended as
appears to us of Record. You are therefore
hereby commanded, that of the goods and Chattels,
Lands and Tenements of them the said Mark Ayres and
Theadore Ayres you cause to be made the sum of
two hundred & seventeen dollars and seven cents
and five dollars and 85 cents costs aforesaid, by
distress and sale and have that money ready in ninety
days from the date hereof, to render to the said Mitchel & al
for their damages and costs aforesaid, Hereof fail not and
make return of this writ according to law, with an
Endorsement thereon as to the manner in which you
may execute the same. Witness Jesse Bennett Clerk
of our said Court and the seal thereof hereto affixed at my office in
Rec'd Middleport this 1st day of August AD 1855
J. Bennett — Clerk

Endorsement on said writ reads as follows, to wit;
"Received this writ August 2 1855 at 2 o'clock P.M. and
Served the same by reading to M & T. Ayres August 9 1855
no property found whereon to levy and nothing made
A. B. Roff Sheriff

Exhibit "M".

46th

State of Illinois,
Iroquois County. } The People of the State of Illinois
to the Sheriff of said County. Greeting:
Whereas. Calvin B. Camp lately, on the 26 day of April
in the year of our Lord one thousand eight hundred
and fifty five in the Circuit Court of said County. recovered
Judgment against Mark Ayres & Theadore Ayres for
the sum of three hundred & thirty five dollars and 80 cents
And also the further sum of Five dollars and 85 cents costs
which was adjudged to him the said C. B. Camp
for his damages Costs and charges in that behalf laid out and
Expended as appears to us of Record —
You are therefore Hereby Commanded. that of
the goods and Chattels. lands and tenements of them
the said M. Ayres & Theo Ayres you cause to be made
the sum of three hundred & thirty five dollars and 80 cents
and five dollars and 85 cents Costs aforesaid, by distress
and sale And have that money ready in ninety days from the date
hereof. to render to the said C B Camp for his damages and
Costs aforesaid. Hereof fail not and make return of this
writ according to law. with an endorsement thereon as
to the manner in which you may execute the same.
Witness Jesse Bennett Clerk of our said Court, and the
Circuit Court Seal thereof hereto affixed at my office in Middleport. this
1st day of August AD 1855.
J. Bennett — Clerk

And the Endorsement on the same. reads as follows. To wit
"Received this writ August 2d 1855 at 2 o'clock PM and served the same
by reading to Mr & T Ayres August 9th 1855 no property found wherein
to Levy and nothing made A B Roff — Sheriff

Exhibit "N."

John Purdue and Fitch B. Stacy
vs
Mark Ayres & Theadore Ayres } assumsit

47th

Comes now the Plaintiffs by Joiner his attorney and it having been shown to the satisfaction of the Court that Defendants had service by process at least ten days previous to this term of Court, ordered that they be called and they were called three times in open Court but come not and wholly make Default herein for want of Plea — referred to Clerk to assess which he reports at nine hundred and forty seven dollars and Eighty six cents —

It is therefore considered and decreed that Plaintiffs have and recover of and from Defendants the said sum of nine hundred and forty seven dollars and Eighty six cents damages ~~&c~~ with costs by them laid out and expended by them in the prosecution of this suit and that Execution issue ~~therefor~~ thereon.

Exhibit "O."

E. G. Reynolds Wm G. Hatcher
vs
Mark Ayres & Theadore Ayres } —

Comes now the Plaintiffs by Joiner their attorney and Defendants by S. A. Washington who confesses Judgment for two hundred and forty six dollars and ninety seven cents. said Confession of Judgment was by power of attorney —

It is therefore considered and decreed that

Plaintiffs have and recover of and from Defendants the said sum of two hundred and forty six dollars and ninety seven cents damages with costs by them laid out and expended in and about the prosecution of this suit. and that Execution issue thereon

Exhibit "D"

48th

Samuel B. Haggard & David S Bradley
vs
Mark Ayres & Theadore Ayres
} Assumsit

And now comes plaintiffs by their attorney C B Joiner and moves the Court for Judgment against Defendants by Default for ~~not~~ want of plea. It was ordered that they be called and they were called three times in open Court. but did not answer - and the Court being satisfied that Defendant had service by process at least ten days previous to this Term of Court it was ordered that it be refered to Clerk to assess damages and report - which he reports at one hundred and fifty two dollars and forty nine cents - It is therefore considered and decreed that plaintiff have and recover of and from Defendant the said sum of one hundred and fifty two dollars & forty nine cents damages with his costs & charges by him laid out and expended in the prosecution of his suit - and that Execution issue thereon -

Exhibit "2"

Eber Dunning
vs
Mark Ayres & Theadore Ayres
} Comes now plaintiff by Joiner

his attorney and Boone Enters his appearance for defendants & it being shown to the satisfaction of the Court that defendants had service by process (from return of Sheriff thereon) at least ten days previous to the first day of this term, ordered that Defendants be called, and they were called three times in open Court. but they failed to appear and Judgment was taken for want of plea, ordered that Clerk assess damages, which he report at $256.90

It is therefore considered and decreed that plaintiff have and recover of and from Defendants the said sum of two hundred and fifty six dollars and ninety cents damages with costs by him laid out and expended in & about the prosecution of this suit and that execution issue thereon —

49 th

Exhibit "R."

State of Illinois } ss. The People of the State of Illinois.
Iroquois County }

to the Sheriff of said County, Greeting;

Whereas, John Purdue & Filch B. Stacy lately, on the 29th day of October in the year of our Lord one thousand Eight Hundred and fifty Six in the Circuit Court of said County recovered Judgment against Mark Ayres and Theadore Ayres for the sum of nine hundred & 47 dollars and 86 Cents, and also the further sum of Six Dollars and 85 Cents Costs which was adjudged to them the said Purdue & Stacy for their damages Costs and Charges in that behalf laid out and expended as appears to us of Record —

You are therefore Hereby commanded that of the Goods and Chattels, Lands and Tenements of them the said Mark Ayres and Theadore Ayres

you cause to be made the said sum of Nine Hundred & forty seven Dollars and 86 Cents and Six Dollars and cents costs aforesaid, by distress and sale and have that money ready in ninety days for the date hereof, to render to the said Purdue & Stacy for their damages and costs aforesaid. Hereof fail not and Make Return of this writ according to law, with an Endorsement thereon as to the manner in which you may execute the same.

50 th =

Witness Jesse Bennett Clerk of our said Court and the Seal Seal thereof hereto affixed at my office in Middleport this 17th Day of November AD 1856.

J Bennett — Clerk —

And the Endorsement on said writ reads as follows. To wit

"Recd this writ November 17th 1856. at 10 oClock AM and served same by reading to Mark & Theadore Aspes Nov 18 1856. no property found wherein to levy A B Roff — Sheriff —

Exhibit "S"

State of Illinois } ss. The People of the State of Illinois to
Rogers County } the Sheriff of said County, Greeting:

Whereas, Edward H. Reynolds & William H. Hatcher lately on the 29th Day of October in the year of our Lord one thousand Eight hundred and fifty-six in the Circuit Court of said County, recovered Judgment against Mark Aspes & Theadore Aspes for the sum of two hundred & forty six Dollars and Ninety seven Cents, also the further sum of Three Dollars and ninety five cents Costs which was adjudged to them the said Edward H Reynolds & William H Hatcher for their damages and Costs, in & charges

in that behalf laid out and Expended as appears to us of Record - You are therefore Hereby Commanded, that of the goods and chattels, lands and tenements of them the said Mark Styers & Theadore Styers you cause to be made the sum of two hundred & forty six dollars and Ninety seven cents and three dollars and ninety four cents costs aforesaid, by distress and sale and have that money ready in ninety days from the date hereof, to render to the said Edward K. Reynolds & William H. Hatcher for their damages and costs aforesaid Hereof Fail not and make return of this writ according to law, with an endorsement thereon as to the manner in which you may execute the same.

5/ &

Witness Jesse Bennett, Clerk of our said Court, and the Seal Seal thereof hereto affixed at my office in Middleport this 17th day of November ad 1856.

J. Bennett — Clerk —

and the Endorsement reads as follows, to wit:

"Rec'd this writ November 17th 1856 at 10 oclock AM and served the same by reading to Mark & Theadore Styers Nov 18th 1856 No property found wherein to levy —

A. B. Roff — Sheriff —

Exhibit "J"

Bagwell

State of Illinois } ss The People of the State of Illinois
Rogers County } To the Sheriff of said County - Greeting

Whereas Samuel P. Haggard and David O. Bradley lately, on the Seventeenth day of September in the year of our Lord one thousand eight hundred and fifty six in the Circuit Court of said County, recovered Judgment against Mark Styers and Theadore Styers for the sum of one hundred & fifty two Dollars and forty nine

cents. and also the further sum of Six Dollars & ten cents costs. which was adjudged to them the said Samuel B. Haggard and David O Bradley for their damages and costs and charges in that behalf laid out and Expended as appears to us of Record. You are Therefore hereby Commanded. that of the goods and chattels. lands and tenements of them the said Mark Ayres and Theadore Ayres you cause to be made the said sum of one hundred and fifty two Dollars and forty nine cents and Six Dollars and ten Cents Costs aforesaid. by distress and sale and have that money ready in ninety days from the date hereof. to render to the said Samuel B. Haggard and David O. Bradley for the damages and costs aforesaid. Whereof fail not and make return of this writ according to law with an endorsement thereon as to the manner in which you may execute the same.

52 d

Witness Thomas Brennan Clerk of our said Court and the seal thereof hereto affixed at my Office in Middleport. this 24 day of December A.D. 1856.

Thomas Brennan Clerk

And the Endorsement or Service on said Writ reads as follows

"Served by reading to the ~~the~~ Theadore Ayres. but no property found and no money paid on the within Execution

James H. Karr — Sheriff

Exhibit "H"

State of Illinois }
Iroquois County } ss. The People of the State of Illinois to the Sheriff of said County Greeting:

Whereas Eber Dunning lately on the 29th day of October in the year of our Lord one thousand Eight

hundred and fifty-six in the Circuit Court of said County. recovered Judgment against Mark Aypes & Theadore Aypes for the sum of two hundred & fifty six dollars and ninety cents. And also the further sum of Five dollars and fifty cents Costs, which was adjudged to him the said Ebenezer Dunning for his costs and charges in that behalf laid out and expended as appears to us of Record. You are therefore Hereby commanded that of the Goods and Chattels, lands and tenements of them the said Mark Aypes & Theadore Aypes you cause to be made the said sum of two hundred & fifty six dollars and ninety cents and four dollars and fifty cents Costs aforesaid, by distress and sale, and have that money ready in ninety days from the date hereof to render to the said Ebenezer Dunning for damages & Costs aforesaid. Hereof fail not and make return of this writ according to law, with an endorsement thereon as to the manner in which you may execute the same.

53 ¢

Witness Jesse Bennett, Clerk of our said Court and the seal thereof hereto affixed at my office in Middleport, this 17th day of November AD 1856.

J Bennett — Clerk

And the Endorsement or return on said writ reads as follows "Recd this writ November 17th 1856 at 10 o'clock Am and served the same by reading to Mark & Theadore Aypes Nov 18th 1856. No property found whereon to levy

A. B Roff — Sheriff —

Exhibit "B"

This Indenture made this Seventh day of April in the year of our Lord one thousand eight hundred and fifty six Between Mark Aypes &

54 ℔

Alma M. Ayres his wife of the County of Iroquois and State of Illinois parties of the first part— and Jesse B. Ayres of the said County and State party of the second part. Witnesseth that the said party of the ~~second~~ first part for and in consideration of two thousand and two dollars & fourteen cents in hand paid by the party of the second part the receipt whereof is hereby acknowledged and the said party of the second ~~part~~ forever released and discharged therefrom have remised released, conveyed quit-claimed and by these presents do remise release convey and quit-claim unto the said party of the second part his heirs and assigns forever all the right title interest claim and demand which the said parties of the first part have in & to the following described lots pieces or parcels of land to wit The East half of SE qtr of the SW qtr of Section twenty nine in Town twenty seven N R twelve W of 2d P.M. Also the W half of Sec thirty five also the E half of the NE qr of Section thirty five in Town twenty seven N of R twelve West also the E half of S E qr of Section thirty four in Town twenty seven N of R twelve W— The full amount being 500 acres more or less— lying and being in the County of Iroquois and State of Illinois— To have and hold the same together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining and all the estate right interest and claim whatever of the said parties of the first part either in law or equity to the only proper use benefit and behoof of the said party of the second part his heirs and assigns forever

In Witness Whereof the said parties of the first part hereunto set their hands and seals the day and year above written.

Signed Sealed & Delivered in Presence of S. G. Bowie & E Bowman

Mark Ayres [L.S.]
Alma M Ayres [L.S.]

55 Th

State of Illinois } ss I S. M. Ayres a justice of the peace in & for said County do certify that Mark Ayres and Alma M. Ayres whose names appear in the foregoing deed and who are personally known to me to be the persons whose names are subscribed to such deed as having executed the same - appeared before me this day in person and did acknowledge the same to be their free act and deed - and the said Alma M. Ayres wife of the said Mark Ayres having been by me made acquainted with the contents of said deed and being examined by me separate and apart from her said husband she acknowledged that she executed the same and relinquished her dower to the lands and tenements therein mentioned voluntarily freely and without compulsion on the part of her said husband

Given under my hand and seal this 10th day of April A.D. 1856.

S M Ayres J.P. [L.S.]

Filed April 16th 1856. and Recorded April 19th AD 1856 -

Exhibit "N."

This Indenture made this seventh day of April in the year of our Lord one thousand Eight hundred and fifty six - Between Mark Ayres and Alma M. Ayres his wife of the County of Bowing

and State of Illinois parties of the first part. and
Jesse B. Sypes of the said County and State party
of the second part Witnesseth that the said parties
of the first part for and in consideration of two
thousand four hundred dollars in hand paid by the
party of the second part. the receipt whereof is hereby
acknowledged and the said party of the second part
forever released and discharged therefrom have
remised ~~and~~ released conveyed quit claimed
and by these presents do remise release convey and
quit-claim unto the said party of the second part
his heirs and assigns forever all the right title interest
claim and demand which the said parties of the first
part have in and to the following described lots pieces
or parcels of lands to wit, the SE¼ of the SW¼ & the
SW¼ of the SE¼ & the NE¼ of the SW¼ of Sec (4) also the
SE¼ of the NE¼ & the W half of the NW¼ & the NE¼ of
the NW¼ and the NW¼ of the NE¼ & the NE¼ of the
SE¼ & the SE¼ of the NW¼ and the SE¼ of the SE¼ of
Section (8) also the W half of the SW¼ and the SW¼
of the NW¼ of Section nine also the W half of the S
half of the SE¼ of the NW¼ of Sec 21 of (12 4/100) acres
all being in Town twenty seven N of R 11 West ——
Containing 572 4/100 acres more or less lying and
being in the county of Hoopin and State of Illinois
To have and to hold the same together with all and
singular the appurtenances & privileges thereunto
belonging or in any wise appertaining. and all the
Estate right interest and claim whatever of the
said party of the first part either in law or equity
to the only proper use benefit and behoof of the

56 th

said party of the secnd party his heirs & assigns forever -

In Witness Whereof the said parties of the first part hereunto set their hands and seals the day and year above written.

Signed Sealed & Delivered
in Presence of S. G. Bowe
E Bowman

Mark Ayres (Seal)
Alma M. Ayres (Seal)

57 Th =

State of Illinois
County ss I S. M. Ayres a Justice of the Peace in & for said County do certify that Mark Ayres whose name appears in the foregoing deed and who are personally known to me to be the person whose names are subscribed to such deed as having executed the same appeared before me this day in person and did acknowledge the same to be their free act and deed and the said Alma M. Ayres wife of the said Mark Ayres having been by me made acquainted with the contents of said deed & being examined by me separate and apart from her said husband she acknowledged that she executed the same and relinquished her dower to the lands and tenements therein mentioned voluntarily freely and without compulsion on the part of her said husband Given under my hand and seal this 10th day of April A.D. 1856.

S. M. Ayres JP (Seal)

Filed April 16th 1856 & Recorded April 19th AD 1856.

Exhibit "H"

This Indenture made and entered into this 18th
day of April in the year of our Lord Eighteen hundred
and fifty five Between Mark Aypes of the County of Bogue
and State of Illinois party of the first part and J. W
5-8th = Lawrence of the same County and State aforesaid
party of the second part. Witnesseth that the said party
of the first part for and in consideration of the
sum of Seven hundred dollars in hand paid the
receipt whereof is acknowledged do hereby grant.
sell. convey. and confirm unto the said party of the
second part his heirs and assigns forever all and
singular the following goods and chattels to wit:
four set of harness. one saddle and bridle. one side
saddle one Piano. three bearrows. three rocking chairs
one center Table two wagons Five plows. one sofa
one set of mahogany one set of Walnut chairs. six
Beadsteads. five wash Stands one extention dining
table one side table. also the present growing crops
of oats and corn in his place where he resides —
amounting in all to about one hundred and fifty acres
and also one Clock four lamps and 80 yards of
Carpeting also 200 Vols of sundry Book the above
property is Mortgaged to secure the payment of a
certain promissory note which reads as follows —
$700. Middleport April 18 1855 Eight months and 13
days after for value received I promise to pay
J. W. Lawrence Seven hundred dollars with interest
from Date Mark Aypes
Together with all and singular the appurtenances

thereon belonging, or in any wise appertaining —
To have and to hold the above goods and Chattels
unto the said party of the second part his heirs
and assigns forever. Provided Always that these
59 th presents are upon this express condition that if the
said Mark Ayres his heirs executors, administrators
or assigns shall on or before the first day of
January A.D. Eighteen hundred and fifty six pay or
cause to be paid to the said J. W. Lawrence or to
his lawful attorney heirs executors administrators
or assigns the sum of seven hundred dollars together
with the interest that may accrue thereon at the rate
of six per centum per annum from the 18th day of
A.D. 1855. Eighteen hundred and fifty five until paid
according to the tenor of the above described promissory
note that then and from thence forth these presents and
every thing herein contained shall cease and be
null and void any thing herein contained to the
contrary notwithstanding. Provided also that
the said Mark Ayres is to retain possession of and
have the use of said goods and Chattels until the
day of payment aforesaid, and also at his own
Expense to keep said good and Chattels and also
at the expiration of said time of payment if said
sum of money together with interest as aforesaid
shall not be paid to Deliver up said goods
and Chattels in good condition to said J. W.
Lawrence or to his heirs, executors administrators
or assigns and Provided also that if Default
in payment as aforesaid shall be made that
then the said J W Lawrence or attorney, agent
or assigns or heirs executors or administrators

Shall have the right to take possession of said goods and chattels wherever the same may or can be found and sell the same at public or private sale to the highest bidder for cash in hand after giving ten days notice of the time place and terms of said sale together with a discription of the goods and chattels to be sold by at least three advertisements posted up in public places in the vicinity where said sale is to take place to make the sum of money and interest promised as aforsaid together with his reasonable costs charges and expenses in so doing, and if there shall be any overplus shall pay the same to the said Mark Ayres

60 Th

In Testimony thereof the said party of the first part has hereunto set his hand and affixed his seal the day and year first herein written.

Signed Sealed & Delivered in
Presence of S.G. Bowie — Mark Ayres (Ls)

State of Illinois }
County of } ss I Daniel Fry Clerk of the County Court in and for said County do certify that this Mortgage was duly acknowledged before me by the above named Mark Ayres this fourth day of May A.D. 1855.

Witness my hand and official Seal
(Ls)
Daniel Fry - Clerk

Filed May 5 1855 Recorded same day 1855.

And afterwards to wit on the 21st day of April AD one thousand eight hundred & fifty seven, the same being the first day of the April. regular term of the Wyoming County Circuit Court for the year last aforesaid, And said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by said Court in words & c as follows, towit,

61 pp

Reeves Stephens & Co Etal
vs
Mark Ayres. Theadore Ayres } Bill to set aside Sale.

And now at this time comes the Plaintiffs by Loomis & Fletcher their Attorneys and on their motion Defendants were ruled to answer by 1st of September next.

And afterwards on the 14th day of November AD 1857. the same being one of the regular days of the October Term of said Court for the year aforesaid, and the same being duly organized and sitting as aforesaid, the following proceedings were had and Entered of record in words following, towit:

Mark E. Reeves. Stephens & Co Etal
vs
Mark Ayres. Theadore Ayres, Timothy B. Mason & Jesse B. Ayres. } Bill to set aside Sale.

And now comes Rowe defendants solicitor on whose motion leave is given to Defendants to answer complainants Bill by the first day of March next, and this cause is continued.

And afterwards on the 20th day of April AD 1858. the same being one of the regular days of the April Term ~~for~~ of said Court for said year, and said Court being duly organized and sitting for the transaction of business as aforesaid the following proceedings were had & entered of record in words following, towit;

62 5

Mark E. Reeves, James E. Reeves etal
vs
Mark Ayres, Theadore Ayres & Timothy B Mason & Jesse B. Ayres. } Bill to set aside Sale.

The defendants by Bovie come and file a demurrer to the complainants bill in this cause —

And afterwards on the 27th day of April AD 1858, the same being one of the regular days of the April Term of said Court for said year — and said Court being duly organized and sitting in open Court for the transaction of business as afore said, the following record was made in said cause towit —

Mark E. Reeves etal
vs
Mark Ayres, Theadore Ayres Timothy Mason & Jesse B. Ayres } Bill to set aside Sale

And now come the defendants by Bovie their solicitor and withdraw the demurrer to complainants bill. And on motion of complainants solicitors leave is hereby given to the complainants to

amend the bill of complaint in this cause. so as to require Timothy B. Mason one of the Defendants to answer the said bill of complaint under oath. and it is further ordered that the defendants answer the Complainants Bill by the first day of September next and this cause is continued.

63 D

and afterwards to wit on the 24th day of July AD 1858 there was filed in the office of the Clerk of said Boquin County Circuit Court the ~~Several~~ Separate answer of Timothy B Mason in said Cause in words and figures - following. to wit:

The State of Illinois }
Boquin County } In the Boquin Cir Court
October Term 1858-

The separate answer of Timothy B Mason to a bill of complaint pending in said Court wherein Mark E Reeves & Divrs others claiming to be - Creditors of Mark Ayres & Theadore Ayres are Complainants, & this respondent & the said Mark & Theadore Ayres & Jesse B. Ayres are defendants

This Defendant saving to himself all benefit of exception to said bill of complaint on account of the errors imperfections. - insufficiencies & absurdities thereof for answer thereto, or to so much thereof as he is advised it is necessary or material for him to -

answer unto — — — — — — — —

Answering says that he has no personal knowledge as to the indebtedness of Mark & Theadore Ayres as stated in said bill but that since the filing of said bill he has been informed by said Theadore Ayres & Mark Ayres that they are indebted to the complainants in the several amounts stated in said bill, that the several Judgments mentined in said bill have been rendered against Mark & Theadore Ayres in consideration thereof that the several executions mentined in said bill have been issued on said Judgments & returned as in said bill alledged & that he believes the allegations in said bill in relation thereto to be true —

64th

This respondent further answering admits that the said Theadore Mark Ayres who are brothers were at the time stated partners in the mercantile — business at the place named in said bill but he denies that he had any knowledge of the existance of said partnership until after the execution of the notes & Mortgages to him below named & until some time in the summer of 1855. until which time respondent had always supposed that said mercantile enterprise at Concord had been carried on in the name & for the benefit of said Mark Ayres —

This defendant is ignorant of the extent of the business conducted by said Mark & Theadore, or whether they bought & sold land as such partners if so to what Extent — This respondent admits that said Theadore & Mark are largely indebted for & on account of their dealings & transactions while such partners but that he is

ignorant of the amount & can not state whether the amount is correctly stated in said bill of complaint or not & further that he has not sufficient information in relation thereto to form a belief. This respondent is not informed, nor does he believe that the Defendants Mark & Theadore, while such partners purchased & entered a large amount of lands in Boone County Illinois & also in the State of Indiana & took the titles to said lands in the name of said Mark Ayres for the purpose of defrauding their creditors. This respondent further answering says that he admits that the said Mark Ayres became the owner in fee simple of the lands named in the said complaint at the time & for the consideration named in said complaint & further that he has been informed since the commencement of this suit & believes the same to be true that said lands were purchased with the partnership ~~means~~ means of said firm of Mark & Theadore Ayres & that said Mark Ayres held the title to the same in trust for himself & the said Theadore Ayres but he denies that the title to said lands were taken in the name of said Mark Ayres for the purpose of defrauding the creditors of himself & said Theadore, but on the contrary he charges that said titles were ~~to~~ so taken for convenience & to facilitate the execution of deeds therefor in the event of sales thereof & that such is a usual & customary course with Mercantile firms. He further states that until after the execution of the mortgages hereinafter named he supposed & believed that said lands had been purchased with the exclusive means of said Mark Ayres & that in equity as well as legally he was the exclusive owner thereof. This Defendant has been informed since the commencement of this suit & believes the same to be true that the said

65 ½

Theadore Ayres on the 9th February 1855 Executed the deed to said Mark Ayres for the lands described in said deed as stated in the Complaint, but he denies that until long after the execution of the Mortgages hereinafter named he had any Knowledge of the execution of said deed & avers that until after then he had no knowledge that said Theadore Ever had any interest in said land either Equitable or legal - he denies that said deed was executed for the fraudulent purpose named in said bill, & also all Knowledge of such fraudulent purpose, if it existed in this defendant -

66th

This defendant further answering says that he admits that on the 19th day of September 1854. the said Mark Ayres, who is the son in law of this respondent, & Alma M. his wife executed to him that he accepted the mortgage which is made a part of said Complaint & marked exhibit "A" but he denies that said Mortgage was executed by said Mark & his said wife or accepted by him for the purpose of defrauding the creditors of said Mark, or for any of the fraudulent purposes named in said Complaint, or for the purpose of hindering or delaying the complaints or other creditors of said Mark & Theadore Ayres from collecting their Debts by covering up said lands, but to secure an indebtedness then due from said Mark Ayres to this defendant, that the said Mark Ayres was at the time justly indebted to him in the amount named in the notes described in said mortgage with the interest accrued thereon, nearly all of which was for money loaned & advanced by this respondent to said Mark, This Defendant denies that said Mortgage

was executed upon the solicitation of said Mark & Theadore Ayres or either of them but charges that the same was executed at the instance of this respondent in pursuance of an understanding which had previously existed that the said Mark should in some mode save this respondent against the loss of said claims - This defendant further answering denies that at the time of the execution of said Mortgage he had any knowledge that the said Theadore Ayres had any interest legal or equitable in said lands, or that the same had been purchased with the joint partnership means of said Theadore & Mark.

67 Th

This defendant further answering admits that on the 9th day of February 1855 the said Mark Ayres & his said wife executed to him, & that he accepted the Mortgage which is made a part of said complaint & marked Exhibit "B." but he denies that said last mentioned mortgage was executed by said Mark & his said wife, or accepted by him for the purpose of defrauding the creditors of said Mark & Theadore or for the purpose of hindering or delaying the complainants or other creditors of said Mark & Theadore Ayres from collecting their debts against them, by covering up said lands, or for any of the fradulent purposes named in said Complaint, but to secure an indebtedness then due from said Mark Ayres to the defendant, that the said Mark Ayres was at the time justly indebted to him in the amounts named in the notes described in said mortgage, with the interest thereon accrued nearly mostly all of which was for money loaned & advanced by this respondent to him the said Mark.

This defendant denies that said Mortgage was executed upon the solicitation of said Mark & Theadore

Ayres or either of them, but charges that the same was executed at the instance of this respondent —

This respondent further answering denies that at the time of the execution of said last mentioned Mortgage he had any knowledge that the said Theadore Ayres had any interest legal or equitable in said lands or that the same had been purchased with the joint partnership means of said Mark & Theadore —

68th

This Defendant further answering says that both said Mortgages are given to secure the same indebtedness & that said indebtedness remains unpaid, & also a large amount of the interest therein, that the said notes have not been paid nor hath either of them or any part thereof an but a small part of the interest therein accrued —

This respondent further answering says that at the time of the execution of said said Mortgages he had not, nor had he when either of them were executed any Knowledge that the said Mark Ayres or the said Mark & Theadore Ayres, or either of them ~~was~~ was or were indebted to any Considerable amount or at all in embarrassed circumstances —

This respondent further answering says that he has been informed, believes & therefore admits that about the time of the date thereof the Defendant Mark Ayres executed to said Lawrence the Chattel Mortgage which is made a part of said complaint that he this respondent was in no wise accessory to the execution of said Mortgage & is wholly ignorant of the purpose or ~~Consideration~~ Consideration which induced its execution, and Cannot answer whether it was or was not executed in

Good faith, or whether the indebtedness therein stated ever existed or whether or not it was ever delivered to said Lawrence. & if so with what motive or understanding or what was the value of said property, or whether any
69th = consideration was given or existed for the execution of said mortgage - and he has not in relation thereto sufficient information upon which to form a belief - & he cannot state whether said Mortgage was or was not executed without the knowledge of said Lawrence. or whether it did or did not hinder & delay said Complainants in the Collection of their said debts - this respondent further answering says that some time in July 1855 said Mortgage was handed to him he thinks by said Mark Ayres while he was on a visit to Mr Ayres for the purpose of seeing his daughter who was the wife of said Ayres; The said Mortgage when so delivered was indorsed & assigned to this respondent by said Lawrence. at the time the same was so delivered to respondent it was understood that he was to hold the same as further & additional security for his said indebtedness - This respondent further says that he did not at the time attach any importance to said Mortgage, & has never looked after the property therein described, nor does he know where the same is or whether the same or any part thereof could now be found. he distinctly denies that he accepted said mortgage for the fraudulent purpose of covering up said property & preventing the same from being taken on execution for debts of Theodore & Mark Ayres or of either of them, or for any fraudulent purpose whatever or with any corrupt design - -

This defendant further answering denies that the lands so mortgaged to him are or ever

were in his estimation of the value stated in said complaint, but he admits that they are of the avarage value of about fifteen dollars an acre—

He further says that that there were & still are incumbrances on said lands previous to the Mortgages to this Defendant of about six thousand dollars including interest, in the shape of Mortgages to other persons namely one Mortgage to one Sheridan for three thousand dollars. one mortgage to one Charles Sherman for about Eighteen hundred dollars. & another Mortgage to one J. Hollingsworth for about eight hundred dollars. This Defendant therefore denies that the security taken for the said indebtedness to him by said mortgages is unreasonable or excessive—

70 th

This defendant further answering expressly denies that the said Theadore Ayres has an interest either equitable or legal in the lands covered by the Mortgages to this defendant which should be applied in payment of said Judgments in preference to to the mortgage debt so due to this defendant. This respondent further answering says that nearly all the money so advanced by him to said Mark Ayres was used in the partnership transactions of said Mark & Theadore Ayres as he has been recently informed & verily believes—

This Defendant denies all fraud, Confederacy & conspiracy with which he stands charged in said bill, & also all false pretences with which he stands charged— She denies that his said Mortgages ought to be cancelled, annulled, set aside or postponed to the Judgments of the complainants—

This respondent admits that he has been informed & believes that the defendants Mark & Theadore are insolvent, & that they have no property subject to Execution unless it be their equity of redemption in the lands mortgaged, & that the said Mark Ayres now lives in Milwaukee in the State of Wisconsin -

71 ℔

This respondent denies that any portion of the money so advanced to defendant Mark & for which said notes were given was advanced as a Marriage portion to his said daughter who was the wife of said Mark -

This respondent further says that he denies each & every allegation in said bill which is not above specifically denied, admitted, or answered

Timothy B. Mason

S. Baird
S.G. Bovie
Commissioners for Dft

Timothy B Mason

State of Illinois } ss
Iroquois County }

Timothy B. Mason personally appeared before me this 26th day of April AD 1858 who after being duly sworn on oath says that he has heard the foregoing answer subscribed by him read and knows the contents thereof and that the matters & things therein stated to be upon his own knowledge are true, and those purporting to be upon information & belief he believes the same to be true -

Subscribed and sworn to before me this 26th day of April AD 1858 -

Timothy B Mason

S.G. Bovie
Master in Chancery

And afterwards on the first day of September AD one thousand eight hundred & fifty Eight. there was filed in the office of the Clerk of said Court the several and joint answers of Mark & Theadore Ayres 73 D which reads in the words &c as follows, to wit:

State of Illinois,
Iroquois County. } October Term of the Iroquois Circuit Court AD 1858.

The joint and several answer of Mark Ayres & Theadore Ayres to a bill of complaint pending in said Court wherein Mark E. Reeves and divers others claiming to be creditors of Mark Ayres & Theadore Ayres are Complainants and these respondents and Timothy B. Mason & Isaac B. Ayres are defendants. These defendants saving and reserving to themselves all benefit of exception to said bill of complaint on account of the errors - imperfections insufficiencies and absurdities thereof for answer thereto or to so much thereof as they are advised it is necessary or material for them to answer unto answering say that they admit that they did carry on the mercantile business at Concord in Iroquois County as stated in said bill that they or the said Mark Ayres did purchase lands of divers individuals but deny that they or either of them entered any lands or purchased any lands of the United States Government. these respondents also admit that they purchased portions of their stock of goods wares and merchandise on credit at Cincinnatti, Lafayette and Chicago they deny that they but seldom paid for any thing so purchased by them but on the contrary say

and avr that they paid for a large portion of the stock they purchased at the places as alledged in said bill — These Defendants further answering deny that they purchased any lands in the State of Illinois or State of Indiana and took the titles of the same in the name of Mark Aspas alone for the purpose of defrauding any of their creditors but on the contrary say and avr that they took the titles to said lands in the name of Mark Aspas for — convienence so that they the said respondents could convey the same to those who purchased of them without the trouble of getting the signatures of both these respondents and their said wives - These respondents further answering admits that they became indebted to the complainants named in said bill in the several amounts therein stated, and that said complainants recovered their several judgments for said indebtedness as stated in said bill these respondents admit that they or the said Mark Aspas purchased of divers persons the lands mentioned in said bill of complaint and that the titles thereto were taken in the name of the said Mark Aspas alone but they and each of them most positively deny that the titles were so taken to hinder defraud or delay the said complainants from the collection of their said several demands or for the purposes of defrauding any one —

74 Th

And these respondents further answering most positively deny that it was the intention of them or either of them when they were so engaged in the Mercantile business as stated in said bill to purchase all or any of their goods upon credit—

and sell them out - and out of the proceeds
thereof to purchase the lands mentioned in said
bill of complaint or any other lands in the name
of Mark Aspas alone to place them beyond the
75th reach of the creditors of these respondents, but that on
the contrary they took the titles in the name of Mark
Aspas alone for the convenience of these respondents.

These respondents further answering admit that
the lands mentioned in said bill as purchased and
the titles thereto taken in the name of the firm that
said lands. The said Theadore Aspas one of these
these respondents conveyed all his interest in the
same to the said Mark Aspas but these respondents
and each of them deny that said Conveyance
last aforesaid was made for any fraudulent
purpose whatever but that the same was made
for the convenience of the said respondents -
as aforesaid -

These respondents further answering admit
that they sold or traded their stock of goods
and town property in Concord at or about the time
stated in said bill to one Charles Sherman for a portion
of the lands mentioned in said bill of complaint and took
the title ~~to~~ thereto in the name of Mark Aspas alone
but they and each of them most positively deny that
it was so done to cheat or wrong the complainants
or any one else -

These respondents further answering deny that they
or either of them applied to Timothy B. Mason the father in law
of said Mark Aspas or solicited him to take, receive or
accept from Mark Aspas and Alma in his life
a mortgage of any kind with or without a suffic
ient consideration therein expressed to cover

entirely said Lands, or any part thereof and place them beyond the reach of the creditors of these respondents or to hinder, delay, or defraud them from collecting said demands or for any of the fraudulent purposes named in said bill of complaint -

These respondents further answering admit that on the 19th Day of September 1854 the said Mark Ayres one of these respondents and Alma M his wife executed to the said Timothy B Mason the Mortgage which is made a part of said complaint and marked Exhibit "A" but they and each of them deny that said mortgage was executed by said Mark and his said wife for the purpose of defrauding the creditors of these respondents or the creditors of either of them or for any of the fraudulent purposes named in said - complaint or for the purpose of hindering or delaying the complainants or other creditors of said Mark and Theadore Ayres from collecting their debts by covering up said Lands but to secure an indebtedness then due from said Mark Ayres to the said Mason that the said Mark Ayres was at the time justly indebted to the said Mason in the amounts named in the notes described in said mortgage with the interest accrued thereon nearly of of which was for money loaned and advanced by the said Mason to the said Mark Ayres -

76th

These respondents and each of them deny that said mortgage was executed upon the solicitation of them or either of them but charge that the same was executed at the instance and request of the said Mason and in pursuance of an understanding

which had previously existed that the said Mark one of these respondents should in some mode secure the said Mason against the loss of said claims.

These respondents further answering deny that they or either of them or the said Mark and Alma M. his wife made to the said Timothy B. Mason a mortgage marked exhibit "B" and made a part of the complaint on the lands purchased of Charles Sherman without any valuable consideration or for any of the fraudulent purposes mentioned in said complaint or to delay hinder, cheat, wrong, or defraud said complainants out of their just claims but on the contrary say that the said Mark and Alma M. his wife did on the 9th day of February 1855 execute to the said Mason said Mortgage which is made a part of said complaint and marked exhibit "B" to secure an indebtedness then due from said Mark Aspas to the said Mason that the said Mark Aspas was at the time of making the mortgage last mentioned jointly indebted to the said Mason in the amounts named in the notes described in said Mortgage with the interest thereon accrued nearly all of which was for money loaned and advanced by the said Mason to the said Mark —

77th

These respondents deny that said Mortgage was executed at the solicitation of the said Mark and Theadore Aspas or either of them but charge that the same was executed at the instance and request of the said Mason

These respondents further answering deny that at the time of the execution of either of said Mortgages marked respectively as exhibits A. and B. and made a part of said bill of complaint that the said Mason had any knowledge of the interest legal or equitable of the said Theadore Aspas in said lands or that the same

had been purchased with the joint partnership means
of these respondents these respondents further answering
say that both said mortgages are given to secure the
same indebtedness that said indebtedness remains unpaid and also a large
amount of the interest therein that the said notes have
not been paid nor have either of them or any part
thereof and but a small part of the interest therein
78th accrued nearly all of which was for money loaned
and advanced to the said Mark Ayres by the said
Mason and which was placed and put into the firm of
Ayres & Co by the said Mark Ayres and formed a large
part of the capital of said firm when they so commenced
the mercantile business in said Town of Concord in the
Fall of 1852. These respondents further answering admit
that the said complainants recovered their respective
judgments against these respondents and that executions
have been issued therein and returned as stated in said
complaint - and these respondents further answering admit
that the said Mark Ayres and Alma M. his wife did on the 7th
day of April 1856 by their certain deed convey all and
and singular the said land described therein to Jesse B.
Ayres which said last mentioned deed is marked "V" and
made a part of the bill of complaint, but these respondents
deny that said deed was made by the said Mark and his
said wife to the said Jesse B. Ayres without a good and
valuable consideration but these respondents most
positively charge that said deed was executed for
a good and lawful consideration which consideration
is mentioned in said deed - These respondents and each
of them deny that said deed was executed for any of the
fraudulent purposes named in said complaint or for

hindering or delaying said complainants in the
collection of the demands which they had against the
said Mark and Theadore Ayres or to cheat wrong or
defraud them out of the same. And these respondents
further answering admit that the said Mark Ayres
79th and his said wife did on the 7th day of April 1856 by
their certain deed marked as exibit "W" and made a part
of said complaint - convey the lands therein described to
the said Jesse B. Ayres - These respondents and each of
them charge that said last mentioned deed was made
to the said Jesse B. Ayres for a good and valuable
consideration but they and each of them deny that said
deed was executed for the purpose of hindering or delaying
or to cheat. wrong. or defraud the said complainants out
of their demands - These respondents further answering
admit that a chattel mortgage was made by the said
mark Ayres to the said James W. Laurence but each of these
respondents positively deny that the same was made to
cheat or defraud these complainants. and the said
Theadore Ayres denies knowing any thing about the
execution of said mortgage for a long time after the
same was executed. These respondents also deny that
the property mentioned in said mortgage was worth two
thousand dollars but on the contrary say and aver
that all their personal property was not at that time
worth over the sum of 6 or 7 hundred dollars -

They deny that they had at any time after the
sale of their stock of goods to said Charles Sherman
they ever had personal property enough to pay
the debts of the said complainants, and the
said Mark Ayres denies that the said Mason
knew anything about the making the said

Chattel Mortgage or the assignment of the same by J.W. Lawrence at the time the same was made or assigned, or that he knew anything about it or that there was any collusion between the said Mark & said Mason to cover up said personal property or any portion of the same for the purpose of cheating & defrauding the said complainants -

80 th

These respondents further answering most positively deny that any portion of the property mentioned in the said Chattel mortgage was ever taken to Milwaukee by the said Mark Ayres or Timothy B. Mason or by any one else - These Respondents also deny that said Mason ever got any of said personal property or the proceeds thereof - These respondents further answering positively deny that said complainants could have made the amount of their debts out of said personal property if said Chattel Mortgage had not been given as charged in said Bill of Complaint. These respondents deny all confederacy and conspiracy charged in said Bill and they also deny each and every allegation in said Bill which is not above & specifically denied admitted admitted or answered.

M Ayres
Theadore Ayres

These respondents further answering most positively deny that said lands mortgaged to said Timothy B. Mason to be worth $20 per acre but on the contrary say that they are not worth over $15 Dollars per acre and further the there is incumbrances on said lands a large portion of which is for the purchase money

money of the same which said incumbrances amount in all to nearly seven thousand dollars: and which were liens before the mortgages were given to said Mason -

These respondents deny that they have any property fraudulently covered up by Mortgage or otherwise - 81 ers

These respondents admit that the complainants have had executions issued on the Judgments obtained against them as charged in said Bill -

These respondents deny that they have any property out of which said Judgments ought to be satisfied

These Defendants positively deny all combination & confederation with the said Timothy B. Mason, Jesse B. Aypes or any one else charged against them in said Bill -

These defendants further answering deny that they ever pretended that they had paid off said Judgments or any part thereof - and the said Mark Aypes one of these respondents denies that he the said Mason ever made any advancements as a marrage portion him or his said wife. he admits that he is the son in law of said Mason

These Defendants deny that there was no Consideration paid them by Jesse B. Aypes for said lands but on the contrary aver that they received a good & valuable consideration for said lands of said Jesse B. Aypes -

And these respondents further say that they deny each and every allegation in said Bill which is not above specifically denied admitted or answered

And afterwards to wit on the 5th day of July AD 1859 there was filed in the office of the Clerk of said Court the Plaintiffs Replication to Defendants answer which reads in words & as follows. to wit:

82 D

State of Illinois } ss Iroquois Circuit Court
Iroquois County } June Term AD 1859.

The Replication of Mark E. Reeves. James E. Reeves Isaac Stephens. Francis E. Good and others creditors of Mark & Theadore Ayres Complainants to the several answers of Timothy B Mason. Jesse B. Ayres & the Joint and several answers of Mark & Theadore Ayres Defendants

These repliants saving and reserving to themselves all and all manner of advantage of exception to the manefold insufficiencies of the said answers for replication thereto say. that they will aver maintain & prove their said Bill to be true certain and sufficient in the law to be answered unto and that the said answers of the said Defendants are uncertain. untrue and insufficient to be replied unto by this repliant — without this that any other matter or thing whatsoever in the said answer contained — material or effectual in the law to be replied unto confessed and avoided traversed or denied is true. all which matters and things these repliants are & will be ready to aver & prove as in and by their said bill they have already prayed.

Fletcher & Joiner
Sols for Complaints

And on the Twelfth Day of January AD 1859. the same being one of the regular days of the January Special Term of the Boquin County Circuit Court for the year AD1859. and said Court being then duly organized and sitting in open Court for the Transaction of business. the following proceedings were had and Entered of Record by said Court. in words &c. to wit

88 ½

D. 724

" Mark E. Reeves et al
" 23. vs } In Chancery
" Mark Ayers et al

" and now come the Complainants by Jones & Fletcher their Solicitors on whose motion " the Court ordered that the Complainants be permitted to " amend the bill of cimplaint in this Cause by erasure " and interlineations thereof. so as to require the said " Jesse B. Ayers one of the Defendants to said bill of " Cimplaint to answer the same under oath.

And afterwards to wit on the 29 "Day of November AD 1859. the same being one of the regular days of said Court for said year & month last aforesaid. and said Court being duly organized and sitting for the Transaction of business as aforesaid the following proceedings where had and entered of Record in words and figures as follows.

E. 238.

" Mark E Reeves et al
" 14 vs } In Chancery
" Mark Ayers et al

This day come the parties to this

" Cause. by their Solicitors and the Court after hearing
" the arguments of Solicitors on the motion for leave
" to amend Record heretofore entered in this cau
" ordered that the record in this Cause of the
" January Term 1859. be and the same is hereby
" amended so as to read instead of " that the
" Complainants have leave to amend their bill by erasure
89 " & interlineation thereof so as to call upon Jesse B.
" Ayres to answer under oath." that the Complainants
" have leave to amend their bill by erasure and
" interlineation thereof and by calling upon Jesse B.
" Ayres to answer under oath.

And afterwards to wit on the 12th Day of June AD
1860- the same being one of the regular days of the
June Term of said Court for said year, and said
Court being duly organized and sitting as aforesaid
the following proceedings were had and entered of
Record by said Court in words & figures- to wit=

E. 542

" Mark E Reeves et al
" 10 vs } Bill to set aside Sale
" Mark Ayres et al

" And now come the Complainants by Joiner
" and Fletcher their Solicitors and enter their motion to
" the Court for a default in this Cause against the
" said Timothy B. Mason one of the Defendants for the
" want of an answer to the Bill. Comes also the
" Defendant Mason by Bovie his solicitor and enters his
" motion to the Court for leave to file the answer of
" said Mason, and the Court after mature Deliberation
" ordered that the motion for default be and it is

"overruled, and that the defendants be permitted to
"file the answer of the defendant Mason, to which the
"Complainants except, and on Motion it is ordered by
"the Court that this Cause be set for hearing at the Chambers
90th "of the Judge of this Court in Kankakee City on the second
"Tuesday (The same being the Fourteenth day) in the month
"of August next on the Plaintiffs exceptions to the amended
"answer of Timothy B. Mason filed in this cause at this term.

And afterwards on the 15th day of June AD 1860.
there was filed by the Clerk of said Court the
Amended answer of Timothy B Mason which reads
in the words and figures as follows to wit!

The State of Illinois } In the Iroquois Cir Court
Iroquois County } Feb. Term 1859.

The Answer of Timothy B. Mason to the amended
bill of Complaint pending in said Court wherein
Mark E Reeves. & others are Complainants & this Respondent
& others are defendants —

This defendant for answer to said amended
bill which amendments are specified in the
affidavit of one of his Counsel J. Baird which is
now on file & made a part of this answer as
Exhibit says that the Mortgages so executed to him
as stated in his original answer, were made
with the consent & Knowledge of said Theadore &
that the allegations in said amendment that
the ~~said~~ same were executed in fraud of said
Theadore, or his Creditors, or without his consent
are untrue. This Defendant further saith that

it is true as stated in his original answer that he had no knowledge that said Theadore Mark Ayres were partners in trade, or that the lands Mortgaged to him were purchased with partnership assets until long after the execution of said Mortgages to him: & until after the commencement of this suit. This Defendant denies that said lands were purchased in the name of Mark Ayres as partnership property, but insists that at the time of such purchase they were regarded by said Mark & Theadore not as partnership property; but as the separate property of said Mark Ayres

91 ct

This respondent further saith that the whole of the proceeds of said ~~Lands~~ loans & advancements so made by him to said Mark were in different modes used & invested in the purchase of said lands. That said lands were therefore really purchased with his means. This Defendant denies each & every allegation contained in the amended & original bill, which is not in his original answer or in this his answer to the amended bill — specifically denied, admitted or answered. The denies all frauds with which he stands charged in the original & amended bill

S.G. Bovie
J. Baird
Solrs for deft Mason.

Timothy B. Mason

And afterwards on the 16th day of June AD 1860 there was filed by the Clerk of said Court, Exceptions to amended answer of T.B. Mason, in words & Cs to wit,

State of Illinois } Iroquois Cir Court
Iroquois County } June Term AD 1860.

Mark E Reeves etal
vs
Timothy B Mason etal } In Chancery

92 Ds

And now at this time come the said complainants by Fletcher & Joiner their Solicitors and Except to the amended answer of Timothy B Mason filed June 15th AD 1860. for the following reasons, Towit

1st In the original answer the said Mason denies that he had any Knowledge of the existance of any right or title of said Theadore Ayres of in and to the Lands Specified in said Mortgage from said Mark Ayres wife to said Mason. and in the amended answer said Mason avers that the said Mortgage was made with the Consent & Knowledge of said Theadore Ayres —

2 Ly That in the original answer said Mason admits that said lands were purchased with the partnership property & effects of said Mark & Theadore and in the amended answer said Mason denies that said lands were purchased with partnership effects of said Mark & Theadore

3d That said amended answer is in other respects contradictory. irrelevant & impertinant and entirely contradictory of said original answer

Joiner & Blades
Attys for complainants

and afterwards on the Secnd Tuesday (the same being the fourteenth day) in the Month of August, A.D. 1860 the following proceedings were had in Vacation at the Chambers of the Judge of said Court at Kankakee City in the State of Illinois in substance, in words following, to wit;

93 "

E. 611

" Mark E Reeves et al
vs
" Mark Ayres et al } In Chancery

" And now come the Complainants
" by Joines and Fletcher their Solicitors and the defendants by
" Bovie and Murray their Solicitors and by agreement of parties
" it is ordered that the hearing upon the exceptions by the
" complainants to the amended answer of Timothy R. Mason
" one of the defendants be continued till tomorrow morning
" at Nine oclock,

Court met ~~—~~ pursuant ~~to~~ adjournment - August 15th A.D. 1860 - at Chambers in Kankakee City Illinois and the following proceedings were had in said cause in words & c. to wit;

" Mark E Reeves et al
vs
" Mark Ayres et al } In Chancery

E. 612

And now come the parties hereto
" by their respective Solicitors and upon hearing the
" arguments upon the exceptions to the answer of Mason
" ordered that the second exception of the Complainants
" be sustained, and it is further ordered that that
" portion of the said amended answer of said Defendant

"Timothy B Masm which avers that the property in
"controversy in this suit was purchased with the
"individual means of the Defendant Mark Ayers, and
"not with the partnership property and effects of the said
"defendants Mark & Theadore Ayers as admitted in said
94 Th = "Masms original answer be and the same is hereby
"stricken out. To the decision sustaining said
"exception the defendants by their counsel except.
"It is further ordered that the first and third Exceptions
"filed by the Complainants to said amended answer be
"and they are overruled.
"And now comes the defendant Masm by his
"Solicitors and enters his motion for leave to answer over.
"ordered that said motion be denied, and now comes
"the defendant Masm by his counsel and enters his
"exception to the order overruling said last motion;
"And now come the Complainants and enter their
"motion to suppress the deposition of Mark Ayers taken
"on the part of the defendants in this cause.

And afterwards to wit on the 20th Day of November
AD 1860 the same being one of the regular days of the
November Term of said Court for the year aforesaid
and said Court being duly organized and sitting
in open Court for the transaction of business the
following proceedings were had and entered of Record
by said Court in said cause in words & to wit

719 "Mark E Reeves etal
"as
"Mark Ayers etal } Bill to set aside Sale

And now come the Complainants by

" Joiner & Fletcher their Solicitors and suggest to
" the Court the Death of Timothy B. Mason one of the
" Defendants to this Bill, and on motion leave is given
" to the Complainants to file a Bill of Revivor as to
" his legal representatives and by agreement it is
" ordered that this Cause be continued.

95th "

And afterwards on the 2d day of July AD 1863.
there was filed with the Clerk of said Court a
Bill of Revivor which reads in the words and
figures as follows. to wit:

To the Honorable Charles R. Starr Judge of the 2d Judicial
Circuit in the State of Illinois in Chancery sitting.

Your orators Mark E Reeves. James E Reeves Isaac
Stephens. Francis & Good Willard Phipps. Henry Falls. Martin
Stadler. Max Stadler, Robert Mitchel. Fordrick Rummelsburg
Calvin R. Camp. John Purdue. Fitch B. Stacy. Edward
H. Reynolds. William H. Hatcher. Samuel B. Haggard
& Abram Coughenour Admr of Eben Dunning deceased
Daniel O Bradley, would represent unto your Honor that
on the 3d day of January AD 1857. your orators except the said
Coughenour & the said Eben Dunning filed their bill
in Chancery in this honorable Court against Timothy B.
Mason. Mark Ayers, Jesse B. Ayers Theadore Ayers -
to subject certain lands in said bill mentioned &
described to executions against said Mark Ayers &
one Theadore Ayers as in and by said bill is more
particularly and at large set forth. And your orators
would further show unto your honor that all of said
defendants appeared to said bill and put in their
several and respective answers thereto. that said

Timothy B. Mason departed this life on or about the
day of AD 1859 leaving his last will and
Testament a certified Copy of which is herewith
Exhibited marked A. and made a part of this their bill
of Complaint. whereby it appears that Abigal H. Mason,
Francis L. Griggs. Lewis B. Hopkins & James M Getchel
were appointed executors executors of the said will
and which said will was afterwards to wit on the
30th day of April AD 1861 duly proved before and
admitted to probate by the Hamilton County Probate
Court in the State of Ohio in due form of law

96 Th

Your orators would further show unto your honor that on
the day of AD 1862 the said Eben Dunning departed
this life intestate & that letters of administration were
afterwards granted in due form of law to Abram Longhenour
by the County Court of Stephens County in the State of Illinois
Your orators would further show unto your Honor that the
said Timothy B. Mason left as his widow the said Abigal
H. Mason also as his Children & heirs at law Lucretia
M. Truax. Abbie H. Mason. Edward B. Mason. Helen M. Mason
& William M. Mason also leaving Alma M Ayres - his grand
child the only child of Alma M Ayres deceased
Your orators are advised that said suit ought to be
revived against the said heirs & widow & executors of said
Timothy B Mason & in the same plight and condition as
it was at the time of the abatement of said suit
as to said Timothy B. Mason and also in favor of your
orator Abram Longhenour with the other complainants.
Your orators therefore pray your Honor that said
suit and proceedings be abated as to the said
Timothy B Mason & also in favor of your orator jointly with
the other complainants Abram Longhenour may be

revived and be in the same plight and condition as the same was at the time of the abatement thereof or that said heirs & executors may show cause to the contrary - and that your orators may have the same relief against said heirs & executors as was in said original bill asked & prayed for.

and that a subpoena may be ~~issued~~ against said Abigal H. Mason, Lucretia Truesdale, Abbie H Mason — Edward B. Mason, Helen M. Mason, William M. Mason — Alma M Ayers. Francis G Griggs Lewis L. Hopkins, & James M. Getchell thereby commanding them and each of them personally to be and appear in this honorable Court & to answer without oath & to stand to abide & ~~perform~~ perform such order & decree in the premises as shall be agreeable to equity & good conscience and to your honor shall seem meet and your orators will ever pray

97 Th

James F Fletcher
Atty for Complts

And on the 12th day of December A.D. 1863. there was filed by the Clerk of said Court in said Cause an affadavit in Non Residence which reads in words following - to wit:

State of Illinois }
Jo Daviess County } ss Jo Daviess County Circuit Court —

Mark E Reeves etal
vs
Mark Ayres etal } Bill of Revivor original and amended Bill —

Personally appeared before me the — undersigned Clerk of said Court James Fletcher who after being duly sworn deposes and says that he is

98 Pr

informed & believes. that Abigal K Mason. Lucretia M Treat Abbie M. Mason. Edward B Mason. Helen M. Mason. William M. Mason. Alma M. Ayres. Francis L. Griggs. Lewis L. Hopkins and James M. Getchel a portion of the defendants to the above suit are non residents

James F Fletcher

Subscribed and sworn to before me this 12th day of December 1863.

Thomas Brennan. Clerk

5 Cts Stamp

And on said 12th day of December AD 1863. there was a summons issued from the office of the Clerk of said Court in said cause which reads as follows. to wit.

State of Illinois
Iroquois County } ss.

The People of the State of Illinois to the Sheriff of said county - Greeting:

We Command you that You summons Abigal K Mason, widow of Timothy B. Mason Lucretia M. Treat. Abbie K. Mason. Edward B. Mason. Helen M. Mason. and William M. Mason the children and heirs at Law of Timothy B. Mason deceased. and Alma M. Ayres the grand child and heir at Law of said Timothy B Mason deceased. and Francis L. Griggs. Lewis L. Hopkins and James M. Getchel. who together with the said Abigal M. Mason are the Executors of the last Will and Testament of Timothy B. Mason deceased. who are impleaded with Mark Ayres. Theadore Ayres and Jesse B. Ayres. if they shall be found in your County personally to be and appear before the Circuit Court of said County on the first day of the next term

thereof to be holden at the Court House in the Town of Middleport in said Iroquois County on the third Tuesday (the same being the 16th day) in the month of February AD 1864, to answer unto Mark E. Reeves. James E Reeves. Isaac Stephens. Francis L. Good. William R. Phipps. Henry Falls. Martin Stadler, Max Stadler, Robert Mitchel. Frederick Rammelsburg. Lealin B. Leamp. John Perdue, Fitch B. Stacy. Edward H. Reynolds. William H Hatcher. Samuel B. Haggard. Daniel O Bradley and Abram Cuyhenow administrators of the Estate of Eber Dunning deceased in their certain Bill of Complaint. for Revivor filed in said Court on the Chancery Side thereof —

99 Th

And have you then and there this writ with your return endorsed hereon.

Witness Thmas Denmmm Clerk and the Seal of said Court hereunto affixed at office in Middleport this 12th day of December AD 1863.

Seal

50 Revenue Stamp Cancelled

Thmas Denmmm Clerk

Said Summons is Endorsed by the Sheriff in words & c as follows to wit —

"The within named defendants not found in my County - Feby 13 1864

"H O. Henry Shff

And on the the 25th day of November AD 1862 the same being one of the regular days of the November Term of said Court for the year aforesaid - and said Court being duly organized and setting in open court for the transaction of business - the following proceedings were had and Entered of Record by said Court in words & to wit

9. 288

" Mark E Reevs et al
" vs
" Mark Ayrs. Theadore Ayrs
" Timothy B. Mason and Jesse B. Ayrs } Bill to set aside Sale

" This day come the Complainants
100 Th = " into Court by Joiner and Fletcher their Solicitors on whose
" motion leave is given to supply the answer of Jesse
" B. Ayres one of the defendants herein, which is supposed
" to be burned, and also leave is given to Complainants
" to retake the depositions of James W. Lawrence and
" others heretofore taken in this cause, which depositions
" are also supposed to be burned.

And afterwards to wit on the 30th day of April AD 1864. there was filed in the office of the Clerk of said Court the answer of Jesse B. Ayrs which reads in the words and figures - as follows, to wit:

State of Illinois
Iroquois County. } ss. June Term of the Iroquois Circuit Court AD 1864.

The several answer of Jesse B. Ayrs to a bill of Complaint pending in said Court wherein Mark E Reevs and divers others claiming to be Creditors of Mark Ayrs and Theadore Ayrs Complainants and Timothy B. Mason and Mark Ayrs and Theadore Ayrs and this respondent are defendants -

This respondent saving and reserving to himself all benefit of exception to said bill of Complaint on account of the errors, imperfections, insufficiencies and absurdities thereof; for answer thereto or to so much thereof as he is advised it is

necessary or material for him to answer unto. Answering says. That he admits that the said Mark & Theadore Ayres did carry on the mercantile business at Concord in Sangamon County as stated in said bill of complaint - That the said Mark Ayres did purchase lands of divers persons -

101 ets

This defendant denies that the said Mark or Theadore Ever entered any lands or purchased any lands of the United States Government either in this State or the State of Indiana.

This respondent from information and belief admits that since the commencement of this suit — complainants recovered their several Judgments as stated in said bill of complaint, but he alleges that he knew nothing of the recovering of said Judgments till after this suit was commenced

This respondent further answering says that of his own Knowledge he does not know that said firm of Ayres & Co purchased any of their goods on Credit, that from information since the making of said deed to him mentioned in the bill of Complaint he now believes they did so purchase a part of their Stock in Trade

This respondent further answering denies that said Mark & Theadore purchased any lands as charged in the bill of complaint in this cause in the States of Illinois and Indiana and took the titles thereto in the name of the said Mark Ayres alone for the purpose of defrauding their creditors or for any of the fraudulent purposes named in said bill of complaint

This respondent further answering says

that he knew nothing about the said Theadore having any intent in any of said lands named in said bill until after the commencement of this suit - Since which time this respondent has been informed and believes such information to be true that the said lands named in the said bill of complaint were purchased and the titles taken in the name of the said Mark for convenience merely and in the usual course of mercantile business -

102

This respondent further answering says that he admits that the said Mark Ayers and Alma his wife did convey by deed said lands at the time stated in said bill of complaint but he most positively denies that said conveyance was made without a good or valuable consideration or for the purpose of hindering or delaying the Creditors of the said Mark & Theadore Ayers from collecting their demands against them or for any of the fraudulent purposes named in said bill but on the contrary this respondent alledges the truth to be that the said Mark & Theadore Ayers were indebted to this respondent in a large sum of money before the time of said conveyance loaned and advanced to them by this respondent

And this respondent avers that the consideration for said conveyance to him was the cancellation of said indebtedness which amount this respondent avers is expressed in said conveyance to him as aforesaid -

This respondent denies all combination and confederacy with the said Mark & Theadore

Ayres and also with T. B. Mason for the purpose of cheating and defrauding said complainants

This respondent further answering says that he is informed and believes that said money he had advanced to the said Mark and Theadore as aforesaid was by them placed into and formed a part of the copartnership funds of said ~~Timothy~~ firm of Ayres & Co

103 D

This respondant further answering denies all combination and confederacy on his part as charged in said bill and denies each and every allegation therein contained as to himself which is not specifically denied admitted or answered in this his answer to said bill of complaint —

Jesse B Ayres

State of Illinois }
Iroquois County } ss.

Jesse B. Ayres being duly sworn on oath says that the matters and things stated in the foregoing answer by him of his own knowledge are true and those stated on information and belief he believes the same to be true

Sworn to and subscribed before me this 28th day of April 1864.

Jesse Ayres

Stephen G. Bovie
Notary Public

N.P. Seal

10 4th =

And on the 13th Day of June AD 1864 there was filed by the Clerk of said Court an answer to Bill of Revivor which reads in the words and figures as follows - Tovit's

State of Illinois
Iroquois County } In Chancery in said Circuit Court

Reeves Stephens & Co others
vs
Mark Ayres & others } To the February Term AD 1864.

The separate and joint answer of all the Defendants named as Defendants in the Complainants Bill by him filed in this Case on the 20th day of July 1863 Saving unto themselves for answer says that it true that the complainants did file their original Bill in this cause on the 3 day of January 1857 as Charged in this their amended Bill to subjected certain Lands in said Bill mentioned and described to Execution against Mark & Theadore Ayres - Ses that it is true as in said Bill Charged that all the Defendants has fully answered the said original Bill - Says that it is true as Charged in said amended Bill that Timothy B. Mason departed this life as Charged in said amended Bill - Says that it is true as Charged in said Bill that he made a last will and that said Will was probated as Charged in the said amended Bill and that it is true as Charged in said Bill that the said Mason appointed the person named in said Bill as executors and

Executrix - admits that the said Eben Dunning departed this life as in said Bill charged.

And this defendants admits that the said Mason left the heirs at Law as charged in their said Amended Bill - but the defendants deny all the charges and allegations set out and charged in the original Bill is as charged in said Bill is untrue as therein charged - and these defendants further yes that all the lands described in their original Bill as the King farm has been sold by virtue of and order of this Court on a Mortgage made and resting on the Land at the time the Mortgage made before Mason received his Mortgage, Sale by said Bill to be set aside and further - Yes that Eighty acres of the Lands named in said Bill as the Hollinsworth farm and containing all the improved on said Land has been sold on and. older Mortgage on said Land before the Mortgage was made to mason and these here deny all the charges and allegations in the original Bill and in their amended Bill that is not admitted in this answer - And these defendants having fully answered their Bill pray to be discharged with their costs, by them in this Cause by them Sustained Rongfully

Abigal H. Mason — wife of T. B. Mason deceased

Francis C. Griggs
Lewis C. Hopkins
James M. Pitchell } Executors -

Abie H. Mason
Edward B. Mason
Helen A. Mason
William L. Mason } Children of T B Mason deceased

Lucretia M. Tomat dau to
Alma Apps granddaughter by

Bowie & Clark
their Solicitors

105 ½

And afterwards on the 14th day of June A.D. 1864.
the same being one of the regular days of the June
Term of the Douglas County Circuit Court for the year
last aforesaid, and said Court being then duly organized
and sitting in open Court for the transaction of business
106th the following proceedings were had and entered of
Record by said Court as follows —

" Mark E Reeves et al
" 33 vs } In Chancery
" Mark Ayres et al

" This day come the Complainants by Joiner &
" Fletcher their Solicitors on whose motion it is ordered by
" the Court that the depositions on file in this cause be
" published, and it is further ordered that the proofs
" in this cause be and the same are closed in this cause
" except the Record evidence to be introduced on the
" trial — and it is further ordered that the case be
" set for trial on Friday morning next

And afterwards on the 15th day of June AD 1864. The same being one of the regular days of the June Term of said Court for the year 1864. and said Court being duly organized and sitting in open Court for the 108th transaction of business as aforesaid - the following proceedings were had and Entered of Record by said Court in the words &c as follows. to wit:

" Mark E Reevs etal
" 33 vs } In Chancery
" Mark Ayres etal }

" And now come Complainants Solicitors " and file herein proof of Publication of notice to the " non-resident Defendants in this Cause in words " and figures following, to wit:

State of Illinois.
Iroquois County. ss.

Iroquois County
Circuit Court, of the February Term AD 1864.

Mark E Reevs. James E Reevs. Isaac Stephens. Francis C. Good. William R. Phipps. Henry Falls, Martin Stadler. Max Stadler. Robert Mitchel, Frederick Rammelsburg. Calvin Camp. John Perdue Fitch B. Stacy. Edward Reynolds. William H. Hatcher Samuel B. Haggard, Daniel O. Bradley and Abram Conghenour administrator of the Estate of Eben Dunning deceased -

Vs.

Mark Ayres. Theadore Ayres. Jesse B. Ayres and Abigal H. Mason widow of Timothy B. Mason and Lucretia M. Jones, Abbie H. Mason, Edward B. Mason. Helen M. Mason. and William M. Mason. the Children and heirs at law of Timothy B. Mason deceased, and Alma M. Ayres the Grand Child and heir at law of said Timothy B Mason, deceased, and Francis C. Griggs, Lewis C. Hopkins and James M. Getchel. who together with the said Abigal H Mason are the Executors of the last will and testament of Timothy B Mason deceased

Bill of Revivor. Original and Amended Bills

109th

Due proof on the part of the said Complainants having been filed in my office. showing the non residence of all of said defendants, except the said Mark Ayres. Theadore Ayres and Jesse B. Ayres, and a Summons in Chancery having been duly issued against said defendants returnable to the first day of the next term of said Court.

Now. Therefore you the said Defendants. and each and every of you will please take notice, that the said Complainants have filed in said Court their Bill of Revivor in the above entitled suit against the said Widow and heirs of Timothy B Mason deceased, and against the said executors and Executrix of the late will and testament of said Timothy B Mason deceased. Now unless you the said Defendants, and each and every of you, shall be and appear at and before the said Circuit Court, on the first day of the next term thereof to be holden at the Court house in the Town of Middleport on the 16th day of February A.D 1864. And then and there plead, answer or demur to the said bill of revivor, and original and amended bills filed in said Cause, the same and the matters and things therein contained will be taken as confessed against you, and a decree rendered according to the prayer of said bills-

Thomas Denman
Clerk

Joiner & Fletcher
Sols for Complts-

Dec 12, 1863-

State of Illinois }
Iroquois County } ss. This will Certify that the

annexed notice has been duly published in the Weekly Press (a newspaper published at Middleport in Iroquois County and State of Illinois) for the term of four Consecutive weeks, the first publication having been effected on the 12th day of December AD 1863

110 7h

5 Rev Stamps

Printers fee $15,00

W. Hogle Publisher
per G. Herrington —

~~And on the 15th Day of June AD 1864, there was filed by the Clerk of said Court the answer of Minors by their Guardian — which reads as follows, to wit:~~

" and it appearing that the non-resident Defendants
" have been duly notified by publication as aforesaid it
" is ordered that Robert Doyle be and he is appointed
" Guardian ad litem for the minor Defendants —
" Alma M. Ayers. Edward B. Mason and William M. Mason
" and now comes the said Guardian ad litem and
" files herein his answer for said Minors and come
" also the complainants and file a Replication herein

And on the 15th Day of June AD 1864 there was filed by the Clerk of said Court the answer of minors by their Guardian — which reads as follows, to wit:

State of Illinois.
Iroquois County. } Iroquois Cir Court June Term AD 1864

The answer of Alma M. Ayers. Edward B. Mason and William M. Mason who are minors under the age of twenty one years by Robert Doyle their Guardian ad litem to a bill in Chancery filed by Mark E Reeves. James E Reeves. Isaac

Stephens, Francis C. Good, William R Phipps
Henry Falls, Martin Sladen Max Sladen, Robert
Mitchell and others Creditors of Mark & Theadore
Ayers, against said Mark Ayers, Theaden Ayers
Jesse B. Ayers, Timothy B. Mason and others —

These defendants for answer to the said bill and
Amended bill in said cause - answer and
111 th say that they are minors under the age of
Twenty one years and know nothing of the matters
and things contained in said original & amended
bill and therefore require strict proof of the
same they therefore pray to be hence dismissed
with their reasonable costs and charges in
this behalf laid out and expended —

Robert Doyle
Guardian ad Litem for Defts

Guardian fee $3.00

And on said 15th day of June A.D. 1864. there was
filed by the Clerk of said Court a Replication
in the words & figures - as follows. to wit:

State of Illinois } Iroquois Circuit Court
Iroquois County } June Term A.D. 1864.

The Replication of Mark E Reeves, James E Reeves
Isaac Stephens, Francis C. Good and others Creditors
of Mark & Theadore Ayers - Complainants to the several &
Joint and several answers of Abigal Mason wife of
Timothy B Mason Dec'd, Francis Griggs, Lewis C
Hopkins & James M. Gitchel Executors of T B Mason
Dec'd, and Abbie H. Mason, Edward B. Mason, Helen
A Mason, William S. Mason, Lucretia M. Truax

Alva Ayres, Jesse B. Ayres Defendants —

These replicants saving and reserving to themselves all and all manner of advantage of Exception to the manifold insufficiencies of the said answers for replication thereto say that they will aver maintain and prove their said Bill to be true certain and sufficient — in the law to be answered unto and that the said answers of the said defendants are uncertain untrue and insufficient to be replied unto by these replicants without this that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto confessed and avoided traversed or denied is true all which matters and things these replicants are and will be ready to aver & prove as in and by their said bill they have already prayed

Joiner & Fletcher
Attys for Complainants

112 ½

And afterwards to wit, on the 17th day of June A.D. 1864 the same being one of the regular days of the June Term for the year aforesaid and said Court being duly organized as aforesaid, the following proceedings were had and entered of Record by said Court in words & figures — as follows, to wit:

" Mark E Reeves et al
" 33 vs } In Chancery
" Mark Ayres et al

" And now at this time come the parties by their Counsel and upon motion

" of said Complainants this cause comes on for hearing
" upon the Bill, answers thereto, replications, amended
" Bill, answers and replications thereto, depositions,
" Exhibits, Records of the several Judgments mentioned
" in Complainants Bill, and of the Mortgages and
113th " " documents, and was argued by Counsel for
" the respective parties -

116 Ms

Deposition of James B Lawrence, being of sound mind & Lawful age, Taken by and before me, the undersigned, Justice of the Peace, in and for said County on the 16th day of July AD 1859. Between the hours of nine o'clock AM & six o'clock P.M. in pursuance of the foregoing notice. said deposition to be read in the above entitled cause now pending in the Rogers County Circuit Court upon the trial of said cause, on part of the complainants. The said witness being by me first sworn to testify the truth, the whole truth, and nothing but the truth, in relation to the matter in controversy in the above entitled cause, according to law, do far as he may be interrogated deposes and says in answer to the following interrogatories, to wit:

1st Interrogatory. State whether your deposition has ever been taken in the above entitled cause, and if so before whom the same was taken?

Answer — It has been taken before Esqure McNeill.

2nd Interrogatory. State whether Mark Ayers, one of the above defendants ever gave you a Chattel Mortgage

on his Persmal property. and if so when it was he gave you said Mortgage. and what was the consideration of said Mortgage and why it was he gave you the same, and what property it was he Mortgaged to you?

117 Th

Answer He gave me a Mortgage – I dont remember how long ago it was – The amount was from six to Eight hundred dollars – some where there about. I dont know why it was he gave it to me. unless he was owing me a bitle. I dont remember what property it was he mortgaged.

2d Interrogatory. State where you were at the time said Mark Ayres gave you said Mortgage. how he came to give you the same. and State fully all you know in relation to said Mark Ayres giving you said Mortgage. and you taking the same, and what you did with said Mortgage!

Answer The first knowledge I had of the affair was a long time after the Mortgage was drawn. six months I guess – I was in Buncombe. Mr. Ayres presented the Mortgage to me and requested me to assign it over to Timothy B. Mason, and I did so.

4th Interrogatory – How long did you hold said Mortgage after said Mark Ayres handed you the same, before you assigned the same over to said Mason? and State what you did with said Mortgage after you assigned the same over to said

Mason! and state how long you held said Mortgage in your possession!

Answer — Mr. Ayers presented the Mortgage to me, I signed my name to an assignment that had been written on the back of it, and handed it back to Ayers. It was in my possession about one minute.

118 Th

5th Interrogatory — State whether you ever had said Mortgage in you possession after you delivered the same back to said Ayers, and if so when!

6th Answer — I have not seen it since —

6th Interrogatory. You State in you answer to interrogatory 2d you dont know why it was that said Ayers gave you said Mortgage unless he was owing you a trifle. State how much he was owing you at that time!

Answer — He was owing me from one hundred and fifty to one hundred and seventy five dollars — I was holding his notes for about two hundred dollars. but he had a small account against me which would have reduced it. that much.

" " "

7th Interrogatory — State whether Mark Ayers at any time after he gave you said Mortgage paid you the said one hundred and fifty or one hundred and seventy-five dollars. and if so. when, and how he paid you the same, and whether said

payment was made before or after you assigned said Mortgage to said Timothy B. Mason

Answer — Since the assignment he paid me up in full. I took a horse of him at one hundred dollars, and he paid me the balance in money at different times along. I got the horse three years ago last Spring, I think. It was all, however, since the assignment.

119 Th

8 Interrogatory — Did Mark Ayres at the time he gave you said Mortgage, give you any reasons for giving you the same, and if so, what?

Answer — I dont know, I cant tell what, I think he said something about making me safe.

9 Interrogatory's State whether you and Mark Ayres ever had any conversation in relation to his giving you said Mortgage at any time before he gave you the same, and if so, State when, and what said conversation was?

Answer — I never had any conversation with him in relation to it until he presented the Mortgage to me for assignment — Knew nothing of it.

10th Interrogatory — Which of the said Ayres first moved to Concord, in this County

Answer — Jesse B. & Theadore came there first to live permanently —

11th Interrogatory — How long after they came was it before Mark came?

Answer — I dont know exactly. If my memory serves me rightly it was some where about eight or ten months — I might have been a year. I dont recollect positively

120 Tr

12 Interrogatory. Where did Theadore and Jesse B. Ayres reside before Mark came, and where after he came?

Answer They lived there at Concord before Mark came, & after. They moved out on the Hollingsworth farm a mile and a half or two miles North West of Concord. Jesse B. Ayres went first & Theadore Ayres about a year afterwards.

13 Interrogatory. How long did the said Jesse B. Ayres live on said farm with the said Theadore Ayres. and where did the said Jesse B. Ayres move to when he left said Hollingsworth farm —

Answer — If my memory serves me right, he lived there about one year, or there about. He moved then on to a farm they bought of Paddock Parks, about four miles South East of Concord.

14 Interrogatory. State in what business was the said Jesse B. Ayres engaged from the time he came to Concord up to the time the said Ayres & Co.

sold out their Stock in Concord.

Answer The first six months he was engaged in doing business. I suppose for the Company I don't Know whether there was any company about it only from heresay, only that they were all at work together there. He then went up to the Hollingsworth farm and lived and worked there about one year. And then he moved from there on to the Paddock Parks place. he staid on the Parks place a year or two & then moved down to the King place—

12 1st

15 Interrogatory. State how long Theadore Ayres had lived on the Hollingsworth farm before Jesse B. Ayres left for the Parks place!

Answer He went on there at the time Jesse B. Ayres left for the Parks place. He went on immediately after the old man vacated it, according to the best of my recollection—

16a Interrogatory. State what Connection the said Jesse B. Ayres had. if any. with the business of the Company of Ayres & Co or whether he had any thing to do with said business. if so. what!

Answer. all I know is he worked there either as a partner, hired hand, or gave his services. this is all I know about it. I dont Know what capacity he worked in.

17 Interrogatory. ~~up~~ to. how late a ~~[illegible]~~ date do you Know

of the said Jesse B. Ayres working in the capacity you talk of?

Answer — I suppose he worked for himself after he went on to the Parks place — I dont know. I suppose he worked there in the capacity I speak of, up to the time he went to the Parks place.

122 ½

18. Interrogatory. State whether the said Jesse B. Ayres moved on to the Hollingsworth farm before or after the said Ayres & Co. purchased it?

Answer — afterwards, if I recollect aright —

19th Interrogatory. State whether he Jesse B. Ayres moved on to the Hollingsworth farm before or after the said Mark Ayres had moved to Lemond.

Answer I dont know when Mark first moved there in reality. He and his wife were there off and on for the first year. However, if my memory serves me right I think he moved there the spring the old man moved to the Hollingsworth farm

* The Counsel for defendants enters a general objection to each and every the interrogatories & and answers thereto

Cross Interrogatories.

1 Interrogatory. State whether Timothy B. Mason was present at the time of the making the Chattel Mortgage

as spoken of by you, or at the time the assign
ment was made as stated by you, or not!

Answer I dont know when the Mortgage was made
or who was present. at the time of the assignment
there was no one present but Ayres and me.

2d Interrogatory. Do you of your own knowledge know
whether the said Mason knew any thing
about the making of said Chattle Mortgage, or the
123 " assignment of the same,

Answer. I dont.

3d Interrogatory. Do you of your own knowledge know
in what Capacity Jesse Bleyes worked with
the said Mark and Theadore Ayres during the
time he so worked for them as stated by you
in your direct examination!

Answer As I dont know.

J. W. Lawrence

Subscribed and Sworn to before me this 16 Day
of July AD. 1859.

C. F. McNeill. J.P.

State of Illinois }
Mcoupin County } ss.

I C. F. McNeill, a Justice of the Peace
in and for said County, and before whom the
foregoing deposition was taken do hereby
Certify that the said James W. Lawrence

whose name is above subscribed by him, appeared before me in pursuance of the foregoing notice on the 16th day of July AD 1859. between the hours in said notice prescribed and who was first sworn by me to testify the truth, the whole truth & nothing but the truth, in relation to the matter in controversy wherein Mark Ekers et al are complainants and Mark Ayres, Theadore Ayres, Timothy B Mason and Lesse B. Ayres are defendants, now pending in the Iroquois County Circuit Court in said State, so far as he might be interrogated upon all such interrogatories as might be directed to be put by either of said parties litigant; and I then and there caused the interrogatories aforesaid put by the said parties aforesaid, together with the answers of the witness thereto to be reduced to writing by me in the order in which they were proposed and answered; after which the said deposition of the said witness was carefully read over to him after which he signed the same, and was by me duly sworn thereto. And that the deposition of said witness was taken before me at my office in Middleport in said County, & subscribed and sworn to before me at the time aforesaid as stated by me aforesaid. And further that the said complainants by George B. Lorier & James Fletcher their attorneys and the said defendants, by Stephen G. Bovie, their attorney were present at the taking thereof.

124 ½

Given under my hand and seal this 16th day of July AD 1859.

L. F. McNeill [seal]

125 th

The Depositions of Mark Ayres and Daniel B. Gardner read in evidence on the trial of the above cause are in words & figures as follows, to wit:

State of Illinois }
Iroquois County } ss. Iroquois Circuit Court of the June Term AD 1859.

Mark E. Reeves. James E. Reeves. Isaac Stephens. Francis C Goode and William R Philipps Merchants and Copartners of the City of Cincinnati doing business under Style & firm of Reeves. Stephens & Co and Henry Falls a Merchant of the City of Cincinnati and Martin Städdler and Mad Städdler merchants and Copartners also of the City of Cincinnati doing business under the name and Style and firm of Martin Städdler & Brother and Robert Mitchel and Fred Rammelsberg merchants and Copartners also of the City Cincinnati doing business under the name Style & firm of Mitchel & Rammelsberg and Calvin B. Camp a Merchant of the City of Cincinnati also John Purdue and Fitch B. Stacy of Lafayette in the State of Indiana and Edward H Reynolds & William H. Hatcher also of Lafayette in the State of Indiana also Samuel B. Haggard & David D Bradley of Chicago and Ebenezer Denning of the County of Iroquois & state of Illinois Copartners

126 Tk

vs

Mark Ayres. Theadore Ayres. Timothy B. Mason & Jesse B. Ayres

Deposition of Mark Ayres being of lawful age and sound mind taken by and before me the undersigned Justice of the Peace in and for said County on the Twenty seventh day of May AD 1859. between the hours of 12 oclock at noon of said day and the hour of 4 oclock PM on the 2d day of June 1859. in pursuance of the foregoing notice said deposition to be read in the above entitled cause now pending in the Iroquois County Circuit Court upon the trial of said

Cause on the part of the complainants said witness being by me first duly sworn to testify the truth, the whole truth, and nothing but the whole truth, in relation to the matters in controversy in the above entitled cause according to law so far as he may be interrogated, deposeth and say in answer to the following interrogatories - to wit

127th

The said Mark Sykes being duly sworn Deposeth and saith

1st Interrogatory - what is your age, occupation, and place of residence -

I am thirty seven years old, I am engaged in commission and auction business in Milwaukee Wisconsin -

2d Interrogatory - State what length of time you have resided in Milwaukee -

I have resided there a little over two years

3d Interrogatory Do you know the parties Plaintiff & Defendants in this cause. If so state when and where you became acquainted with them and each of them

I am acquainted with all the firms mentioned and with most of the members of the firms, and with all the other individuals mentioned excepting Samuel B. Haggard and Daniel O. Bradley. I have been acquainted with the firms of Reeves Stephen & Co, Kenny Falls, Martin Stadler & Brother, Mitchel & Rammel and Calvin B. Camp for about ten years I became acquainted with them in Cincinnati and with the firms of Perdue & Stacy and Reynolds & Hatches of Lafayette Indiana about six years. I have been acquainted with Eben Denning about six years

Have been acquainted with Timothy B. Mason about fifteen years became acquainted with him in Cincinnati Jesse B. Ayres is my Father and Theadore Ayres is my Brother

4th Interrogatory State what business you were engaged in and where your place of business was on or about AD 1851 or 1852

128 Mc

I was engaged in the retail Dry Goods business in Cincinnati in AD 1851 and until the Summer of AD 1852

5 Interrogatory State what business you were engaged in from the time stated in your answer to the 4th Interrogatory. and where your place of business was to the winter & spring of AD 1855 and whether you were engaged in business alone, or in Company with one else and if in company with some some other person or persons. State whoses from November AD 1852 to January AD 1855

I was engaged in a general goods business in Concord Rogers County in Company with my brother Theadore Ayres

6 interrogatory State the time as near as you can that you commenced business in Concord. and whether you commenced business there alone or in company with Theadore Ayres as stated

Ans To the best of my recolection I commenced business in Concord in November AD 1852 and in company with Theadore Ayres

7th Interrogatory State where you purchased your goods, wares and merchandise, during the time you were so engaged in business at Concord whether you purchased the same on Credit or for Cash

Ans I sent about three thousand Dollars worth of

Dry Goods from my stock in Cincinnati to Concord
at the commencement of business there Goods were
purchased in Cincinnati. Lafayette and Chicago
sometimes for Cash and sometimes on Credit—

8 Interrogatory State whether out of the proceeds of the sale of
said goods. wares. and Merchandise while so
Engayed in business at Concord as aforesaid
you entered or bought a large amount of Lands

129th in the State of Illinois or Indiana of the General
Government or private individuals if so state
the number of acres purchased.

Ans I did not enter or purchase any lands from the
General Government in Illinois or Indiana did purch
of private individuals between ten and Eleven hundred
acres of land and six or eight lots in the town of Concord
in Illinois and about one hundred and twenty acres in
Indiana

9 Interrogatory State about the number of acres of land you
purchased of private individuals while in business
at Concord as aforesaid and of whom you purchased
and where said lands are situated—

Ans The whole number of acres purchased was about
Ten hundred and seventy two in Illinois and about
one hundred & twenty acres in Jasper Co Indiana
of J. Hollingsworth. about Four hundred and Eighty acres
of Samuel Warrick forty acres of Ozmus Devault
Forty acres of Hoagle about Twelve acres making
about Five hundred and seventy two acres known
as the Hollingsworth farm. of Charles Sherman
five hundred acres known as the King farm
purchased of the Peck estate, six or eight town

Lots in Concord. Also one hundred and twenty
acres more or less of one Flowers in Jasper County Indiana
10th Interrogatory - State what amount of lands you purchased in the
State of Indiana of whom you purchased the same
and whether said lands were purchased before or
after you engaged in business in Concord, and
130th = whether said land were paid for by the joint means
of Mark and Theadore Ayres or whether it was an
individual transaction of your own -
Ans I purchased in the State of Indiana of one Timmons
about four hundred and Eight acres of land - The
purchase was made about February AD 1853 after I
had commenced business in Concord the land
was paid for with goods from my stock in Cincinnati
and was not paid for with the Joint means of Mark
& Theadore Ayres. but was an individual enterprise
and also by the Firm of Ayres & Co of About 120 acres of
land in Jasper County Indiana of one Flowers.
11th Interrogatory State the name or style of the Firm under which
you did business at Concord - State whether you
were ever engaged under the same name and
Style in the goods business in Cincinnati or
elsewhere -
Ans The style of the Firm at Concord was Ayres & Co
I was never engaged in the goods business in
Cincinnati under the name and style of Ayres & Co
but was in business in Morocco Indiana under
the same name style and firm of Ayres & Co
12 Interrogatory State whether the firm of Ayres & Co while they were
engaged in business at Concord as aforesaid -
purchased a large amount of lands in the State of
Illinois and Indiana with the Joint means of said

firm - and took the title to said land in the name of said firm or in the individual name of one of the members of said firm - and if in the individual name of one of said firm why were said titles so taken in the individual instead of the name of the firm

Ans as before stated about ten hundred and seventy two acres of land and some six or eight lots in the town of Concord were purchased in the 131st State of Illinois with the joint means of said firm and the titles to all or nearly all were taken in the individual name of one of said firm the titles were so taken for the greater convience of transfering in case of sales, and in accordance with to usual Custom in mercantile firms - and also about one hundred and twenty acres in Jasper County State of Indiana - near Pilot Grove, the title to which was taken in the name of one of the firm for the reasons already given -

13 Interrogatory State in what way the payment was made for the Hollingsworth farm and whether full payment has been made thereon or not

Payments were made in Cash and in goods at various times and in various amounts, full payment has not been made a balance of Seven hundred dollars remains unpaid -

14 Interrogatory State how the King farm was paid for, and whether full payment has been made of the purchase money for the same and whether there was any incumberances existing upon said farm at the time the same was purchased of said Sherman

and what was the amount of said incumbrance

Ans The King farm was paid for in part with a Stock of goods in Store in Concord and some six or eight lots with the improvements thereon in the Town of Concord and by notes secured by a Mortgage upon

132 D" said farm which notes have not been paid - the was a Mortgage on said farm existing at the time of the purchase amounting to three thousand Dollars

15 Interrogatory State how the Town lots in Concord aforesaid were paid for and whether the said Town lots, the Hollingsworth farm and the King farm are in Morgan County Illinois and whether you believe these to be the same lands mentioned and described in the complainants bill of complaint

Ans To the best of my recolection the town lots in Concord were paid for in Cash - the said Town lots in Concord and said Hollingsworth Farm and the King farm are all in Morgan County Illinois I believe these to be the same lands mentioned and described in the complainants bill of Complaint -

16 " Interrogatory State whether the title to all of said Town lots purchased in Concord as aforesaid and the title to Hollingsworths farm and the King farm were Taken in the joint name of Ayres & Co or in the individual name of one of ~~one~~ the members of said firm. and if in the individual name of one of said firm. which one and for what purpose

Ans the title to all of said town lots purchased in Concord and the title to the Hollingsworth farm and the King farm. were not taken in the joint name of Ayres & Co accepting about forty acres but were taken in the name of Mark Ayres one of said firm. the title was so taken

in the name of Mark Ayres merely for the greater convenience in making title or transfer in case of sales and in accordance with usual custom in similar cases with mercantile firms —

17th Interrogatory — State in what way the firm of Ayres & Co purchased their first stock of goods at the opening of business at Concord — whether for cash or on credit — & whether both members of said firm came to Concord at the same time. when they commenced business there.

133 ds =

Ans About three thousand dollars worth of goods were put into their store by Mark Ayres from his stock in Cincinnati. the balance of the stock was purchased partly on credit and party for cash. Theadore Ayres came to Concord at the Commencement of business in November AD 1852 and Mark Ayres about the middle of December same year

18 Interrogatory State whether Theadore Ayres opened business at Concord at the time he came there first, on his own account or under the style of Ayres & Co

Ans He commenced business under the style of Ayres & Co and not on his own account —

19th Interrogatory State about the length of time Ayres & Co did business at Concord —

Ans they were in business at Concord a little over two years

20 Interrogatory State where each member of the firm of Ayres & Co resided during the time they did business in Concord

Ans — Mark Ayres resided in the village of Concord during the whole time and Theadore Ayres resided a small portion of the time in the village. but a greater part of the time on the Hollingsworth Farm

21 Interrogatory State whether both members of said firm agree

their attention to the business in the Store or not, and if not by both, how was the business conducted

Ans for the first few months Theadore Ayres gave his attention chefly to the business of the Store, after that his time and attention principally to our farming

134th and Stock operations. Mark Ayres gave his time wholly to the business of the Store –

22 Interrogatory State what amount of capitol was put into the firm at the time they commenced business at Concord as aforesaid and whether each member of the firm of Ayres & Co furnished an equal amount of the same or not. and if not which furnished the greater part

Ans – at the commencement of the business at Concord about three thousand dollars was put into the Concern by Mark Ayres and a small amount by Theadore Ayres to the amount of three or four hundred dollars the greater part being furnished by Mark Ayres –

23 Interrogatory State whether the Stock in Store was increased at any time after they had commenced business as aforesaid and if so what proportion of the increase capitol was furnished by each member of said firm

Ans The capitol was largely increased after the Commencement of the business in Concord and a large proportion, probably about three quarters of the amount was put in by Mark Ayres –

24th Interrogatory State whether the firm of Ayres & Co or either member of said firm at the time they opened business at Concord as aforesaid – had any Considerable amount of Capitol of their own, or either of theirs or whether they operated principaly on borrowed capitol –

Ans at the time of commencing business at Concord neither member of the firm of Ayres & Co had any

considerable amount of capitol of their own in their business. they operated principally upon borrowed capitol

25 Interrogatory State if you know how the capitol of said firm or of each member of said firm was ~~borrowed~~ formed when they commenced business at Concord –

ans The capitol with which business was commenced at Concord was furnished by Mark Ayres. and was

135th a part of money borrowed of Timothy B. Mason while I was in business in Cincinnati

26 Interrogatory State what amount of money you borrowed of Timothy B. Mason prior to your commencing business at Concord. as near as you can recollect and about what amount of the same remaind unpaid at that time

ans I borrowed of Timothy B. Mason previous to commencing business at Concord between ten and Eleven Thousand Dollars and the whole amount remained unpaid at that time –

27 Interrogatory State whether any person ~~any~~ person or persons prior to the firm of Ayres & Co commencing business at Concord borrowed or loaned expressly for your personal benefit a large amount of money and give their own individual note and security for the same. if so state who borrowed it and from whome it was borrowed and what security was given for such loan and state the amount of such loan and all you know about it

ans Sometime during the year AD 1851. and previous to commencing business at Concord – Timothy B. Mason borrowed for me and my express benefit the sum of Five Thousand Dollars of one Clerk and

gave his own note for the payment of the same secured by a Mortgage upon a house and lot (his homestead in Cincinnati)

28th Interrogatory State if you know what rate of interest per annum said loan was made for. and whether you signed the note with Mason for such loan or in any way became responsible to Clark for said loan or any part thereof or the interest of the same.

136 Th

Ans The rate of interest for which said loan was ~~given~~ made was ten per cent per annum, I did not sign the note with Mason for said loan nor in any way became responsible to Clark for the payment of said loan or any part thereof or for the interest accruing therein

29 Interrogatory State whether the five thousand dollars borrowed of Clark by Timothy B. Mason was by him paid over to you and whether said amount is a part of the Ten or Eleven Thousand dollars you borrowed of Mason as stated in your answer to the 26th Interrogatory

Ans The five thousand dollars borrowed by Mason of Clark was paid over to me by said Mason. this amount of Five Thousand dollars is a part of the ten or Eleven Thousand dollars mentioned as borrowed of T. B. Mason in my answer to the 26th Interrogatory

30th Interrogatory State what the amount you had borrowed of Mason was invested in at or about the time you commenced business at Concord under the firm of Ayres & Co whether the same was in money or goods and merchandise and about what amount of each and whether any portion of the same was in real estate

ans The amount borrowed of T. B. Mason at or

about the time of Commencing business at Concord was invested in a Stock of Dry goods and real estate. about nine thousand dollars in Merchandise and about three thousand dollars in real estate

31 Interrogatory State if the amount or amounts stated in your answer to the 20th interrogatory include the money you got of Mason and your own individual Capitol or not—

137 m

Ans The amount stated in my answer to the 20th Interrogatory includes the amount of money borrowed of said Mason and my own individual capitol in the business at Cincinnati

32 Interrogatory State if the money or the Capitol you borrowed of Mason was put into the business of the firm of Sypes & Co at Concord and continued there as a portion of the capitol as said firm—

Ans The larger part of the Capitol borrowed of Mason was put into the business of said firm of Sypes & Co and continued as a portion of the Capitol of the firm—

33 Interrogatory State whether each member of the Firm of Sypes & Co Knew of this indebtedness of yourself to J B Mason and that said Capitol was carried into the firm and formed a part of the capitol upon which said firm operated—

Ans Both members of the firm of Sypes & Co Knew of my indebtedness to J. B. Mason and that said Capitol was carried into the firm and formed a part of the Capitol of said firm

34 Interrogatory. State in what way you secured the said J.B.

Mason The Ten or Eleven thousand dollars mentioned
in your answer to the 26th Interrogatory and the
interest thereon

Ans I gave said Mason Mortgages on real estate in the
Town of Concord consisting of some six or Eight lots
138 in with the improvements thereon and on about five —
hundred and seventy two acres of land known as
the Hollingsworth farm situated in Iroquois

35 Interrogatory State whether the Hollingsworth farm and the Town
lots mentioned in your answer to the 34th Interrogatory
are the same lands mentioned in the bill of Complaint
in this Cause and in the Copy of said Mortgage
mentioned therein as filed and marked Exhibit "A."

Ans — The Hollingsworth farm and the Town lots mentioned
in my answer to the 34th Interrogatory are to the best
of my knowledge and belief the same as mentioned
in Exhibit "A" and in said bill of Complaint

36 Interrogatory State whether you ever gave Timothy B. Mason
a mortgage on any other lands in Iroquois County
Illinois as additional security for said money if so
designate said lands as near as you can

Ans I gave said Timothy B. Mason a mortgage upon
Five hundred acres of land known as the King farm

37 Interrogatory State if the mortgage on the King farm embraces
the same land refered to in the bill of Complaint
and in the Copy of the Mortgage mentioned therein
as Exhibit "B"

Ans — To the best of my knowledge and belief the Mortgage
given to said Mason on the King farm embraces
the same land refered to in the bill of Complaint
and in the Copy of the Mortgage mentioned there as Exhibit B.

38 Interrogatory State how you came to give the said Mason

a Mortgage on the King farm, and whether the King farm is the farm you purchased of Charles Sherman

Ans — Having negociated a trade with Charles Sherman of the Town property in Concord Mr Mason consented at my solicitation to release his Mortgage on said

139th property in Concord in condition of having one upon the King farm - The King farm is the same farm purchased of Charles Sherman

39 Interrogatory State if you gave him the Mortgage on the King farm refered to in the bill of Complaint upon the Consideration mentioned in your answer to the 38th interrogatory and if said incumbrance of three thousand dollars before mentioned by you, and any other incumbrance existed on said farm at the time of giving said Mortgage to Mason -

Ans I gave said Mason the Mortgage upon the King farm refered to in the bill of Complaint solely upon the Consideration of his releasing his mortgage on the Town property in Concord the said incumbrance of three thousand dollars existed on said farm at the time of giving Mason the Mortgage before mentioned and also a Mortgage to Charles Sherman of between Eighteen and nineteen hundred dollars

40th Interrogatory State where Timothy B. Mason resided at the time of giving each of said Mortgages and where he resided during the whole time, the firm of Ayres & Co ~~where~~ were doing business at Concord

Ans At the time of giving each and all of the Mortgages refered to Timothy B. Mason resided in Cincinnati Ohio as he also did during the whole time that Ayres & Co were doing business at Concord —

41 Interrogatory State whether you either directly or indirectly conversed with Timothy B Mason, and solicited him to take either of the mortgages mentioned in the bill of complaint of this cause or any other mortgage for any purpose whatever and if so for what purpose

140[a]

Ans I never offered to Timothy B. Mason and solicited him to take either of the Mortgages refered to in the bill of complaint except the Mortgage upon the King farm which Mortgage he agreed to accept in the place of his Mortgage on the town property in Concord which he released for this consideration

42 Interrogatory State what the object was of your applying to said Mason to take the mortgage on the King farm

Ans The object of my applying to Mr Mason to take the Mortgage upon the King farm was for the purpose of getting him to release his Mortgage upon the town property in Concord which property I had negociated in a trade with Charles Sherman as stated in my answer to the 38[th] Interrogatory –

43 Interrogatory State whether the Mortgages mentioned in the bill of complaint as given by Mark Ayres & wife to said Mason were given upon the consideration mentioned in said Mortgages

Ans The Mortgages given to said Mason by Mark Ayres & wife were given upon the Considerations mentioned in said Mortgages

44 Interrogatory – State if you know whether Timothy B. Mason knew in what manner the lands refered to in the bill of complaint were purchased and whether he knew that they belonged to the firm of Ayres & Co or to Mark Ayres alone –

Ans I do not know whether said Mason knew

in what manner the lands refered to in the bill of Complaint were purchased, nor whether he knew that they belongd to the firm of Ayres & Co or to Mark Ayres alone

45 Interrogatory State if you know whether said Mason had any Knowledge of the manner the firm of Ayres & Co conducted business at Concord

141 st

Ans I do not know whether said Mason had any Knowledge of the manner the firm of Ayres & Co conducted business at Concord

46 Interrogatory State whether at the time of making said Mortgages or either of them to the said Mason you had any conversation with him in reference to the title of said lands belonging to yourself alone or to the firm of Ayres & Co

Ans at the time of giving said Mortgages or either of them to the said Mason I had no conversation with him in reference to the title of said land whether they belongd to myself alone or to the firm of Ayres & Co

47 Interrogatory State where Timothy B. Mason was at the time of giving each of said Mortgages, and whether they were given in good faith to secure the Ten or Eleven thousand dollars and interest thereon that you borrowed of T B Mason as aforesaid

Ans Timothy B. Mason was in Cincinnati at the time of giving each of said Mortgages and they were given in good faith to secure the Ten or Eleven thousand dollars which I borrowed of the said Mason as I before stated

48 Interrogatory State whether you ever applied to Timothy B Mason and solicited him to take either of the Mortgages

respectively marked exhibit A and B. in said Bill of Complaint for the purpose of hindering Delaying or Defrauding the Complainants or ~~either~~ other Creditors of the
142 D = firm of Ayres & Co out of the claims they held against said firm

Ans I never solicited Timothy B. Mason to take or gave him either of the Mortgages respectivly marked exhibit A and B. in said Bill of Complaint for the purpose of hindering, Delaying or Defrauding the complainants or other Creditors of the firm of Ayres & Co out of the claims they held against said Firm

49 Interrogatory State what relation Mr Mason was to you at the time you were in business at Concord as Ayres & Co -

Ans He was my father in law

50 Interrogatory State whether he ever advanced any portion of the Ten or Eleven thousand Dollars you have spoken of before as a marriage settlement upon your wife

Ans Mr Mason did not advance any portion of the ten or Eleven thousand Dollars before mentioned as a marrage settlement upon my wife -

51 Interrogatory State if you had any understanding with T. B. Mason prior to the Mortgage being executed which is marked as exhibit "A" in the Bill of complaints in reference to ~~security~~ securing him against the loss of his said claim against you

Ans There was an understanding between Mr Mason and myself previous to the time of giving said Mortgage refered to. that when I became possessed of real estate in the State of Illinois I should secure his Claim by Mortgage upon such real estate

52 Interrogatory State whether at the time of the execution of either

of ~~either~~ of the Mortgages respectively marked as Exhibits A and B. in the bill of Complaint, to said Mason if he the said Mason had any Knowledge that the said Theadore Ayres had any interest legal or equitable in said lands described in said Mortgages

Ans I do not know whether at the time of the execution of either of the Mortgages refered to, to the said Mason he had any Knowledge that the said Theadore Ayres had any interest legal or equitable in said land as described in said Mortgages.

143 D

53 Interrogatory State whether both of said Mortgages were given to secure the same indebtedness whether said indebtedness remains unpaid or the interest therein accruing

Ans Both of the said Mortgages were given to secure the same indebtedness and said indebtedness remains unpaid and the interest therein -

Adjourned by Consent till 7 oclock A.M. on the 28th day of May. at 7 oclock A.M. May 28th parties met and proceeded to further examin Mark Ayres the witness

54th Interrogatory State whether at the time of executing either of said Mortgages to Mason. to secure said indebtedness Mason knew anything about the extent of the indebtedness of Ayres & Co or that they were much embarressed at that time

Ans I do not think that at the time of executing said Mortgages to Mason he knew anything about the extent of the indebtedness of Ayres & Co. or that they were in embarressed circumstances

55 Interrogatory State whether you did or did not execute

to one L. W. Lawrence a Chattel Mortgage also State whether said Mason knew anything about the execution thereof at the time it was executed or anything about your ~~dealings~~ dealings with Mr Lawrence

144th and about what the property was worth mentioned in said Chattel Mortgage at the time of making the same and whether said Mason to your knowledge ever received any of said property mentioned in said Chattel Mortgage or the proceeds thereof and also state what said property was worth -

Ans In the Spring of ad 1855 in April I think I did execute to L. W. Lawrence a Chattel Mortgage Mr Mason knew nothing of the executing of the Chattel Mortgage to Lawrence and nothing about my dealings with said Lawrence, or of the value of the Property described in said Mortgage, said Mason being in Cincinnati at the time - and I having no communication with him in regard to the matter, said Mason never received any of the property described in the Mortgage or any amount of the proceeds of the same, to the best of my recolection and knowledge the property described in said Mortgage was worth some Seven or Eight hundred Dollars

56 Interrogatory State what the object was in executing each of in the bill of complaint respectively marked said Mortgages mentioned, as exhibits A and B. to said T. B. Mason -

Ans The object of giving Mason the Mortgages mentioned in the bill of complaint respectively marked exhibits A and B. was to secure to him the payment of a just indebtedness of about ten thousand Dollars due him as has been before stated

57 Interrogatory State whether you gave Mason your own individual

note or notes for said indebtedness or those of Ayres & Co also state the amount said note or notes were given for and about the date of the same—

Ans I gave my own Individual notes to Mason for said indebtedness. the amount was in two notes one for five thousand dollars and the other for five thousand four hundred and forty seven dollars and some cents I think, the notes were given and dated sometime during the fall of A.D 1853—

145th

58 Interrogatory State whether this amount in said notes is the same indebtedness for which said Mortgages were given, to secure to said Mason

Ans The amounts of the notes mentioned is the same indebtedness, to secure which the Mortgages were given

59 Interrogatory State whether you did or did not, convey by Deed to Jesse B. Ayres the Hollingsworth farm and the King farm and whether said conveyance was made in good faith and for the consideration mentioned in said deed to him—

Ans I did convey to said Jesse B. Ayres by Deed the farms known as the Hollingsworth and King farms. said conveyance was made in good faith and for the consideration mentioned in said deed to him

60 Interrogatory State whether Jesse B. Ayres took said land subject to the incumbrances before mentioned by you, and if any other incumbrances existed on said land at the time of the conveyance to him

Ans Jesse B. Ayres did take the lands before mentioned subject to the incumbrances already mentioned and of the Mortgages given to said Mason already described and certain Judgments. I do not know

of any other incumbrances on said lands at the time
6th Interrogatory State whether there was or was not at the time
of the Conveyance to Jesse B. Hynes certain Judgments
in the Iroquois Circuit Court that operated as a lien
on said land subject to said Mortgages —

Ans There was at the time of the Conveyance of said lands
to Jesse B. Hynes. certain Judgments that operated as
14th a lien on said land subject to said Mortgages.

all the foregoing Interrogatories and answers are objected to
by the attorney for Plaintiff

Examination by the Complainants.

1st Interrogatory — You state that during the time you were doing
business in Concord, Timothy B. Mason was your Father
(objected to) in Law. State how that was — when he became your
father in law and when you were married to his
daughter and where he was residing at that time.

Ans I married the daughter of Timothy B. Mason in
September AD 1846. he was residing in Cincinnati
at that time —

2 Interrogatory State what business you were engaged in when
you were married to the daughter of Timothy B. Mason and
(objected to what business the said Mason was engaged in
at that time

(Ans) at the time of my marrage with the daughter
of T. B. Mason I was salesman in a Dry goods
store in Cincinnati. said Mason was engaged in
the Piano and Music business in the same place

3d Interrogatory In whose Store were you engaged in as a salesman
at that time —

Ans I was ~~engaged~~ salesman in Store of Padgett & Brace,

at the time refered to —

4 Interrogatory (objected to) how long did you continue as Salesman for Padgit & Macy after you were Married

Ans about three months I think

5 Interrogatory (objected to) State what you did after you discontinued the business of Salesman for Padgit and Macy.

Ans In December 1847 I think I commenced the Dry goods business in Cincinnati with David B. Lupton under the Style of Lupton & Ayres —

147

6th Interrogatory (objected to) State how long you continued business under the Style of Lupton & Ayres

Ans Until about June AD 1850.

7th Interrogatory State how you succeeded in business as a firm under the style of Lupton & Ayres whether you made or lost money by the operation, and if you made — how much and if you lost how much

objected to —

Ans Did not succeed very well in business as a firm lost some money. but do not know how much

8th Interrogatory objected to — State about how much money you lost

ans — The amount of money lost was small cannot say how much —

9 Interrogatory objected to — State what you did after you discontinued business as a firm of Lupton & Ayres —

Ans I commenced the Dry goods business on my own account at Cincinnati

10 Interrogatory objected to State whether the firm of Lupton & Ayres paid up all their Creditors. or did their Creditors loose money by them —

ans — The firm of Lupton & Ayres did not pay all their Creditors. but their creditors lost some money by them

11 Interrogatory How much did the Creditors of Lupton & Ayres

objected to

loose

To the best of my recolection they lost about four thousand dollars

12th Interrogatory State whether the firm of Lupton & Ayres have settled
objected to with their Creditors and have been discharged from their Debts, if so in what way

ans About July AD 1850. I made a proposition to the Creditors
148 a of Lupton & Ayres. the firm. the firm being Resolved to compromise their said indebtedness by giving them indorsed notes for the amount proposed which was about sixty per cent of the indebtedness of said Firm which proposition was accepted, and the firm of Lupton & Ayres was released from their indebtedness

13th Interrogatory State how said notes were given, and by whom the same were given, and by whom the same were indorsed, to the Creditors of Lupton & Ayres by which
objected to said compromise was made as spoken of by you in answer to Interrogatory Twelveth

ans The notes were given by myself, and indorsed by Timothy B. Mason

14 Interrogatory State what the notes so given and indorsed as aforesaid amounted to -

ans Cannot recolect with Certainty the amount but think it was from six to Eight thousand dollars -

15 Interrogatory State whether said notes so given and indorsed as aforesaid to the Creditors of the said firm of
objected to Lupton & Ayres have been paid if so by whome and when the same were paid

ans The notes refered to as being given to the Creditors of Lupton & Ayres have all been paid. they were paid by me as they became due at times varying from six months to Eighteen months from the date of the same

16 Interrogatory — State how you paid said notes whether with money or otherwise. and if with money, where you got said money. and if otherwise how

objected to

Ans — I paid said notes with money, the money principaly or all of it, was taken as receipts from the sale of goods in store –

17 Interrogatory — Please explain yourself and state what you mean by the money "was taken as receipts from the sale of goods in Store"

149

Ans — I mean that the notes refered to were principally or wholly paid by money received from the sale of goods in my store

18 Interrogatory — Please State what you mean by "my Store" whether you had a Store at that time – if so where it was and what kind of business you were doing. whether a grocery business, Dry goods business or a mixed business. at the time said notes were paid of by you as spoken of by you above

objected to

Ans — I had a Store in Cincinnati, and was doing and exclusively a dry goods business at the time said notes were paid

19 Interrogatory – State under what name and style you did business as spoken of by you in your answer to Interrogatory 18th when you commenced and wh: you discontinued such business – whether any person was interested with you or whether you operated alone

objected to

Ans — The business was conducted under the name and style of M. Riggs & Co. I commenced business as stated in a previous answer about July 1st 1858

and Continued the business under the same name and Style until the Summer or fall of AD 1852

20 Interrogatory objected to — Who composed the firm of M. Ayres & Co. as Spoken of by you in your answer to the 19th Interrogatory Please give the name of each individual member of that firm

150th

ans Mark Ayres and Timothy B. Mason

21 Interrogatory objected to — State what property you saved if any upon the disolution of the firm of Lapton & Ayres if any how much and what you did with it

ans I do not known that I saved any property upon the disolutim of the firm of Lapton & Ayres. I offered the creditors of said firm what I supposed the goods were worth to me if any thing it was in the stock of goods so obtained

22 Interrogatory objected to — State what you mean by the stock of goods so obtained —

ans I mean by the stock of goods so obtained the stock of goods belonging to the firm of Lapton & Ayres at the time of its disolutim which Stock of goods, I obtained by crompose with the creditors of said firm and in consideratim of the endorsed notes given to said Creditors as stated in my answer to the 12th Interrogatory

23 Interrogatory objected to — what amount of good did you obtain by the Compromise with said creditors as Spoken of you in your answer to Interrogatory 22

ans I do not recolect distinctly the amount of goods so obtained but think it was from ten to Twelve thousand dollars - this was about the amount of the cost of the goods and not what I considered the value of the goods at that time.

The goods being worth to the best of my knowledge some six or Eight thousand dollars or the amount I offered to the Creditors of said Lupton & Ayres in settlement —

24 Interogatory objected to — Why ~~were~~ were not the goods spoken of by you worth as much as they cost

Ans 15-1st Because they consisted in a Cut Stock of dry goods, many of them fancy goods, and including remnants and other undesireable goods which will accumulate in a business of that kind —

25 Interrogatory objected to what became of said Stock of goods as spoken of in your answer to interrogatory 24

Ans They went into my general Stock of Goods in Cincinnati

26 Interrogatory what do you mean by your general Stock of goods in Cincinnati — do you mean a Stock of goods Kept by M. Ayres & Co or do you have reference to some other stock of goods

Ans I mean the stock of goods kept by M. Ayres & Co

27 Interrogatory Objected to State whether the first Stock of goods put into the Store of Ayres & Co at Concord, as spoken of by you in your direct examination, were taken from the Stock of goods of M Ayres & Co in Cincinnati

Ans They were so taken

28 Interrogatory objected to State whether there were any more goods taken from the Stock of the firm of M Ayres & Co in Cincinnati and put into the Store of Ayres & Co at Concord after the first Stock was taken as spoken of by you in your answer to Interrogatory 27 and if so how many

Ans I cannot say certainly whether there were

any more goods taken from the Stock of M Ayres & Co in Cincinnati to the Store of Ayres & Co at Concord but think there was, cannot give the amount—

29 Interrogatory — what time did you wind up the business of the firm of M Ayres & Co in Cincinnati and what became of the Stock of goods on hand

objected to—

Ans — The business of said firm of M Ayres & Co was closed up in the fall of 1852 to the best of my recolection about three thousand dollars of said Stock of goods were sent to Concord Illinois a part of the goods were sold at Evansville Indiana and at Indianapolis and the balance remained packed up in Cincinnati until sometime in the winter AD 1853. about February I think when they were sent to Lafayette Indiana a part of them were sold to Auction for cash, in Lafayette and a part of them traded for a farm in Jasper County Indiana

152d

30 Interrogatory — You state in your direct examination that you borrowed of the said Timothy B. Mason Ten or Eleven thousand — will you please state when you borrowed said sum of money, for what purpose you borrowed it, and what you did with the same, whether you gave any note or notes or any instrument of writing of any kind, if so what kind, to secure said sum of money to said Mason at the time you borrowed the same

objected to

Ans — I borrowed of said Mason the Ten or Eleven thousand dollars spoken of, in various sums, and at different times from the summer of AD 1850 to the summer of 1852 I borrowed it for the benefit of the business in which I was engaged and used it in the prosecution of said business do not remember whether I gave said Mason any note or instrument

of writing at the time said sums of money were borrowed

31 Interrogatory You state that you used the money so borrowed
objected to of said Mason in the business in which you were
Engaged. Please state what business that was

Ans It was the retail Dry goods business -

32 Interrogatory - Please state if the retail Dry goods business
objected to as spoken of in your answer to Interrogatory 31st was
the business carried on by M Ayres & Co in Cincinnati

Ans It was -

33 Interrogatory You state in your answer to Interrogatory number 29.
that you borrowed of said Mason the ten or Eleven
thousand, in various sums and at different times
from the summer of AD 1850 to the summer of AD 1852
will you please state each sum so borrowed by you
its amount, and the time and place the same was so
borrowed, and for what purpose each sum was so borrowed

Ans The sum of five thousand dollars was borrowed of
said Mason at one time in the fall of AD 1851.
I think the other sums borrowed were of various
amounts and at different times. These amounts and
the time of borrowing them — not recolected.

adjourned at 3 oclock PM May 28th to meet at the office of
James Fletcher in Middleport at 10 oclock A M on the
30th Day of May 1859.

May 30th Parties appeared at the office of J. Fletcher in Middleport
and adjourned to the Court house in said Town

34 Interrogatory State whether there was any other person or persons
interested in the firm of M. Ayres & Co than

objected to

Mark Ayres and Timothy B. Mason, if so give the names of those persons or person

Ans

Timothy B. Mason, nor any other person or persons, were interested in the management or profits of the business done under the name of M. Ayres & Co the business was commenced and conducted solely by myself and for my benefit. T B. Mason, giving me the use and benefit of his name to give me a credit in the purchase of goods —

157th

35 Interrogatory

where was the said Theadore Ayres and what was he doing during the time the business of M. Ayres & Co was carried on in Cincinnati

objected to

Ans

Theadore Ayres resided in the Country about six miles from Cincinnati and to the best of my recolection, was engaged in the business of Farming do not recolect that he was engaged in any other business during the time, except I think a portion of the time, perhaps about a year he had charge of one of the Toll gates on the Cincinnati and Hamilton turn pike

36 Interrogatory

you state above that one of the sums you borrowed of said Mason was five thousand dollars. Will you state whether you recieved said sum of money from said Mason, and if so, what kind of money it was whether bills or specie, and what you did with said sum of money. and why it was that you borrowed the same — what interest you agreed to pay upon said money, for what time you borrowed it. and whether there was any contract made between you and said Mason, in relation to the length of time you was to retain said money, and when and how you were to pay it

objected to

Ans I received said sum of Five Thousand Dollars from said Mason, think it was all in bank bills. it may have been a check upon a Bank for that amount - I used said sum of money in the prosecution of my business, and borrowed it because I needed the money in my business -

155th I agreed to pay 10 pr cent per annum for the same. I think it was borrowed for three or five years, said sum of five thousand Dollars borrowed of J B Mason was borrowed by said Mason of one Clark for the term of three years I think at 10 pr cent per annum and it was the understanding that I was to pay the interest of the same, but I do not recolect that there was any written contract, as to the time or manner of paying the same, but it was the understanding that I was to pay the same to him by the time his note given to said Clark should become due -

37 Interrogatory State whether the said sum of Five thousand Dollars was got all at the same time or at different times

objected to

Ans all at the same time

38 Interrogatory State whether said sum of five thousand Dollars was paid out by you, and what - the same was paid out for -

Ans The said sum of five thousand Dollars was all paid out by me to the best of my Knowledge, cannot say precisely what it was all paid out for - think the most of it was used for paying for goods and all of it for the benefit of my business -

objected to

39 Interrogatory State whether any portion of the said five thousand Dollars was paid on the Debt of Lupton & Cypres -

objected to

Ans Have no recolection whether any of the five thousand dollars was so used —

40 Interogatory You state that there was no written Contract made between you and the said Mason in relation to the said five Thousand dollars, now was there any verbal or printed contract, and if so state fully what that contract was —

objected to

Ans There was no printed Contract and I do not remember that there was any written Contract or any verbal Contract except an understanding that I was to keep the interest paid and if possible to pay the amount by the time the note became due which he gave to Clark before stated

15 6 Th

41 Interrogatory Did said Mason give his own individual not to said Clark for said five thousand dollars, or did any other person sign with him, and if so who

Objected to

Ans Said Mason gave his own individual note secured by Mortgage upon his homestead in Cincinnati, to secure the same to said Clark No other person or persons signed the note with him

42 Interogatory — State whether you applied to said Clark, to borrow said money before said Mason

objected to —

Ans Do not remember that I did

43 Interogatory State whether you solicited said Mason to go to said Clark, to get said sum of money for you

objected to

Ans I do not remember that I did solicit said Mason to go to said Clark to borrowe the money for me

44th Interogatory State what the reasons were for borrowing said sum of money at that time —

objected to —

Ans — I needed a considerable amount of money in my business, and think I sugested to Mr Mason

the plan of borrowing some money to aid me in my business —

45 Interrogatory objected to — State if you please at the time said money was borrowed from Clark, what your circumstances were, whether you were largely in debt, or clear of debt and what amount of goods you had in your business at Cincinnati and what amount of cash you had on hand if any, and whether you were doing a thriving or sinking business

157th

Ans — at the time the money was borrowed of Clark I was indebted to some extent for goods purchased on credit, but cannot recolet the amount of such indebtedness — cannot say what amount goods I had at that time nor the amount of cash on hand I was doing a thriving business at that time to the best of my knowledge

46 Interrogatory objected to — You state above that it was the understanding that you were to keep the interest paid up on said note so given to Clark, and if possible to pay up the principal by the time it became due but that there was no contract in relation to it neither written, printed or verbal between you and the said Mason — Please state how you got such an understanding, whether there was anything said between you and said Mason which gave you such understanding, if so state what it was if nothing was said please state how you obtained such understanding

Answer — I had repeated Conversations with Mr Mason in regard to the matter and it was from such

conversations that I got such understanding but cannot relate particularly the conversation between us

47 Interrogatory — You State above that you were doing a thriving business at the time said money was borrowed — what was the necessity of borrowing said five thousand dollars at that time, and what lead to the previous Conversations you Spoke of, had with Mr Mason, that induced you to arive at the opinion that you were to Keep up the interest upon said five thousand dollars and pay the principal if possible when it should become due

objected to 158th

Ans I Stated to the best of my knowledge that I was doing a thriving business at that time I had need of the five thousand dollars to aid me in paying for the goods purchased on credit and to Enable me to buy a part of my goods for cash and generally to aid me in the prosecution of my business and it was the need of additional Capital which led to the conversations with Mr Mason — that there was an understanding to Keep up the interest — I remember from the fact that I did so pay the interest for a considerable length of time —

48 Interrogatory State if you Please any Conversation had with Mr Mason concerning the borrowing of money which induced you to come to the understanding you spoke of

objected to

Ans — I remember that Conversation were had with Mr Mason but cannot recolect particularly about such Conversations —

49 Interrogatory How do you recolect so well the understanding

you had in relation to the manner of payment
Objected to of said money as aforesaid, when you cannot
recolect any conversation had between you and
said Mason which you say caused you to
have such understanding
Ans I think I have not said that I recolect
distinctly any understanding as to the manner
159th of paying the money refered to, but a recolection
of an understanding that it was to be paid if
possible by the time Clarks note became due
I remember the understanding in regard to the
interest from the fact of paying the same, and
have a general recolection of the conversations
had with Mr Mason but not a minute and
particular recolection of them
50th Interrogatory State whether you paid said interest when the
same became due, and whether you paid
Objected to the same to said Clark or to the said Mason
and how often you paid the same, and
how much you paid at each time
Ans — To the best of my recolection I paid the
interest as it became due as long as I —
remained in Cincinnati — do not remember
certainly but think I paid the interest to the said
Clark — Think the interest was payable every six
months and the amount of each payment was
Two hundred and fifty dollars —
51 Interrogatory You State above that it was the understanding
you was to keep up the interest on said note
of Five thousand dollars and if possible pay the
Objected to principal when it became due, how did

you expect to pay the same, where did you expect to get your money from to pay the same, whether you expected to take the amount of money
160 a necessary to make said payment out of your said business, which you was then doing or whether you expected to get the same from some other sourse and if so from what sourse

Ans — I have no distinct recolection of what my — expectations were in regard to the payment of the said five thousand dollars have no recolection of expecting money from any other sourse than my business to pay the money refered to.

52 Interrogatory You state in your direct examination of borrowing Ten or Eleven thousand dollars from said Mason is the said sum of Five thousand dollars so borrowed from said Clark a portion of said sum of Ten or Eleven thousand dollars — if not then state how that is — if so please give the particulars of the balance of the said sum Ten or Eleven thousand dollars — when and where you got the balance of whome you got it whether you got it all at once, or at diferant times —

Ans The five thousand dollars borrowed of Clark was a part of the Ten or Eleven thousand dollars refered to the balance of the Ten or Eleven thousand dollars I borrowed of said Mason in various sums and at different times. I do not recolect the ~~differant~~ particular amounts, nor the times when said sums were borrowed. But they were so borrowed sometime between the Summer ad 1850 and the Summer of ad 1852

53 Interrogatory State what you did with balance of the said sum of ten or Eleven thousand dollars, so borrowed

objected to

in the manner and form Spoken of by you in your answer to interrogatory 52nd

Ans The balance of the ten or Eleven thousand dollars refered to was used according to the best of my recolection in my business, in buying goods, — paying for goods bought on Credit, and Generaly for such purposes as require the use of money in carrying on a mercantile business, but I cannot recolect the particular purposes for which such sums were used

161st May 30th 6 oclock PM by consent of the parties we adjourn to the hour of 7 oclock AM on the 31st day of May at the Court house May 31st day Parties appeared at 7 oclock AM. and resumed the evidence of Mark Ayres —

54 Interrogatory — You State in a previous portion of your Deposition that the balance of the said Ten or Eleven Thousand Dollars, was borrowed in various sums and at different times — Please State when the first of said various sums was borrowed and what amount the same was —

objected to

Ans I cannot recolect the amount, nor the time when the first sum was borrowed

objected to

55 Interrogatory Please State when the second sum was borrowed and its amount —

Ans I cannot recollect the precise amount or the exact time when any of the said sums were borrowed

56 Interrogatory Please State how many sums and at how many different times, the same were borrowed, which constituted the various sums and the

objected to

Deferant times you Speak of

Ans I cannot remember the number of sums, nor at how many different times they were borrowed

57 Interrogatory objected to 162 Please state whether you gave said Mason any note or notes bond or bonds or instrument of writing or writings for said various sums of money or any of them, and if so, state what the same was or were

Ans at the time of borrowing said sums of money I have no recolection of giving said Mason any note or notes or bonds or other other instrument of writing but did in the fall of ~~as~~ 1853. I think give said Mason my note for the whole amount of said sums —

58a Interrogatory objected to State whether said various sums you speak of were borrowed before or after said five thousand dollars were borrowed of the said Clark as spoken of by you in a previous portion of your deposition

Ans I cannot distinctly recollect whether said various sums were borrowed before or after the five thousand dollars alluded to as borrowed of said Clark but think a portion of said sums were borrowed before and a portion after that event, but cannot tell what proportion of said various sums were borrowed before or after said five thousand dollars so borrowed of said Clark.

59 Interrogatory objected — State whether there was any Contract or Contracts made between you and the said Mason previous to or at the time that you borrowed said various sums of money, in relation to the borrowing the same, and if so please state whether that Contract was in writing, Printing or parole —

Ans I have no recolection of any Contract in writing or otherwise at the time or previous to the time of borrowing said sums, in relation to it

60 Interrogatory You state in a previous portion of your Deposition, that at the time you discontinued your business in Cincinnati, that you had been doing under the name and style of W. Sproule & Co

objected to

you sent a portion of your goods to Evansville a portion to Indianapolis and a portion to Lafayette and a portion to Crawfordsville Fountain County, State if you left any in Cincinnati and if so what portion

163

Ans To the best of my recolection I left none of said goods in Cincinnati

61 Interrogatory - Please state what amount of the goods you sent to Evansville - and what became of the same

objected to

Ans I do not recolect the amount of goods sent to Evansville - nor what amount was sold in Evansville, and I do not distinctly remember but think the goods unsold at Evansville were sent to Lafayette -

62 Interrogatory State who took charge of that portion of the goods sent to Evansville

objected to

Ans I took charge of said goods myself

63 Interrogatory - State whether you went to Evansville with said goods

objected to

Ans To the best of my recolection I did go to Evansville with said goods -

64 Interrogatory State who else went to Evansville with said goods.

objected to

Ans I do not remember that any other person went to Evansville with said goods

65 Interrogatory objected to — How long did you keep said goods at Evansville

Ans — I thing I was in Evansville with said goods but a few days perhaps about a week - the goods remaining unsold may have remained packed up in Evansville a longer time, but do not remember distinctly about it —

164th

66 Interrogatory objected to — was there any other person in charge of said goods at Evansville than your self during the time they were there

Ans — I think no other person had charge of said goods at Evansville, unless they were left packed and in store there for a time —

67a Interrogatory objected to — did you sell any of said goods while they were so left at Evansville, and if so did you sell them at wholesale retail or at auction —

Ans — to the best of my recolection a few of said goods were sold at ~~auction~~ retail or private Sale, but the greater part of the goods sold were disposed of at auction

68a Interrogatory objected to — who was the auctioneer at the time you sold said goods at auction

Ans — I do not remember the name of the auctioneer he was in the auction business at Evansville

69 Interrogatory objected to — Had you ever been acquainted with him before that time

Ans — I think I had never been acquainted with him before that time

70 Interrogatory objected to — who was Clerk at said auction Sale

Ans — I do not remember

71 Interrogatory objected to — State whether you had a Clerk at all at said Auction Sale

Ans — There was an account kept of the sales but who kept the books. I do not recolect

72a Interrogatory objected to — were you at Evansville during the time of said auction Sale and if so were you present at said Sales

Ans — I was Evansville at the time. I was present at said Sale or Sales

73 Interrogatory objected to

State whether any person went either before, or after or at the time you went from Cincinnati to Evansville to assist you in selling said goods if so state who

Ans

I have no recolection that any person went from Cincinnati at any time to assist me in selling goods at Evansville

165th

74 Interrogatory objected to

State what the amount of said sales at Evansville was

Ans

I have no distinct recolection as to the amount of said sales. but to the best of my recolection they amounted to some five or six hundred dollars —

75 Interrogatory objected to

Please state what amount of goods you took to Indianapolis from said stock in Cincinnati — belonging to the firm of M. Ayres & Co

Ans

to the best of my knowledge the firm of M. Ayres & Co had ceased to exist before any goods were taken from Cincinnati to Indianapolis or Evansville from said stock I do not remember the amount of goods taken to Indianapolis from said stock perhaps to the amount of five or six hundred dollars —

76 Interrogatory objected to

State how said firm of M. Ayres & Co ceased to exist when it ceased to exist, and by what means it ceased to exist

Ans

the store and business of M. Ayres & Co was closed I think in July AD 1852. the goods were boxed up and stored. and no business further done in the name of M Ayres & Co than to collect debts due said firm and to pay the debts of said firm. the said firm of M. Ayres & Co ceased to exist by the closing up of the business of the firm think there was a notice of the disolution of said firm published in the newspapers

at about that time but am not certain —

77 Interrogatory objected to — State whether there was a settlement made between the members of the firm of M. Ayres & Co and if so what that settlement was — state fully —

Ans — I have no recollection of any such settlement

78 Interrogatory objected to 166th — State whether it was agreed between the members of the firm of M. Ayres & Co at the time you speak that said firm ceased to exist. that the same should cease to Exist and if so state whether said agreement was in writing or by parole and state fully what that agreement was. if such existed

Ans — The firm of M Ayres & Co ceased to Exist. by the mutual consent of Mr Mason and myself and I have no recolection of any particular agreement written or otherwise in relation to it —

79 Interrogatory objected to — How did you get such mutual consent between each other - and what was said which gave such consent between the members of said firm

Ans — Mr Mason became a member of the firm of M. Ayres & Co for the reason solely to give me a credit in my business in Cincinnati — and when I closed my business there the firm of M. Ayres & Co ceased. I did not ask him for nor did he propose to give me the use of his name any longer — I do not recollect the conversations held with Mr Mason in relation to the disolution of the said firm of M. Ayres & Co

80th Interrogatory objected to — How do you know then that it was by the mutual consent of the members of the firm of M. Ayres & Co that the same ceased to exist —

Ans — I have a recollection that there was such mutual consent but do not recollect the particular conversation or conversations in relation to it

81 Interrogatory — Do you recollect any conversation had between the members of said firm of M Ayres & Co in relation to its dissolution. if so state when and where such conversation was held and what it was —

objected to

Ans I have a recollection of conversation with Mr Mason in relation to the dissolution of the firm of M. Ayres & Co but have no distinct recollection of any particular Conversation. nor the time of such conversations —

to 167

82 Interrogatory Why do you then say if you have no distinct recollection of any particular Conversation. Concerning the dissolution of said firm of M Ayres & Co that the same was dissolved by mutual consent —

objected to

Ans I have a recollection that said firm of M. Ayres & Co was dissolved from the fact that no business was done in the name of said firm after that time and that that it was dissolved by mutual Consent by a general recollection of the conversations with Mr Mason and from the fact that I have no recollection that Mr Mason ever objected to such dissolution ~~was objected to such dissolution~~ —

83 Interrogatory Have you any other reason for stating that the firm of M Ayres & Co was dissolved, than those reasons given in your answer to interrogatory 82d if so state what those reasons are

objected to

Ans no other reasons occur to me at this time for stating that the firm of M. Ayres & Co. was dissolved than those already given

Adjourned till 12½ o'clock. P.M. 12½ o'clock P.M. Resumed the evidence of Mark Ayres —

84 Interrogatory What kind of a business did M. Ayres & Co do whether a Cash or a Credit business or both

objected to

Ans They did both Cash and credit business —

85 Interrogatory objected to What amount of Debts were outstanding in favor of M. Ayres & Co at the time they discontinued the business in Cincinnati

Ans I have no distinct recollection of the amount so outstanding

86 Interrogatory objected to State to the best of your recollection and belief, the amount of Debts that were so outstanding at the time you discontinued business as aforesaid

Answer 168 In At the time of closing my business at Cincinnati there may have been to the amount of one or two thousand dollars of outstanding Debts due the firm of M. Ayres & Co. but have no particular recollection of the amount

87 Interrogatory objected to Is it your belief there was more than Two thousand dollars due the firm of M. Ayres & Co if so please state the amount —

Ans I have not a distinct recollection of the amount but should think from the best of my recollection it would not vary much from two thousand dollars more or less

88 Interrogatory objected to How long was it after you discontinued business in Cincinnati until you came to Concord in this County —

Ans I gave up business in Cincinnati in the Summer or fall of AD 1852 and came to Concord Illinois. to the best of my recollection about Christmas of the same year —

89 Interrogatory objected to who settled up the business and collected the Debts of M Ayres & Co after you discontinued business in Cincinnati

Ans I settled up the business and Collected the Debts due M. Ayres & Co. a small portion of said Debts

the amount not recollected was not collected at that time. some of said amount being still unpaid

90 Interrogatory Did any other person collect. any portion of said debts due M. Ayres & Co after you discontinued business in Cincinnati than yourself — if so — state who and how much he so collected —

Objected to

Ans I have no recollection that any other person than myself Collected any of the debts due M. Ayres & Co

91 Interrogatory What became of the goods which were taken to Indianapolis after the business of M Ayres & Co was discontinued in Cincinnati

objected to

Ans The goods remaining unsold of those taken Taken to Indianapolis were taken back to Cincinnati a portion having been sold in Indianapolis. the amount not recollected, but to the best of my recollection the amount was some three or four hundred Dollars

92 Interrogatory What became of said goods which were Taken back to Cincinnati

objected to

Ans The goods taken to Indianapolis were taken from the stock of goods which were boxed up and stored when I closed my store, and the goods returned from Indianapolis were put with the goods boxed and stored as aforesaid

93 Interrogatory who took charge of said goods while they were in Indianapolis —

objected to

Ans I took them to Indianapolis in Company with an auctioneer from Cincinnati who was going to that place with a stock of goods to sell. I had charge of my goods, and received the money for them when sold —

94th Interrogatory objected to

Ans

State what you did with the proceeds of the sales of said goods at Evansville and Indianapolis To the best of recollection the sale of the goods at Evansville was when I was on my way to Concord about December 1852 and that I took the money there received with me. that I paid part of the same at Lafayette in paying the freight on goods sent to Ayres & Co Concord from Cincinnati and that the money received from the sales alluded to at Indianapolis and Evansville was expended for the benefit of Ayres & Co but I cannot recollect distinctly in what particular manner the money so received was expended —

170th

95th Interrogatory objected to

Ans

what became of the goods you had at Evansville which were not sold by you —
to the best of my recollection. they were sent or taken to Lafayette

96 Interrogatory objected to

Ans

what disposition was made of them after they were taken to Lafayette —
after the sale of goods alluded to at Evansville all the goods remaining of my stock at Cincinnati were taken to Lafayette — amounting to the best of my recollection to between three and four thousand dollars — a small part were sold at auction and to the amount of over three thousand dollars were traded for a farm in Jasper County Indiana

97th Interrogatory

Objected to

you state to in your answer to Interrogatory 96th that the amount of over three thousand dollars of said goods which were taken to Lafayette were traded for a farm in Jasper County Indiana — Please state to whom they were so traded — and give the discription of said farm for

which they were so traded the number of acres it contained

Ans I think the name of the person to whome I traded said goods refered to was Abraham Timmons and the farm which I got in exchange for said goods was situated about eight miles south of Rensellear in Jasper County and contained to the best of my recollection four hundred & seven acres and a fraction over —

98 Interrogatory Please state what said farm was valued at, at the time you took the same in exchange for said goods, and in whose name was the title taken for the same —

objected to

Ans To the best of my recollection I gave thirty two hundred dollars in goods for the farm alluded to — do not know what said farm was valued at. the title was taken in my own name

99 Interrogatory Please to state if you know who is the owner of said farm now

objected to

Ans — To the best of my recollection I sold said farm in the fall of 1855 to Timothy B. Mason, I do not know that he has parted with it —

100 Interrogatory How much did you sell said farm to Timothy B. Mason for

objected to

Ans I think the amount was Three Thousand Dollars —

101 Interrogatory what were the terms upon which you sold said Farm to said Mason —

objected to

ans — Something over Twenty Eight hundred Dollars of the amount was in the payment of a bill or account of said Mason for the unpaid interest on the Ten or Eleven Thousand Dollars borrowed of said Mason as before stated

and for one or two accounts due by Ayres & Co to
Merchants in Cincinnati for goods purchased,
which said Mason had paid for as amounting
as near as I can recollect to between four and
172 d five hundred Dollars - and some items and amounts
which I do not now recollect. the balance of the
three thousand Dollars purchase money was paid by his
note of about a hundred and twenty dollars I think
having a short time to run to the best of my recollection
two or three months -

102 Interrogatory State what time the sale of said farm was made to
objected to said Mason. I think it was in the fall of ad 1855. but
do not remember the exact time -

103 Interrogatory - How long before said sale of said ~~land~~ farm to said
objected to Mason. had the said Mason paid the one or to
accounts to the creditors of Ayres & Co in Cincinnati

Ans - I cannot now remember when said Mason paid
the accounts refered to

104 Interrogatory who were the creditors. to whome said one or two
objected to accounts were paid by the said Mason -

Ans The firm of John C. Huntington & Co was one of them
and the amount paid them was to the best of my
recollection about four hundred dollars - I do recollect
the name of any other but am under the impression
there was another account due by said Ayres & Co
payable to said Mason

105 Interrogatory Did the firm of M. Ayres & Co in Cincinnati
purchase goods of the said firm of John C Huntington
objected to & Co while they were so engaged in business in
Cincinnati and if so had said firm of M Ayres & Co
settled up and paid the firm of John C. Huntington
& Co before the said account was paid by the said

Mason to the said John C Huntington & Co

Ans — The firm of M. Ayres & Co never purchased any goods from the said John C Huntington & Co and to the best of my recollection never became indebted to them in any amount. they being in another kind of business —

173d

106 Interrogatory objected to — Know came the said Mason to pay said account to the said John C. Huntington & Co

Ans — Mr Mason wrote me that one of the firm of J C Huntington & Co desired to purchase some property of him and wished to pay for the same, or in part — in the notes or account said firm held against said Ayres & Co — said Mason wished to know if the account of J. C. Huntington & Co was correct and that if he paid it whether I would be able to pay the amount soon — I replied to Mr Mason — that the account referred to was correct and if he should pay it — I thought he would get his pay —

107 Interrogatory — what time did you receive the letter you spoke of from Mr Mason — concerning the claim John C Huntington & Co held against Ayres & Co

objected to

Ans — to the best of my recollection this was in the Spring of ad 1855 —

108a Interrogatory — was the note given to Clark by said Mason, as spoken of by you in a previous portion of your deposition ever been paid, and if so, by whome was it paid and when was the same paid

objected to

Ans — I have been informed by said Mason that said note to Clark had been paid by himself, the time I do not remember —

109a Interrogatory — State whether it was possible for you to pay

objected to
Ans

said note when it became due
To the best of my recollection the note became due in the fall of A.D. 1856 and it was not possible for me to pay the same at the time —

110 Interrogatory
objected to
Ans
174 a

State whether you would have paid the same had it been possible for you to have done so —
I had given Mr Mason a note secured by Mortgages upon real Estate, for the five thousand dollars, and I cannot say what I would have done if I had had that amount of money at that time —

111 Interrogatory
objected to

In giving Mr Mason a note for said five thousand did you reckon any interest in said note which you gave to him, which had accrued on the said five thousand dollars, and if so how much

Ans —

The note was given for the sum amount of Five thousand dollars the amount borrowed of Clark, and no interest was embodied in said note —

112 Interrogatory
objected to

You state in a previous portion of your Deposition that you kept the interest paid up on said note to said Clark during the time you remained in Cincinnati — Please state up to what time you remained in Cincinnati, and whether you paid any interest on said note of five thousand dollars after that time, and if so how much —

Ans

I remained in Cincinnati until about December A.D. 1852. interest was paid on said five Thousand Dollars by me after that time, but I cannot recollect how much nor how long —

113 a Interrogatory
objected to
Ans

when was said note to said Clark given by said Mason for said five thousand dollars
to the best of my recollection it was in the fall of A.D. 1851

114 Interrogatory

How much money altogether did you loan

Objected to pay, or cause to be paid on said note so given to said Clark

Ans I had paid up to the time of my leaving Cincinnati about five hundred dollars interest on said note, since that time I do not recollect distinctly the payments made, and cannot give the whole amount paid – all I have paid has been as interest on said note –

175" 115 Interrogatory You state that said Mason gave you a note for the balance of the purchase money, on the farm you sold him in Jasper County, will you please state whether said Mason has ever paid the amount to you of said note, and if so when and where and how he paid it you

objected to

Ans To the best of my recollection, the note referred to was paid by said Mason by the time it became due but I do not distinctly recollect the time or the manner of paying the same –

116" Interrogatory State whether said Mason did or not pay you the amount of said note in money, if not in money how did he pay the same –

objected to

Ans I do not recollect distinctly in regard to it, and cannot state whether the amount of said note was paid in money or not, but think it was –

May 31. "6 oclock PM adjourned till the hour of 7 oclock AM on the 1st day of June.

June 1st 1859. Parties appeared at 7 oclock AM and resumed the evidence of Mark Ayres –

117 Interrogatory State where you were at the time you sold said

Lafayette goods, and deeded said Land in Jasper
Objected to County to said Mason, and where was said Mason
at that time—

ans— I was in Lafayette at the time of trading said Stock
of goods for the farm in Jasper County, at that time
176a Mr Mason resided in Cincinnati, I was in Boquin's
County Illinois, when I deeded said lands to said
Mason, said Mason was residing at that time at
Milwaukee but was then on a visit to Boquin County.

118th Interrogatory— State whether at the time you deeded said lands
in Jasper County to said Mason you ~~was~~ were in
failing or failed circumstances, and whether there had
been a suit Commenced in said Jasper County against
Objected to you or against the firm of Ayres & Co in favor of some
Cincinnati Creditor or Creditors, if so whome, and what
the nature of such suit was whether commenced by
attachment or otherwise—

ans— at the time alluded to I was to the best of my
knowledge in failed circumstances, there had been a
suit Commenced in Jasper County against the
firm of Ayres & Co. by certain Cincinnati Creditors.
The names of the firms were Taylor French Wynne,
Lockwood & Brothers I think, and Latimer, Colburn & Lapton
the suit was commenced by attachment, but
at the time of giveing said deed to Mason there
was no suit pending, said attachment having
been dismissed by the Plaintiffs in the case.

119 Interrogatory State whether you did not expect at the time of
making said deed to said Mason that another suit
Objected to would be commenced against the firm of Ayres & Co
by said Cincinnati Creditors in Jasper County
to obtain a lien upon said Lands for

objected to satisfaction of their said Debts. and whether that matter was not talked over between you and said Mason at the time, or whether said Creditors were not in

177th some way talked about between you and the said Mason at or before the time of making said deed and if so what was said - State fully -

Ans - I have no distinct recollection whether at the time of giving said deed to said Mason I had or had not any expectation that another suit would be commenced by said Creditors. I have no recollection of and I do not think that there was any conversation between the said Mason any myself in regard to the matter, or that said Creditors were in any way talked about at or before the time of making said deed -

120 Interrogatory State whether there was a suit commenced against the firm of Ayres & Co by said Creditors. or

objected to any of them, and if so which of said Creditors, in said Jasper County, and if such suit was commenced how long was the same commenced after the said deed was given to said Mason and what has been done with said suit, whether the same is now pending or has it been decided.

Ans - I am not certain whether another suit was commenced by said Creditors against Ayres & Co. after the time alluded to - but I am under the impression that a suit was commenced by said Creditors within a few months perhaps two or three after giving said deed to Mason. I am not certain whether said suit if instituted has been decided or not - - - - -

121st Interrogatory – State whether there was any suit Commenced, after the giving of said deed to said Mason, wherein the title to said farm in Jasper County was controverted and if so where was said suit Commenced, and who were Plaintiffs and who were Defendants in said suit –

objected to

178a

Ans – I think there was a suit Commenced by said Creditors, Taylor, French, & Wynne and others already mentioned, within two or three months from the time of giving said deed to Mason, wherein the title to said land in Jasper County was Controverted Parties already named were the Plaintiffs and Timothy B. Mason and I think Theadore Ayers and myself were the Defendants –

122 Interrogatory Theadore Ayers and yourself had no interest in said suit in Jasper County did they, and it was perfectly immaterial whether said suit, was decided in favor of said Plaintiffs or said defendants –

objected to

Ans – I do not know what interest Theadore Ayers had in said suit as I had sold all my right and title to said land, do not know that I had any interest in the decision of said suit

123 Interrogatory – why do you write down all your answers and frequently refer back to the Deposition already given before you will make another answer

objected to

Ans I have written down but a small part of my answers, before giving them, when I have done so it is simply that I might give them in a better form, and more fully answer all the points in the interrogatory. I have no other reason I do not frequently refer back to the Deposition given, before giving my answer, and have not

done so, since it was objected to at an early stage of my deposition —

124 Interrogatory objected to

Did you make a computation of the interest upon money you pretended to have borrowed of said Mason, at the time you made the deed to the Jasper County Farm to said Mason, and if so please give the computation so made now in answer to this interrogatory:

179v

Ans

The bill of interest and other items of said Mason which was a part of the payment for said farm was made out in due form, and to the best of my recollection I examined the computations of interest of said bill carefully, but have not more distinct recollection of the matter. —

125 Interrogatory objected to

State at the time said deed was made to said Mason, to said Jasper Farm — how much interest was due on the said five thousand Dollar note, so given by said Mason to said Clark as spoken of by you in a previous portion of your deposition

Ans —

I cannot recollect the amount of interest remaining unpaid on said Clark note at that time — the interest was computed in the bill of said Mason before mentioned from the time I had left the interest unpaid to the time of making the deed alluded to or rather I think said bill of Mason gave the amount of interest he had paid to said Clark since I had left the interest unpaid

126th Interrogatory objected to

What time elapsed between the time of your paying the interest the last time: and the making of said deed, and what amount of interest was due at the time of making

said deed to the Jasper County farm. on said note to Clark —

Ans I paid the interest to Clark to the best of my recollection until about December ad 1852. after that time I have no distinct recollection of the amount of said interest paid by me. but am of the impression that I did pay a part of said interest to Masm but to what time I have no recollection the item of interest on said Clark's note in Masms bill was subsequent to the time, to which I had paid the interest on said note to the time of giving the deed refered to. to Masm. I do not remember the amount of interest due on said Clark note at the time of giving said deed —

127 Interrogatory Do you Know that said Masms bill of said
objected to interest was Correct

Ans I believed at the time, and believe now that said bill was correct —

128 Interrogatory — what makes you believe now that said bill
objected to was correct

Ans My recollection of the transaction makes me now believes the account was correct —

129 Interrogatory — what relection of the transaction —
objected to

ans I have a relection of selling said land to said Masm. and a recollection of a bill of Items of said Masm against me settled by said sale of land I have a recollection that the total amount of said bill was between twenty eight and twenty nine hundred dollars, the prices amount not recollected. but I do not recollect the particular amount of any of the items of said bill —

130 "Interrogatory - State whether you took a receipt of said
objected to Mason for said interest
Ans - I took a receipt for the whole bill of items but
not a receipt seperately for the interest alluded to
131 "Interrogatory - where is said receipt -
objected to
Ans - to the best of my recollection it is in Milwaukee
Wisconsin in my possession
132 "Interrogatory - will you produce the same so as to have
objected to the same on trial in this case
Ans If said receipt is in my possession as I suppose
I have no objection to producing the same -
133 "Interrogatory who is your attorney in this case - and will
objected to you send said receipt to said attorney to be
produced as evidence in this case
Ans S. G. Bovie is my attorney in this case and I
will if he requests it send said receipt to him
or if I am directed or commanded to the Court
to do -
134 "Interrogatory Will you send said receipt to me (James Fletcher)
objected to to be used as evidence in this suit -
Ans I cannot say that I will -
135 "Interrogatory - why cannot you say that you will
objected to
Ans Because I do not know that under the circumstances
it is proper for me to do so -
136 "Interrogatory - why do you think it is not proper for you to do
objected to so give all the reasons why you do not think
it proper to do so -
Ans - I have no objections to furnishing said receipt
as evidence in the case, and I have no other
reason for decling sending yours James H. Fletcher said receipt
then the one already given that I do not know
that it would be proper for me to do so -

181 St

137th Interrogatory objected to Ans. — Why would it not be proper for you to do so.
I should not feel at liberty to furnish any ~~paper~~ papers or such papers, without the consent or advise of my attorney —

138th Interrogatory objected to — You state in a previous portion of your Deposition that S. G. Bovie is your attorney. Please state whether there is any contract between you and S. G. Bovie in relation to the amount of the fees he is to charge you in this suit, and if so state what, and if not state how he is serving you and under what kind of a retainer

182

Ans — There is no contract existing to my knowledge relative to the fees he is to charge in this suit, said Bovie has been my attorney for a considerable length of time but I have no recollection that there has been any agreement in regard to the fees in the defence of this suit —

139 Interrogatory objected to — Ans — State how many attorneys there are employed on the part of the Defense in the prosecution of this suit,
I know of no others employed except B. Baird and S. G. Bovie

140th Interrogatory objected to — which one of the Defendants employs Mr Baird and which one employs Mr Bovies or are they Employed by all the Defendants. state fully

Ans — I think that said Mason employs both of the attorneys defending this suit and that the other Defendants employ S. G. Bovie alone —

141 Interrogatory — What do you mean by the ~~those~~ other Defendants as mentioned in your answer to Interrogatory 140.

Ans — I mean Jesse B. Ayres. Theadore Ayres & myself

142 Interrogatory objected to — How much does Jesse B. Ayres. Theadore Ayres and yourself — expect or intend to pay Mr Bovie for his services in this suit —

Ans — I do not know whether said Jesse B. Ayres ha

paid said Bovie or what amount he has promised
or expects to pay said Bovie on account of this
suit. to the best of my knowledge there has
been no agreement between Theadore Sypes and
myself and the said Bovie as to the amount or
manner of paying his fees in the defense of this suit

183 a

143 Interogatory Do you expect to pay Mr Bovie a reasonable
objected to. Compensation for his services in this suit, if so how much
Ans I expect to pay Mr Bovie a reasonable Compensation
but have formed no opinion as to the amount —

144 Interogatory Do you look upon this suit as a very important
objected to suit or one of trifling importance
Ans I look upon it as an important suit

145 Interogatory What was said farm worth in Jasper County
objected to at the time you deeded the same to said
Timothy R. Mason
Ans I considered it worth three thousand dollars —

146 Interogatory Did said Mason take up said note of one hundred
and twenty dollars, so given for the balance that you
say was due to you for the purchase money of said
farm in Jasper County, if so when he so took it up
how he took it up — if he paid it in money or
otherwise State fully —
Ans To the best of my recollection said Mason did take
up said note of about one hundred and twenty dollars
but I have no distinct recollection of the time or the
manner of his paying the same —

147 Interogatory Do you know that he paid said note at all, if so how
objected to
Ans I have a recollection that said note has been paid
have an impression that a portion of it was paid in
money but cannot recollect the amount, or
whether all of said note was paid in money or how it was paid

148 Interogatory — You State in your answer to Cross Interogatory 144ª in substance that you look upon this suit as an important suit, and to whom is it important whether to the Plaintiffs or Defendants

why is this suit an important suit

ans I think this suit an important one because of the amount involved in it and that it is important to the plaintiffs and principally to one of the Defendants said T. B. Mason. I do not know that the other Defendants would or would not be benefitted in any result of the suit pecuniarly —

184ª

149 Interogatory objected to Would not Jesse B. Ayres be benefitted in the result of this suit pecuniarily. Please give your opinion

Ans I do not know that Jesse B Ayres would be benefitted in the result of this suit

150 Interogatory objected to would you not be benefitted in the result of this suit if decided in favor of the Defendants —

Ans I do not know, and cannot say whether I would or would not be benefitted if the suit was so resulted

157 Interogatory objected to would you not be liquidating a debt which you claim to owe T. B. Mason if this suit is decided in favor of the Defendants

Ans If this suit should be so decided it would I suppose enable him to collect the debt due as before stated, but I am unable to say whether if the suit so resulted the property in litigation would or would not pay more of the debts of Ayres & Co —

12 Oclock at noon adjourned till one oclock PM
At one oclock PM Parties came and resumed the Deposition of Mark Ayres —

152 Interogatory objected to State whether you ever tried to compromise this suit

with myself (J. Fletcher) or S. G. Bovie – and if so what proposition you made to us or either of us —

Ans I have no recollection of having made any effort to compromise this suit with said Fletcher or Joiner

153d Interrogatory objected to 185 Ans State whether you know if said J. B. Mason ever tried to compromise this suit with said plaintiffs or any of them, or with their attorneys George B. Joiner or James Fletcher and if so what proposition he made in order to bring about such compromise

I am not aware that said Mason ever made any effort to compromise this suit with the Plaintiffs or the said Joiner and Fletcher

154 Interrogatory State whether the said Stephen G. Bovie did not visit Milwaukee and consult you and said Mason there in relation to bringing about a compromise of this suit, and whether you, or you and the said Mason or both of you or one of you did not authorize and request the said S. B. Bovie, to compromise this suit with the Plaintiffs or their attorneys provided he could do so by giving the said Hollingsworth farm in satisfaction of the claims of the said complainants in this suit together with certain claims which said S. G. Bovies held as attorney against the said Ayres & Co and in favor of Cincinnati Creditors and whether said Mason did not give said Bovie a power of attorney and authorize him to make such compromise —

Upon the above question being asked Mr Baird who appeared as one of the Counsel for Mr Mason, objected to the answering of said question on two grounds 1st that the evidence would not be admissable if given 2d that the witness should

not be required to answer if he had no knowledge in relation thereto except from communication made to said Bovie as the attorney of said Mason and himself in this case S. G. Bovie. says he does, not care whether the question is answered or not

Ans I have no recollection that S. G. Bovie came to Milwaukee at any time to consult with said Mason 186 and myself in relation to a compromise of this suit. I have a recollection that S. G. Bovie was in Milwaukee since I have resided there but whether it was before or after the commencement of this suit. I do not remember nor do I remember that his visit to Milwaukee had any reference to this suit in any way and I do not know whether said Mason requested or authorized said Bovie to make a proposition to the Plaintiffs in this suit or their attorneys to compromise this suit or that he gave him a power of attorney to make such compromise —

155 Interrogatory State whether you do or do not know whether said Mason gave to Mr Bovies a power of attorney objected to to release said Mortgaged premises from said Mortgage which you gave to him as spoken of by you above - on certain conditions, and if so state what those conditions were in said Power of attorney, and all you know about the power of attorney

Ans at my request Mr Mason consented to have a proposition made to the Creditors of Aspas & Co for. Compromise or settlement of the debts of said firm. to the best of my knowledge the proposition was in substance, that he said Mason would

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release his Mortgages on said farms and share pro-rata with the other creditors on condition of the release of said Sykes & Co of their indebtedness I understood that he gave said Bovie a power of attorney to act in the matter but I do not know what the conditions of said Power of attorney were.

156 Interrogatory objected to Ans Why was it that Mr Mason desired the firm of Sykes & Co released from their indebtedness I suppose my relation to him as son in law, was a reason, of his desireing such release I know of no other particular reasons. ~~of his~~ if he had any I do not know what they were

J. J. Baird object to the above question on behalf of Defendant Mason and the answer for the same reasons that I objected to the 154 interrogatory —

157 Interrogatory objected to Ans State whether you ever gave to Mr Mason a Chattel Mortgage. when and where you gave the same, on what property you gave the same — where said Mason was when said Chattel Mortgage was given. and where you was when the same was given. what was the Consideration of said Mortgage, whether said Mason ever required you to give said Mortgage before you gave the same. and what was the object of your giving it —

In the Spring of A.D 1855. about April I think I gave to J. W. Lawrence a Chattel Mortgage on certain personal property consisting of some household furniture. some agricultural implements and I think on the crops growing on said King farm at that time where I resided. and other things not recollected — the amount of the Consideration in said Mortgage was I think Seven hundred Dollars

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I was indebted to said Lawrence for borrowed money to considerable amount, but cannot state what the amount was - and this Mortgage was given him to secure him against the loss of his debt - after I had paid up the amount due said Lawrence he at my request I think assigned said Mortgage to Timothy B. Mason this was about June or July A.D 1855 to the best of my recollection - I have no recollection of ever giving said Mason any other Chattel Mortgage said Mason never requested me to give him said Mortgage, and he knew nothing about it I think until I gave it to him as assigned from L. W. Lawrence The object I had in giving it to said Mason was to the best of my recollection as security for what I then owed him said Mason ~~resided~~ resided in Milwaukee at that time -

158 Interrogatory - Did said L. W. Lawrence request you to give him said Mortgage before you did so -
objected to
Ans I have no recollection that he did

159 Interrogatory If said Lawrence did not request you to give said Mortgage why did you do so
objected to
Ans I was indebted to said Lawrence in an unsettled account for borrowed money to a considerable amount, but do not recollect what the amount was - and I wished to secure him against the loss of said amount due him -

160 Interrogatory State how long it was after said Mortgage was given, before you paid up said debt to said Lawrence, which you say you owed him
Objected to
Ans I think the amount was all paid before or about the first of July -

161 Interrogatory State about how long it was before said Debt was paid to said Lawrence after said Mortgage was given to said Lawrence

Objected to

Ans I think said Mortgage was given to said Lawrence in April 1855 and that the whole amount of my indebtedness to him was paid before or about the first of July 1855 I do not remember the date of said payment or payments —

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162 Interrogatory Was there any note accompanying said Mortgage at the time you gave the same to said Lawrence

objected to

Ans I do recollect certainty. but think there was a note

163 Interrogatory Where was said Lawrence when you gave him said Mortgage and what did you say to him when you gave him the same —

objected to

Ans Said Lawrence resided in Concord at that time, but I do not recollect where he was when I gave him said Mortgage and I do not remember the Conversation had with him at that time —

164 Interrogatory State whether you did not hand to said Lawrence the said Chattel Mortgage together with a promissory note and at the same time, whether you did not request him to assign the same to the said Timothy B. Mason

objected to

Ans I have no such recollections

165 Interrogatory State whether you did or did not, in relative terms request said Lawrence to assign said Mortgage to said Mason or note accompanying the same or both at the same time you hand him the said Mortgage

objected to

Ans I have no recollection of making such request of said Lawrence at that time, and think I did not

166 Interrogatory State whether at the time you handed the Mortgage

objected to

to said Lawrence. he did not assign the same
or the note which accompanyed the same to said
Mason and immediately hand the same back to you
Ans I have no such recollection and think he did not
167 Interrogatory — State how you recollect so well, that said
objected to Mortgage was not assigned until you paid said
Lawrence the debt you owed him and cannot
recollect whether said Mortgage was assigned at
the time you handed him the same.
Ans I have no distinct recollection when said
Mortgage or note was assigned, one reason
for my thinking that said assignment was
not made at the time of giving the said Mortgage
to Lawrence, was that the debt was unpaid for
which the mortgage was given —
168 Interrogatory Did you tell said Lawrence at the time you
objected to gave said Mortgage that it was given to secure said
debt which you then owed him, or words to that effect.
Ans I am under the impression that I did so state to said
Lawrence that the Mortgage was to secure the debt I owed
him. but I have no distinct recollection of the conversation
had with him at that time
169 Interrogatory are you certain that said Lawrence did
not hand back to you the Mortgage for the
objected to benefit of said Mason on the same day you
handed it to him.
Ans I have no such recollection and think he did
170th Interrogatory Do you recollect that you ever handed said
objected to Mortgage to said Lawrence at all
Ans To the best of my recollection I did give to
said Lawrence the Chattel Mortgage spoken of at the
time before stated in April AD 1855.

171 Interrogatory Do you Know whether said Chattel Mortgage
objected to was ever recorded if so who took the same
to the recorder to have the same recorded
Ans I think said Chattel Mortgage was recorded
but I do not Know who took the same to the
recorder for record
191st

172 Interrogatory Do you Know whether the said Mortgage
objected to was recorded before or after you handed the same
to said Lawrence -
Ans I have no recollection as to the time when said
Mortgage was recorded or any thing about the
recording of said Mortgage

173 Interrogatory Was said Mortgage ever handed to said Mason
objected to if so - at what time
Ans I think said Mortgage was handed to said Mason
at or about the first of July AD 1858. when said
Mason was on a visit at my house

174 Interrogatory State whether about the time you gave said
objected to Chattel Mortgage to said Lawrence, the said
Complainants in this suit or some of them had not
obtained Judgments against the firm of Ayres & Co
for Debts which said firm then owed them
Ans I think that Judgments were obtained against
the firm of Ayres & Co as stated about the time
of giveing said Chattel Mortgage but I do not know
whether they were obtained before or after the same was
given to Lawrence

175 Interrogatory You State in your direct examination that you
objected to gave a deed to Jesse B. Ayres for the Hollingsworth
and King farms. will you state what was the
consideration for said deed - whether good or valuable

whether he paid you money for the same or other property. if he paid you money, how much, and when and where did he pay the same. if he paid you other property. the kind of property — and when and where he paid you the same.

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Ans Theadore Ayers and myself were indebted to Jesse B. Ayers in the amount of a note of two thousand dollars given to said Jesse B. Ayers in Ohio before removing to Illinois — this note had not been paid and it was with perhaps some interest added the consideration in said deed.

176 Interrogatory what was said note given for and when was the same given

objected to:

Ans The said note was given for said J B Ayers interest in a certain piece of land in Hamilton County Ohio I do not remember the date of said note but think it was about the year ad 1850.

177 Interrogatory did not Mr Joiner draw up said note after you removed to this County

objected to

Ans The note I speak of was executed in Ohio, as stated, and before said Jesse B Ayers, Theadore Ayers or myself came to Illinois

178 Interrogatory Did you take up said note at the time you executed said deed to Jesse B. Ayers

objected to

Ans The note I have spoken of may have been taken up and settled and another note taken for the same which said last note may have been drawn by said G. B. Joiner. but I have no distinct recollection about it, and it may have been this last named note, which was the consideration in the deed given to the said J B Ayers as before stated, I do not recollect whether the note for which the

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deed was executed. was taken up at the time of giving said deed.

179 Interrogatory - State who lives on the Hollingsworth Farm if you know
objected to

Ans I think one Nofsker lives on said farm

180 Interrogatory - who does said Nofsker pay the rent of said farm to
objected to

Ans I think he pays it to Jesse B. Ayres -

181 Interrogatory Who rented said Farm to said Nofsker
objected to

Ans I think said Nofsker lived on that farm before said farm was sold to Jesse B. Ayres - and that it was rented to him by Theadore Ayres. but am not certain

182 Interrogatory State who lived on the King Farm.
objected to

Ans Jesse B. Ayres lived on the King farm -

183 Interrogatory - State whether you do or have since you deed
objected to said farms to said Jesse B. Ayres received any profits or rents from said farms or contracted to receive the same -

Ans Since selling said farms to Jesse B. Ayres. I have not received any rents or profits from the same nor made any contract in relation to the rents of said farms -

184 Interrogatory Do you expect to receive any rents or profits
objected to of said Farms or either of them

Ans I do not -

185 Interrogatory State whether there was any other consideration
objected to for said farms than the note refered to -

Ans I do not recollect that there was -

186 Interrogatory State whether the title to both said farms
objected to to Jesse B Ayres was made by one deed or whether you made it by two deeds

Ans I do not recollect whether one or two deeds were given

At 6 o'clock P.M. adjourned till Eight o'clock PM.

Eight o'clock PM resumed the examination of Mark Aspes.

187 Interrogatory State at the time the said Aspes & Co discontinued
objected to business at Concord. what became of all the
personal property goods and Chattels notes, accounts
and money belonging to said firm, Please specify
particularly in relation to that matter and what
was the value of the same.

Ans — The stock of goods on hand at that time and amounting to about five Thousand dollars as nearly as I can recollect. was sold to Charles Sherman in the trail for the King Farm the notes and accounts belonging to said Firm at that time. the amount of which is not recollected but to the best of my recollection amounting to from between two and three thousand dollars was used principally in the payment of the debts of said firm.
Cannot say what amount of said notes and accounts were collected, or the particular manner in which they were used, There was some stock consisting of cattle in number from sixty to eighty. to the best of my recollection. some six or eight horses I think The value of said stock may have been from ten to fifteen hundred dollars but I cannot state with certainty the number or the value of said stock to the best of my recollection said stock was sold at various times but the manner they disposed of or the amount received for them I do not recollect. I do not now remember any

195 w

other personal property belonging to Ayres & Co at that time – I do not remember the amount of money on hand at that time but think it was very small

188 Interrogatory objected to

State whether the said Purdue & Stacy had a Chattel Mortgage on any of said Cattle and if so what became of them if you know

Ans

I think said Purdue & Stacy did have a Chattel Mortgage on a part of said Cattle – said Cattle were advertised for sale by G. B. Joiner attorney for said Purdue & Stacy the Cattle so advertised were not sold on the day so advertised for said sale for the reason I think that there were not purchasers to buy them. I then proposed to give said Joiner in settlement of the claim of said Purdue & Stacy, cattle to the amount in full of said claim of said Purdue & Stacy. the value of which to be fixed by disinterested persons – said proposition was not accepted and the Cattle again advertised to be sold. I was not at the sale last held and cannot. State the number of Cattle sold or the amount they brought I do not know what became of the Cattle –

189a Interrogatory objected to

State whether you ever sold any of said Cattle as spoken of by you which the firm of Ayres & Co had at the time they discontinued business or afterwards. to Jesse B. Ayres

Ans

I have no recollection of selling any of said Cattle to Jesse B. Ayres

190a Interrogatory objected to

State whether J B. Ayres got any of said cattle into his possession by way of a gift or otherwise and kept them – and if so how many

Ans

I have no recollection that said Jesse B Ayres

got any of said Cattle into his possessim by
gift or otherwise and kept them

191 Interrogatory objected to — State whether Lesse B Ayres got any of said horses into his possessim by purchase or otherwise if so how many and whether he has the same on hand now

Ans — I think said Lesse B. Ayres became the purchaser of all or most of said horses named at a Chatt Mortgage sales. said Chattel Mortgage was given I think to Loiner & Barrette. to secure a debt due by said Ayres & Co. I do not know the number purchased at said Chattel Mortgage sale. I think he has only one or two of them in his possessim now ——

192 Interrogatory objected to — Did not you or Theadore Ayres or one of you furnish L B Ayres money to buy in said horses

Ans — I was residing in Milwaukee at the time of said Sale and did not furnish any money to said Lesse B. Ayres to buy in said horses. and have no knowledge that Theadore Ayres furnished any money for that purpose

193 Interrogatory objected to — You state that after the firm of Ayres & Co discontinued business they sold of the personal property collected the notes and accounts and said Debts Please state what Debts were so paid and the amount

Ans — one Debt so paid was to John L. Donovan for money borrowed of him to the amount of about one thousand dollars to the best of my recollection I paid said I. N. Lawrence to the amount of some two or three hundred dollars as nearly as I can recollect — I have now no distinct recollection what other Debts were paid or the time of paying them

194 Interrogatory objected to — at what time did you pay said Debs to said Lawrence, was it before or after the execution of said

Chattel Mortgage to him

Ans The debt due said Lawrence was paid after the execution to him of said Chattel Mortgage —

195 Interrogatory — what was the value of the property embraced in the Chattel Mortgage executed Lawrence, and assigned to said Mason in your opinion

objected to

Ans I have not a distinct recollection. but upon looking at the Chattel Mortgage - I should think the property described in said Mortgage was worth from Eight hundred to one thousand dollars —

1917

196 Interrogatory what did you do with said property embraced in said Chattel Mortgage - and where is the same now State fully in regard to said property

objected to

Ans The Piano mentioned in said Mortgage was sold under an execution I think. but do not now remember in whose favor said execution was — all or most of the books. were sent to Milwaukee where I have them in my possession - I do not recollect. certainly in regard to the other articles mentioned in the Chattel Mortgage

197 Interrogatory Has not Jesse B. Ayres got the balance of said articles mentioned in said Chattel Mortgage or some portion of them ~~said~~ and if so what portion of them —

objected to

Ans Jesse B Ayres may have a small portion of said goods but I am unable to say what portion.

198 Interrogatory State what is the reason you cannot tell where said property is which is embraced in said Chattel Mortgage

objected to

ans I think I sold some of the articles named in said Chattel Mortgage before I removed to Milwaukee since I so removed to Milwaukee my father the said J B. Ayres had a public sale of stock

agracultural implements &c I think at said
Sale that some of said property was sold. but cannot
state what articles were sold, but I have no
particular recollection of the matter —

199 Interrogatory — State whether you gave your deposition to be used
objected to in said suit in Jasper County. wherein yourself
Theadore Ayres and Timothy B Mann were Defendants
198 and the Creditors of Ayres & Co. were Plaintiffs as
spoken of by you in a previous portion of this Deposition
of yours — if so before whom was said Deposition
taken and where was it taken

Ans I did give my Deposition in said case pending in
Jasper County — said Deposition was taken in
Middleport Iroquois County Illinois and before
Justice McNeill I think it was about April 1858.
I have never given but one Deposition in said case
I think —

200 Interrogatory. You state in a previous portion of your deposition
objected to that you never entered any Government Land
in Iroquois County. State whether you did not enter
Government land in the name of Jesse B. Ayres south
of Concord in this County — if not whether you did
not furnish the said Jesse B. Ayres with money
to enter the same. said land being the land upon
which the said Jesse B. Ayres resided prior to his
moveing on to the King farm —

Ans I never entered any government land in the
name of Jesse B. Ayres nor have I any recollection
of having furnished Jesse B. Ayres with any
money to enter said lands mentioned.

Adjourned to 9 oclock on the 2d day of June — June 2
day at 9 oclock am Parties appeared & resumed the Deposition

of Mark Cypes —

Re Examination of Mark Cypes —

1 Interrogatory Look upon the orginal notes now shown you, Copies of which are herewith filed marked Exhibits "A" and "B" made a part of your deposition, and State whether said original notes are the notes embraced in the two Mortgages from you to said T B Mason which are made partes of the Complaint in this cause

Ans I am satisfied that these are the original notes given to said Timothy B Mason and that they are the same embraced in the Mortgages from me to mason as has been before stated

2 Interrogatory State whether a settlement took place between you and Mason when said Notes were executed whether said notes represented accurately the amount then due from you to said Mason and what class of Indebtedness each of said notes represents —

Ans a settlement took place between said Mason and myself at the time of the execution of said notes and I believe they accurately represent the amount then due him. one of the notes refered to embraced various items of money loaned to me by said Mason. during the time in which he gave me the benefit of his name in my business, amounting to at the time of said settlement five thousand four hundred forty seven 97/100 dollars the other note was for five thousand dollars. the amount of money borrowed by said Mason of said Clark and loaned by Mason to me

3d Interrogatory State as near as you can, the period of

time in which the indebtedness which formes the
consideration of the five thousand four hundred forty
seven 97/100 Dollar note accrued, and how it accured

Ans The time of borrowing the items which form the
v consideration of the note of Five Thousand four
200 hundred forty seven 97/100 Dollars, was embraced in the
time in which said Mason gave me the benefit
of his name in my business. say from July 1850 to
about July 1852 and were sums of money borrowed
of said Mason as the necessities of my business requir

4 Interrogatory You state in your Cross Examination that you
and T B Mason were partners under the firm name
of M. Ayers & Co from July AD 1850. to the fall of 1852
State fully. more particularly. the nature and extent
of that partnership

Ans T. B. Mason was during the time spoken of in the Piano
and Music business in Cincinnati, and with the
desire to aid me, he at my request consented to
lend me the use of his name (he having a good credit)
in the purchase of goods and consented to become a
partner under the style of M Ayers & Co, instead of
indorsing my notes from time to time, said Mason
had no interest in the profits of said business
and took, nor had any controll in the management
of said business, and was only a partner for the
particular purpose of giving me a credit as stated
above - The condition of mason was simply that of a
general endorser for me in my business. The business
of said M Ayers & Co was closed and all the debts
of said firm were paid before I came to Illinois to
reside.

5th Interrogatory You state in your Cross Examination that you

obtained the goods belonging to the firm of Lupton & Ayres in Cincinnati by a compromise with your creditors what do you mean by that —

Ans — I had become convinced that said Lupton was purloining the goods and money of the firm of Lupton & Ayres and for the protection of myself and Creditors I had got out an injunction against him from a Court of Chancery in Cincinnati, and the goods of said firm had passed into the hands of a recivor for the benefit of said creditors of Lupton & Ayres, it was while the goods were so in the receivers hands I made a proposition to the said creditors of Lupton & Ayres to purchase said stock of goods by giving them Endorsed notes for the same as above in my deposition more fully explained

6.th Interrogatory You state in your cross examination that at the time you sold and conveyed your Jasper County farm to T B Mason you had another settlement with him which brought you in his debt to the amount of Between Twenty Eight hundred and twenty nine hundred dollars - State as fully as you now can the items of said indebtedness

Ans Since my Cross Examination has ended I have reflected more upon the items composing said bill of said Mason and I am satisfied that one of the items included not only the interest upon the note of Five thousand dollars from the date of the same, to the time of sale of Land to said Mason - but also embraced the interest accrued on the note of Five thousand four hundred forty seven 97/100 dollars from the time of giving said note to the time

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"of selling said land to Mason as above - the
"interest on the two notes at that time amounting
"to about Eighteen hundred dollars as nearly as
"I can recollect. I refer to the two notes refered to
"in this Deposition and marked exhibits A & B.

7 Interrogatory "State whether the items of said indebtedness included
"any part of the principal upon the two notes Copies
"of which marked exhibits A & B. you have above
"made a part of your Deposition.

Ans "They did not include any part of the principal of
"said note.

"Mark Ayres"

"A" "$5000. Cincinnati October 13th 1853.
"Three Years after date I promise to pay to the order of
"J. B. Mason Five Thousand Dollars for value received
"with interest on the same at the rate of ten per cent per
"annum. The Interest payable semi annually and to
"be continued at the same rate per cent and times of payment
"after maturity provided the principal is not paid
"in full at that time

"Mark Ayres"

"B" "$5,147.97/100. Cincinnati October 15th 1853.
"one year after date I promise to pay to the order
"of J B Mason Five Thousand five hundred and forty
"seven 97/100 Dollars for value received with interest
"from date at the rate of six per cent per
"annum payable semi annually.

"Mark Ayres"

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Also on the 2d day of June A.D. 1859. Personally appeared David B. Gardner a witness produced on the part of the Defendants — produced and sworn and deposes as follows in answer to the following questins, Court's

1 Interogatry What is your name. residence and occupation

Ans My age is thirty one years. name David B. Gardner residence Middleport Illinois. occupation has been that of a Mercantile business also dealing in Real Estate

2 Interogatry What is the custom of mercantile firms of two or more members in taking deeds of real estate acquired in their partnership transactions state whether it is usual in such cases to take the deed in the name of one of the Partners instead of the joint names of all the partners

Ans I believe it is frequently done, at least I have done so myself - as has also my partner -

3 Interogatry What personal experience have you had in relation thereto

Ans I have purchased several pieces of land in my own name in this County as a matter of convienence although my partner had an equal interest in said land, and took titles thereto in my own name, although the land belonged in fact, to the firm of S.S. & D.B. Gardner of which I was a member

Cross Examination

1 Interogatry State if you and your brother have not

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usually taken the title to the land you purchased for the benefit the firm of S S & D B Gardner in the name of the two partners

Ans The most but not all we have purchased, the titles have been taken in the name of the firm

2 Interogatory State where your brother, who is your brother has resided since you commenced business here –

Ans Most of the time he has resided in La Salle Illinois

3 Interogatory – State where Theadore Ayers resided, during the time the firm of Ayers & Co were doing business in this County –

Ans " I believe Theadore Ayers resided in Boone
" County during that time

"D. B. Gardner"

The Record of the several Judgments, and Executions issued therein, read in evidence by the complainants on the trial of this cause are as follows,

Declaration Mark E Reeves et al
vs
Mark Ayers et al } 1st

State of Illinois } Boone County Circuit Court
Boone County } of the April Term A D 1855.

Boone County, Ss:

Mark E Reeves, James E. Reeves, Isaac Stephens, Warren le Good and William R. Phiffs doing business under the name and style of firm of Reeves Stephens & Co by James Fletcher their

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Attorney Complain of Mark Ayres and Theadore Ayres doing business under the name and style & firm of Ayres & Co being in Custody &c of a plea of Trespass on the case on promises.

For that Whereas the said Defendants by and under the name Style and firm of Ayres & Co heretofore to wit on the twenty fourth day of March in the year of our Lord one thousand Eight hundred and fifty four at Cincinnati to wit at the County of Hamilton aforesaid, made their certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year Last aforesaid and thereby then and there promised to pay one day after the date thereof to the order of the said plaintiffs the sum of Fifty Dollars for value Received. and then and there delivered the said promissory note to the said plaintiffs. by means whereof and by force of the Statute in such case made and provided the said Defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note: and being so liable they the said Defendants in consideration thereof afterwards to wit on the day and year last aforesaid at Hamilton County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said promissory note specified according to the tenor and effect thereof-

And for that Whereas also the said defendants

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by and under the name Style and firm of Ayres & Co heretofore to wit on the day and year Last aforesaid to wit on the said 24th day of March AD 1854 at Cincinnati to wit at the County of Iroquois aforesaid made their certain other promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year last aforesaid and thereby then and there promised to pay six months after the date thereof for Value Received to the order of the said plaintiffs the sum of one hundred forty six $\frac{33}{100}$ Dollars (meaning one hundred and forty six Dollars and thirty three cents) and then and there delivered the said last mentioned promissory note to the said plaintiffs: by means whereof and by force of the Statute in such case made and provided, the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note, and being so Liable they the said Defendants in Consideration thereof afterwards to wit on the day and year last aforesaid at Iroquois County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said last mentioned promissory note specified according to the tenor and effect thereof - And for that Whereas also the said defendants by and under the name Style and firm of Ayres & Co heretofore to wit on the day and year last aforesaid to wit on the said 24th day of March AD 1854, at Cincinnati

to wit at the County of Iroquois aforesaid made their certain other promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year last aforesaid, and thereby then and there promised to pay nine months after the date thereof for value Received to the order of the said plaintiffs the sum of one hundred forty Eight Dlls 48/100 dollars (meaning one hundred and forty Eight Dollars and forty Eight Cents) and then and there delivered the said last mentioned promissory note to the said plaintiffs, by means whereof and by force of the Statute in such case made and provided the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note and being so liable they the said Defendants in consideration thereof afterwards to wit on the day and year last aforesaid at Iroquois County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said promissory note specified according to the tenor and effect thereof—

And for that Whereas also the said defendants by and under the name style and firm of Ayres & Co heretofore to wit on the day and year last aforesaid, To wit on the said 24th day of March AD 1854 at Cincinnati to wit at the County of Iroquois aforesaid made their certain other promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year last aforesaid and thereby then and there promised

to pay twelve months after the date thereof for value Received to the order of the said plaintiffs the sum of One hundred fifty & 58/100 Dollars (meaning one hundred and fifty Dollars and fifty Eight cents) and then and there delivered the said last mentioned promissory note to the said plaintiffs. by means whereof and by force of the Statute in such case made and provided the said Defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified according to the tenor and effect of the said promissory note. and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year Last aforesaid at Iroquois County aforesaid undertook and then and there faithfully promissed the said plaintiffs to pay them the said sum of money in the said promissory note specified according to the tenor and effect thereof.

And Whereas also the said Defendants afterwards to wit on the day and year last aforesaid at Iroquois County aforesaid were indebted to the said plaintiffs in the further sum of five hundred and seventy five dollars of Like Lawful money for divers goods wares merchandise & Chattels before that time by the said plaintiffs sold and Delivered to the said Defendants and at the special instance & Request of the said defendants and being so indebted they the said defendants in consideration thereof afterwards to wit on the day and year last aforesaid at Iroquois County aforesaid undertook and then and there faithfully promissed the said plaintiffs to pay them the said last mentioned sum of money

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. Whereas they the said defendants should be thereunto afterwards Requested. Nevertheless the said defendants not Regarding their said several promises and undertakings, but Continuing and fraudulently intending to deceive and defraud the said plaintiffs in this behalf have not as yet paid the said several sums of money or any or either of them or any part thereof to the said plaintiffs (although often requested so to do) but the said defendants to pay the said plaintiffs the same have wholly neglected and refused and did do neglect and refuse, to the damage of the said plaintiffs of one thousand dollars and therefore they bring this suit &c

James Fletcher
atty for Plffs —

The following is a Copy of the note mentioned & described in the first Count of the above and foregoing declaration, towit:

"$50 00/100" Cincinnati March 24 1854.
" One day after date for value Received we promise to
" pay to the order of Reeves Stephens & Co fifty & 00/100 Dollars
" at the — "Ayres & Co"

The following is a Copy of the note mentioned & described in the second Count of the above and foregoing declaration, to wit:

"$146 33/100" "Cincinnati March 24 1854."
" Six months after date for value Received we promise to
" pay to the order of Reeves Stephens & Co one hundred
" forty six & 33/100 dollars at the" — "Ayres & Co"

The following is a Copy of the note mentioned and described in the third Count of the above and foregoing declaration, To wit

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"$148 48/100" "Cincinnati March 24. 1854"
"Nine months after date for Value Received we promise
"to pay to the order of Reeves Stephens & Co one hundred
"Forty Eight & 48/100 Dollars - at the - "Ayres & Co"

The following is a Copy of the note mentioned and described in the fourth Count of the above and foregoing declaration, To wit

"$150 58/100" "Cincinnati March 24 1854.
"Twelve months after date for Value Received we promise
"to pay to the order of Reeves Stephens & Co one hundred
"fifty & 58/100 Dollars - at the -
"Ayres & Co"
"$773."

The following is a Copy of the account described in the fifth Count of the above declaration, To wit;

Mark Ayres & Theadore Ayres Dr
To Reeves Stephens & Co - To Goods Wares Merchandizes & Chattels sold & delivered to the said Mark Ayres & Theadore Ayres by the said Reeves Stephens $575.00

Summons. Read

State of Illinois } ss The People of the State of Illinois
Iroquois County } to the Sheriff of said County, Greeting:
We Command you that you Summon Mark Ayres & Theadore Ayres if to be found in your County,

2 11 a

personally to be and appear before the Circuit Court of said County on the first day of the next term thereof, to be holden at the Court House in the Town of Middleport on the 2d Day of April next to answer Mark E Reeves, Laney E Reeves, Isaac Stephens, Francis McGoode & William R Phillips in an action of Trespass on the case on promisses to the damage of them the said Plaintiffs in the sum of one thousand Dollars and have you then and there this writ.

Witness, Jesse Bennett Clerk of our said Court, and the Seal thereof, at Middleport, this 27th Day of March AD 1855

(Seal)

J Bennett — Clerk

Endorsed

" Served this writ by reading the same to Mark Ayres April 5th 1855 and Theaden Ayres the 13 of April

"A.B. Roff. Sheriff"

The Judgment of the Court in this cause and the — Execution and return thereon, marked Exhibits "b" and "I" respectively are copied in this Record on Pages 37 and 41

Henry Falls vs Mark & Theaden Ayres —

State of Illinois } Iroquois County Circuit Court
Iroquois County } of the April Term AD 1855 —

Iroquois County to wit:

Henry Falls by James Fletcher his attorney complains of Mark Ayres being in custody &c of a plea of trespass on the case on promisses — For that Whereas the

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said defendant heretofore to wit on the thirteenth day of June in the year of our Lord one thousand Eight hundred and fifty four &c To wit at the County of Iroquois aforesaid was indebted to the said plaintiff in the sum of one hundred and fifty two Dollars and sixty three cents of Lawful money of the United States for diverse goods wares merchandize and chattels by the said plaintiff before that time sold and delivered to the said defendant, and at his special instance and Request and being so indebted to the said Defendant in consideration thereof afterwards to wit on the day and year last aforesaid at Iroquois County aforsaid undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money aforesaid when he the said defendant should be thereunto afterwards Requested - Nevertheless the said Defendant not Regarding his said promises and undertakings but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf hath not as yet paid the said sum money aforesaid or any part thereof to the said plaintiff although often Requested so to do, but the said Defendant to pay him the same hath hitherto wholly neglected and Refused and still doth neglect and Refuse - To the damage of the said plaintiff of one hundred & fifty two Dollars & sixty three Cents and therefore he brings his Suit &c

James Fletcher
atty for Plaintiff

The within account is the same account of or Copey thereof upon which the above Entitled Suit is brought and as described in said declaration the being for goods Sold & delivered to the said Mark Ayres by the said Henry Fla

Cincinnati 1 July 1854.

Mr Mark Ayres — Iroquois Ills —

To Henry Falls, Dr

1854				
June 13 —	58 1/4 Yds English Super Carpet		1.15	66.99
&	65 " 4/4 Hemp do		35	22.75
2/13	28 1/2 " Cotton & Wool do		70	19.95
	6 3/4 " 4/4 Venetian do		85	5.66
	16 3/4 " 5/8 do do		55	9.22
	5/4 " 2/4 do do		45	2.36
	1 Tufted Rug			4.50
	2 1/4 Yd 7/4 oil Cloth		125	3.12
	2 1/2 " do		85	2.13
	12 1/2 . Ruff Linen		30	3.75
	3 pr Curtain Bands		85	2.55
	1 Skeleton Mat			1.75
	1 Berlin do			1.25
	2 Wrappers			.50
				146.48
1854				40
Oct 13 —	2 pr Tassels		20	
	5 yds Cord		3	15
	5 Shade Tassels		10	50
	15 yds Cord		3	45
				1.50
1855				
Jany 1	Interest to date			4.65
				152.63

State of Ohio Hamilton County. Ss.

Before me a Notary Public personally came Henry Falls who being duly sworn doth depose and say that the above stated account against Mark Ayres is just and true, and that the amount of one hundred and fifty two 63/100 Dollars is justly due to the said Henry Falls and that it is still unpaid and that there is no set off against said account and further this Deponant saith not

Henry Falls

Sworn to & subscribed before me this 27th day of December AD 1854

Job Pugh
Notary Public

N P Seal

Summons Read

State of Illinois
Iroquois County } ss The People of the State of Illinois
to the Sheriff of said County. Greeting!

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We Command you that you Summon Mark Ayres if to be found in your County, personally to be and appear before the Circuit Court of said county. on the first day of the next term thereof. to be holden at the Court House in the Town of Middleport on the 24th Day of April next. to Answer Henry Falls in an action of Trespass on the Case on promises to the damage of him the said Plaintiff in the sum of two hundred & fifty two & 63/100 dollars and have you then and there this writ.

Witness, Jesse Bennett Clerk of our said Court and the Seal thereof. at Middleport, this 27 day of March AD 1855

Seal

J Bennett Clerk

Endorsed

Served this writ by reading the same to Mark Ayres
April 5th 1855 A.B. Roff Sheriff

The Judgment of the Court in this cause and the Execution and return thereon marked Exhibits "D" and "J" respectively are copied in this Record on Pages 38 and 42

Declaration -

Stadler & Brother vs Mark and Theadore Ayres

State of Illinois } Iroquois County Circuit Court
Iroquois County } ss of the April Term AD 1855

Iroquois County To wit - Martin Stadler and Max Stadler doing business under the name

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and Style of Stader & Brother by James Fletcher their attorney Complain of Mark Ayres and Theadore Ayres doing business under the name Style and firm of Ayres & Co. being in Custody &c of a plea of trespass on the case on prmises For that whereas the said defendants bey and under the name Style and firm of Ayres & Co here to fore Towit on the fifteenth day of March in the year four Lord one thousand Eight hundred and fifty four at Cincinnati towit at the County of Hoquois aforesaid made their certain prmissory note in Writing bearing date to wit the day and year last aforesaid and thereby then and there prmissed to pay six months after the date there of to the order of the said plaintiffs the sum of one hundred Seventy one 60/100 Dollars, meaning one hundred and Seventy one dollars and Sixty cents for value received and then and there delivered the said promissory note to the said plaintiffs: bey means whereof and by force of the Statute in such case made and provided the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said prmissory note specified according to the tenor and effect of the said prmissory note, and being so liable they the said defendants in Consideration thereof afterwards to wit on the day and year last aforesaid at &c towit at the County of Hoquois aforesaid undertook and then and there faithfully prmissed the said plaintiffs to pay them the said sum of money in the said prmissory note specified according to the tenor and effect thereof

And for that Whereas also the said defendants bey and under the name Style and firm of Ayres & Co

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heretofore to wit on the day and year last aforesaid at Cincinnati to wit at the County of Iroquois aforesaid made their certain other promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year last aforesaid. and thereby then and there promised the said plaintiffs to pay nine months after the date thereof to the order of the said plaintiffs the sum of one hundred and seventy one 59/100 Dollars meaning one hundred and seventy one Dollars and fifty nine Cents for value Received. and then and there delivered the said promissory note to the said plaintiffs by means whereof and by force of the Statute in such case made and provided the said defendants then and there became liable to pay to the said plaintiff the said sum of money in the said last mentioned promissory note specified according to the tenor and effect of the said last mentioned promissory note and being so liable they the said defendants in consideration thereof afterwards to wit on the day and year last aforesaid at & to wit at the County of Iroquois aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the said last mentioned promissory note specified according to the tenor and effect thereof — And for that Whereas also the said defendants by and under the name style and firm of Ayres & Co heretofore to wit on the day and year last aforesaid at Cincinnati To wit at the County of Iroquois aforesaid made their other certain promissory note in writing bearing date a certain day and year therein mentioned to wit the day and year last aforesaid, and thereby then and promissed to pay one year after the date then

to the order of the said plaintiffs the sum of one hundred and seventy one 59/100 dollars. meaning one hundred and seventy one dollars and fifty nine cents for Value Received and then and there delivered the said last mentioned promissory note to the said plaintiffs by means whereof and by force of the Statute in such case made and provided the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said last mentioned promissory note specified according to the tenor and effect of the said last mentioned promissory note, and being so liable they the said defendants in Consideration thereof afterwards to wit on the day and year last aforesaid at Iroquois County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay them the said sum of money in the last mentioned promissory note specified according to the tenor and effect thereof —

And Whereas also the said defendants afterwards to wit on the day and year last aforesaid at & at Court at the County of Iroquois aforesaid was indebted to to the said plaintiff in the further sum of five hundred and fourteen dollars and Eighteen cents of like lawful money for divers goods wares and merchandizes by the said plaintiffs before that time sold and delivered to the said defendants and at their special instance and Request. and being so indebted they the said defendants in Consideration thereof afterwards to wit on the day and year last aforesaid at Iroquois County aforesaid undertook and then and there faithfully promised the said plaintiffs to pay

2/8 dr

them the said last mentioned sum of money when they the said defendants should be thereunto afterwards Requested — Nevertheless the said defendants not Regarding their said several promises & undertakings but contriving and fraudulently intending to deceive and defraud the said plaintiffs in this behalf have not as yet paid the said several sums of money or any or either of them or any part thereof to the said plaintiffs, although often Requested so to do, but the said defendants to them the same have hitherto wholly neglected and Refused, and still do neglect and Refuse to the damage of the said plaintiffs of Eleven hundred dollars and therefore they bring their suit &c

James Fletcher

Atty for Plffs —

The following is a copy of the note mentioned & discribed in the first Count of the above & foregoing declaration, to wit:

"$171 60/100 "Cincinnati March 15th 1854."

"Six months after date we promise to pay to the order of

"Stadler & Brother one hundred Seventy one 60/100 Dollars —

"for Value Received"

"No — Due Sept 18 1854. "Ayres & Co"

The following is a copy of the note mentioned & described in the second Count of the above & foregoing declaration Towit

"$171 57/100" Cincinnati March 15th 1854.

"Nine months after date we promise to pay to the order

"of Stadler & Brother One hundred and Seventy one 57/100

"Dollars for Value Received"

"No — Due Decemb 18/54. — "Ayres & Co"

The following is a Copy of the note mentioned and described in the third Count of the above and foregoing declaration. Towit.

"$171 59/100" "Cincinnati March 15 1854"

"One year after date we promise to pay to the order of "Sladen & Brother one hundred and seventy one and 59/100 "Dollars for value Received"

"No Due March 18/55 – "Ayres & Co"

2/9 W

The following is a Copy of the account mentioned and described in the fourth Count of the above & foreg. declaration – Towit –

Mark Ayres & Theadore Ayres Dr

To Martin Sladen & Max Sladen

To Goods – Wares & Merchandize sold & delivered to them by the said Sladen & Brother $514.18

Summons Read

State of Illinois } ss The People of the State of Illinois
Iroquois County }

to the Sheriff of said County, Greeting:

~~The People~~ We command you that you Summon Mark Ayres & Theadore Ayres if to be found in your county, personally to be and appear before the Circuit Court of said County, on the first day of the next term thereof, to be holden at the Court House in the Town of Middleport on the 2d day of April, ~~next~~ instr to answer Martin Sladen & Max Sladen in an action of Trespass on the case on promises to the damage of them the said Plaintiffs in the sum of Eleven hundred dollars and have you then and there this writ.

Witness Jesse Bennett Clerk of our said Court and the Seal thereof, at Middleport this 7th day of April A.D. 1855

Seal

J Bennett Clerk

Endorsed

"Served this writ by reading the same to Mark Ayres April 7th 1855 and Served on Theadore Ayres April 13 1855

A.B.R of SMff

2 20 Th

The Judgment of the Court in this Cause and the Execution and return thereon, marked Exhibit "E" and "K" respectively are Copied in this Record on Pages 38 and 43 —

The following is a Copy of the original note on which Judgment was rendered in favor of Robert Mitchel etal as Mark Ayres etal as described in Complainants Bill and which was proved and read in Evidence on the trial of this Cause.

"$210 75/100 "Cincinnati June 1st 1854

"Four months after date we Promise to pay to the order of "Mitchell & Rimmelsburg at — Two hundred & ten "75/100 Dollars (Two hundred and ten dollars and Seventy five "Cents meaning) Value Received (for value Received meaning) "No — Due — "Ayres & Co"

The Judgment of the Court in this Cause and the Execution and return thereon marked Exhibits "F" and "L" respectively are Copied in this Record on Pages 39 and 45

The following is a Copy of the original Notes and account on which Judgment was rendered in favor of Calvin R. Camp — as Mark Ayres etal as described in Complainants Bill — which was proved and read in evidence on the trial of this Cause

"Cincinnati March 10th 1854

"Six months after date we Promise to pay to the order "of C R Camp One hundred and Eight 41/100 Dollars

" Value Received payable at the Commercial Bank
" No — $108 41/100 " due " "Ayres & Co"

22 ct.

"Cincinnati March 10th 1854"
" Nine months after date we Promise to pay to the order
" of LeBlamp one hundred and Eight 41/100 Dollars
" Value Received payable at the Commercial Bank.
" $108 41/100 "Ayres & Co"
" No — due

"Cincinnati March 10th 1854
" Twelve months after date we promise to pay to the
" order of LeBlamp one hundred and Eight 42/100 Dollars
" Value Received payable at the Commercial Bank.
" $108 42/100 " "Ayres & Co"
" No — due "

"Cincinnati March 10th 1854"
" Six months after date we promise to pay to the order
" of LeBlamp one hundred and Eight 41/100 Dollars
" Value Received payable at the Commercial Bank."
" $108 41/100 " "Ayres & Co"
" No — due "

"Cincinnati March 10th 1854."
" Nine months after date we promise to pay to the order
" of LeBlamp one hundred and Eight 41/100 Dollars
" Value Received payable at the Commercial Bank.
" $108 41/100 " "Ayres & Co"—
" No — due"

"Cincinnati March 10th 1854"
"Twelve months after date we promise to pay to the
"order of Le Bleamp one hundred and Eight 42/100
"Dollars Value Received payable at the Commercial Bank
"$108 42/100" "Ayres & Co"
"No. due"

2225

Mark Ayres &
Theadore Ayres Dr
To Lealvin Bleamp

March 10 1854 To Goods wares & Merchandise Sold & delivered to
them by the said Lealvin Bleamp $325.24.

The Judgment of the Court in this Cause and the
Execution and return thereon, marked Exhibit "G" and
"H" respectively are Copied in this Record on Pages
40 and 46

and the Copy of the Judgment & in case of Reeves & Co
vs Ayres & Co before H. D. Bryant a Justice of the Peace
and marked "Exhibit "K" is Copied in this Record
on Page 40 — — was Read in evidence

The following is a Copy of the original note on which
Judgment was rendered in favor of Purdue and
Stacy vs Mark Ayres & etal as described in —
Complainants Bill & which was proved & read in evidence
on the trial of this cause

"No
"$864 88/100 "La Fayette Ind January 18th 1853
"Twelve months after date for value received we promise
"to pay to Purdue & Stacy or order Eight hundred &

" sixty four 85/100 Dollars with interest without any
" relief whatever from valuation or appraisment
" laws with interest from date "

"Ayres & Co"

223 S

The Judgment of the Court upon said note and the Execution and return thereon, marked Exhibits "N" and "R" respectively are Copied in this Record on Pages — 47 and 49 —

The following is a copy of the original note on which Judgment was rendered in favor of Reynolds Hatcher & Co and against Mark Ayres etal as described in Complainants Bill which was proved & read in evidence on the trial of this cause.

" $225.94 " "Lafayette Ind April 10 1855
" One day after date for value Received I promise
" to pay Reynolds. Hatcher & Co, or order Two Hundred
" & Twenty five 94/100 Dollars without any relief whatever
" from Valuation or appraisement Laws
" Due witness Jas B Dimm —" "Ayres & Co "

The Judgment of the Court upon said note and the Execution and return thereon, marked Exhibits "O" and "S" respectively are copied in this Record on Pages 47 and 50..

The following is a copy of the original note on which Judgment was rendered in favor Haggard etal as Mark Ayres etal as described in Complainants Bill & which was proved and read in evidence on the trial of this cause

224 Th

The Judgment of the Court on said note and the Execution and return thereon, marked Exhibits "D" and "I" respectively are copied in this Record on Pages 48 and 51

The following is a Copy of the original note on which Judgment was rendered in favor of Eben Dunning vs Ayres & Co as described in Complainants Bill. & which was proved and read in evidence on the trial of this cause.

"$22/05 "Leonard Iroquois Co Ill Feby 17th 1853
" One day after date we promise to pay Eben Dunning
" or order Two hundred and twenty one 05/100 Dollars
" Value Received - with interest at the rate of ten per
" Cent per annum

"Ayres & Co"

The Judgment of the Court on said note and the Execution and return thereon, marked Exhibits "2" and "K" respectively are copied in this Record on Pages 48 and 52

The Mortgages from Mark Ayres to Timothy B. Mason read in evidence on the trial of this cause and marked Exhibits "A" and "B", respectively are Copied on Pages 30 and 34 of this Record -

225 The

and The Deeds from Mark Ayres wife to Jesse B. Ayres read in evidence on the trial of this Cause Marked Exhibit "V" and "W" respectively are copied on Pages 53 and 55 of this Record

and the Chattel Mortgage from Mark Ayres to T B Mason read in evidence on the trial of this Cause marked Exhibit "26" is copied on Page 58 – of this Record

The following is a Copy (Certified) of the last Will and Testament of Timothy B. Mason which was then read in evidence in said Cause – in words and figures – as follows – to-wit: the same being marked Exhibit "A" in Complainants Bill of Revivor.

Timothy B. Mason dec'd.

Please at the Court House in Cincinnati, in the County of Hamilton, and State of Ohio, of the Hamilton County Probate Court, at a session thereof held, at the place, aforesaid on the thirtieth day of April in the year of our Lord one thousand eight hundred, and sixty one, before the Honorable Alex Paddack sole Judge of said Court. –

The State of Ohio } ss Probate Court.
Hamilton County }

Be it remembered that on the thirtieth day of april in the year of our Lord

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Will

one thousand eight hundred and sixty. one. the last will and Testament of Timothy B Mason late of said County deceased. was presented for probate in the words and figures following to wit;

In the name of God Amen. I. Timothy B. Mason of the City of Cincinnati. do make and publish this my last will and testament. in manner, and form following;

First I direct that all my just debts. and all proper charges. be paid. out of my estate.

Secondly all my property of whatever kind, and wherever situate. I hereby authorizs and empower my Executors herein after named. to convert into money. from time to time. at their discretion. and to invest the same in such manner, as they may deem. for the interest of my heirs; until they shall have so invested the sum of twenty Thousand dollars. and the net proceeds of such investments together with such additional sum or sums from the principal as may in their opinion be necessary for the comfortable support of my beloved wife Abigal H. Mason. and the education and support of my dear children. Abbie H. Mason. Edward B. Mason. Helen A. Mason and William L. Mason. I direct my said executors to appropriate and pay as the same may be needed for these purposes

Thirdly; I bequeath to my said Executors the sum of Five hundred dollars. in trust. to pay the same as hereinafter directed. to the person who. when the same is payable. shall act as Treasurer of the "American Home Missionary Society." formed in the City of New York. in the year 1826. to be

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applied to the Charitable uses and purposes of said Society, and under its direction, said sum to be so paid, as to make my said wife. Abigal H. Mason, and my children Lucretia M. Truax, Abbie H. Mason, Edward B. Mason, Helen A. Mason, and William L. Mason, or such of them, as shall then be living Life members of said Society -

Fourthly: I bequeath to my said Executors the further sum of Five Hundred Dollars, in trust to pay the same as herein after directed to the person who, when the same shall be payable shall act as Treasurer of the "Foreign department of the American Missionary Association." New York City, to be applied to its Charitable uses and purposes under the direction of the Executive Committee of said association. said sum to be so paid as to make the said Abigal H. Mason, William L. Mason Lucretia M. Truax, and Edmund A. Truax, her husband, or the survivors of them, Life members of said association.

Fifthly; I bequeath to my said Executors the further sum of Two hundred and fifty Dollars in trust, to pay the same to the person who, when the same shall be payable shall act as Treasurer of the "American Reform Tract and Book Society located in Cincinnati, Ohio - said sum ~~#~~ to be paid in such way as to make the said Abigal H. Mason, Edmond A. Truax, Lucretia M. Truax, Abbie H. Mason, Edward B Mason, Helen A. Mason, and William L Mason, or the survivors of them Life members of said Society.

Sixthly - I direct that the foregoing bequests in

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trust, shall be paid to said Societies by my said Executors, out of moneys of my estate to be received by them after they shall first have invested said sum of Twenty Thousand Dollars for the benefit of my heirs as above provided - and that no part of said bequests, or of either of them shall be paid or payable, until after the full sum of Twenty Thousand Dollars shall have been received and invested by them as aforesaid. But if the assets of my Estate which shall come into the hands of my Executors, after the investment of said sum of Twenty Thousand Dollars, shall be insufficient to pay said bequests, it is my will, and I hereby direct that said bequests or the residue thereof remaining unpaid shall be fully paid and discharged before the final distribution of the assetts of my Estate, as herein after provided. Seventhly: I further direct that my said executors shall pay to said Societies, the one full and equal one tenth part of any moneys which shall at any time be paid into their hands, as such executors, on account of any claim or claims which may be due my Estate, from either Mark Ayres, of the County of Iroquois in the State of Illinois, or from Edward A Truax, of the City of Cincinnati, said one tenth part of such moneys, to be paid over to said Societies by my executors in Thirty days after they shall have received the same, as follows - that is to say - two fifths thereof to be paid to the "American Home Missionary Society; two fifths of the Foreign department of the American Missionary Association" and the

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residue to the "American Reform Tract, and Book Society."

Eighthly – all property or moneys belonging to my estate, remaining after the investment of said sum of Twenty Thousand Dollars, and the payment of the foregoing bequests. I do hereby authorize and empower my said executors to invest in such manner as in their opinion may be for the bests – of my said wife and children. all investments made by my said Executors ~~the~~ under the provisions of this will, shall be subject to change, at their discretion, and shall be kept under their control until the decease of my said wife, or, if she should die before all my children shall attain full age, then such investments shall be under like control of the survivors of my said Executors until my youngest child then living shall have attained full legal age.

Ninthly: It is my desire to observe strict impartiality in my bequests to my dear children and I direct that upon the decease of my wife if my youngest child then living shall be of age, or, if not, then as soon as such youngest child shall be of age, whatever property or moneys of my estate shall then be left, shall as soon as ~~practicable~~ practicable be divided and destributed by the survivors (or survivor of my said Executors as follows, that is to say – It is my desire that my property so remaining shall be divided equally between my children, and if any one or more of them shall have died, leaving a

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child or children, living, that such child or children shall take the share of its or their deceased parent. But in making such divsion, if Alma M. Ayres, the only child of my deceased daughter shall then be living, my Executors shall determine what sum if any, is then due my Estate from her Father, Mark Ayres, or from his Estate, and said claim against said Mark Ayres, or his Estate, if it should amount to less than the said Alma M. Ayres' share of my Estate, shall be assigned or transferred by my said Executors, to her, without recourse, as payment pro so much of her share, and the residue shall be paid her in money or property. But if said indebtedness of the said Mark Ayres, or of his Estate, should amount to as much, or more than the share of the said Alma M. Ayres, in my Estate, then said claim shall be transferred - or an amount thereof equal to the sum of the share of the said Alma M. Ayres in my Estate, shall be assigned or transferred to her as aforesaid, without recourse, as a full and complete payment of my devise to her under this my will, and proper credit shall be given to the said Mark Ayres, for the sum so transferred. And any sum or sums which shall then be due my Estate from Edmund A. Tmax, or from his Estate, shall be in like manner transferred or assigned to Lucretia M. Tmax, or to her children in payment of so much of her or their share of my estate, under this my will and the proper credit given therefor to the said Edmund A. Tmax, and the residue, if any,

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of the share of the said Lucretia M. Mason, or her children shall be paid her or them, in money or property - The residue of my Estate of whatever Kind, or wherever situate shall be divided equally between my remaining Children Abbie H. Mason, Edward B Mason, Helen A. Mason, and William L. Mason, or the survivors of them, and if either of them shall shall have died before them - leaving a child or children living, such child or children shall take the share of its or their deceased parent.

The provisions made herein for the support of my wife Abigal H. Mason, is intended to be in lieu of her right of dower in my Estate. I do hereby nominate and appoint my beloved wife Abigal H Mason, and my friends Francis L. Griggs, Lewis L. Hopkins and James M. Gilchell Executors of this my last will and testament, hereby authorizing and empowering them to compromise, adjust, release and discharge, in such manner as they may deem best, the debts, and claims due me, and all obligations claims and suits against me, or to which I am in any way a party, and I do also authorize and empower them at their discretion to sell by private sale or otherwise, upon such terms of credit or otherwise as they may think proper, all or any part of my real - estate, wherever the same may be situate and deeds to purchasers to execute acknowledge and deliver, in fee simple, all power herein vested in my Executors, shall appertain to and be exercised by the survivors of them.

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I desire that no appraisment and no sale of my personal property be made unless deemed best by my Executrs. and that the Court of Probate direct the omission of the same. I further desire that no bonds be required of my said wife, and that the said Francis L. Griggs, Lewis L. Hopkins, and James W. Gilchell shall not be required to give bonds in more than the sum of Five Thousand Dollars each, or if jointly, in not more than Fifteen Thousand Dollars, as Executors of this my last will and Testament.

In Testimony Whereof I have hereunto set my hand and seal on this 27th day of October in the year — Eighteen Hundred and fifty-nine.

The name of "Francis L. Griggs" was inserted in the sixth and also in the Twentieth line from the top. also the word "Fifteen" in the twenty second line from the top before signing.

Timothy B. Mason (Seal)

Signed and acknowledged by the said Timothy B. Mason, as his last will, and testament, in our presence; and signed by us in his presence, and in the presence of each other —

Griffith Rees
Samuel Ridenour Jr.

and thereupon Samuel Ridenour Jr. and Griffith Rees, the subscribing Witnesses of the last Will and Testament of Timothy B. Mason dec'd appeared and testified in open Court, and their testimony was reduced to writing in form following to wit:

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affidavit

The State of Ohio } ss. Hamilton Probate Court.
Hamilton County. }

Probate of the last Will of Timothy B. Mason deceased, presented on the thirtieth Day of April AD 1861. Personally appeared in open Court. Samuel Rideaour Jr. one of the subscribing witnesses of the last Will and testament of Timothy B. Mason deceased, who being duly sworn according to law, to speak the truth, the whole truth, and nothing but the truth, in relation to the execution of said Will depose and say that they were present at the making of said Will, and at the request of the deceased subscribed their names to said Will as witnesses, in the presence of the deceased, and of each other; that they heard him acknowledge the same to be his last Will and Testament; that the said Timothy B. Mason was at the time of making, signing, and sealing said Will, of legal age and of sound, and disposing mind and memory and under no undue or unlawful restraint whatsoever

Sworn to and subscribed in open Court. this 30th day of April AD. 1861.
Alex Paddack
Probate Judge

} Samuel Rideaour Jr.

affidavit

The State of Ohio } ss
Hamilton County } Hamilton Probate Court.

Probate of the last will of Timothy B. Mason deceased, presented on the thirtieth day of April AD 1861. Personally appeared

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in open Court. Griffith Rees. the other Subscribing Witness of the last Will and Testament of Timothy B Mason. deceased. who being duly sworn according to law to speak the truth, the whole truth, and nothing but the truth, in relation to the execution of said Will. Depose and say that they were present at the making of said Will, and at the request of the deceased. Subscribed their names to said Will. as witnesses. in the presence of the deceased. and of each other, that they saw the said Timothy B. Mason deceased sign and seal said Will. and heard him acknowledge the same to be his last Will and Testament; that the said Timothy B. Mason, was at the time of making. signing. and sealing said Will. of legal age and of sound and disposing mind and memory. and under no undue or unlawful restraint whatsoever.

Sworn to and Subscribed in open Court. This 30th day of April. AD 1861.
Alex Paddack
Probate Judge

} Griffith Rees —

And at the same time. Oliver D. Norton attending Physician of Timothy B Mason dec'd appeared and testified in open Court. and his testimony was reduced to writing in form following. to wit;

Affidavit

The State of Ohio
Hamilton County } ss

Oliver D. Norton being duly sworn deposes and says that he was well acquainted

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with Timothy B. Masm in his life time both upon the 27th day of October AD 1859 up to the time of his decease - that he was the attending Phisician upon said Masm up to the time of his death & frequently conversed with him, and had every opportunity of knowing the condition of his mind affiant says that he is satisfied that upon the 27th day of October AD 1859. said Masm was of sound and disposing mind and memory, and competent to make a will and transact business generally.

Sworn to and subscribed in my presence this 30th day of April AD 1861. } Olin D. Norton, M.D.

Alex Paddack
Probate Judge

Now here at the session of our said Probate Court first aforesaid on the 30th day of April in the year of our Lord one thousand Eight hundred and sixty one probate of the last will and testament of Timothy B Masm decd, was decreed by our said Court as follows to wit;

Probate 6585 } In the matter of the last will and Testament of Timothy B. Masm decd }

The last will and Testament of Timothy B Masm late of this County deceased was this day presented to the Court for Probate and Griffeth Reese, and Samuel Rideout Jr the subscribing witnesses to said will, coming before the Court, were duly sworn, and examined according to law, and the testimony of both of said witnesses reduced to writing and filed,

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And it appearing to the Court that said Will was duly attested and executed, and that said Testator, was at the time of executing the same of full age, sound mind, and memory and under no undue restraint.

The Court therefore admits said Will to Probate and orders the same together with the Testimony Taken, to be recorded, according to the provisions of the Statute in such cases made and provided. And now comes Abigal H. Mason, widow of said Timothy B. Mason, deceased (and after the Court having explained to her the provisions of said Will and her right under it, and also her right under the law,) and Elects to take under the said Will. and desires that this her declaration be entered on the Journal of this Court.

The State of Ohio
Hamilton County } ss Probate Court.

I Alexander Paddack, Sole Judge and Ex-officio Clerk of the Probate Court within and for the County aforesaid, do hereby certify the foregoing to be a true Transcript of the last Will and Testament of Timothy B Mason late of the aforesaid County deed. duly admitted to Probate April 30th A.D 1861. as the same appear from the Records of said Court

In Testimony whereof, I have hereunto set my hand and affixed the Seal of said Court. at Cincinnati this 16th Day of May A.D 1863.

Seal

5¢ Rev Stamp

Alex Paddack
Probate Judge and Ex-officio Clerk

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The State of Ohio }
Hamilton County } ss.

I Alex Paddack. Dole Judge of the Probate Court, within and for said County hereby certify. that the Signature attached to the above certificate purporting to be that of Alex Paddack, is his genuine signature; and that he was, at the time thereof, ex-officio Clerk of said Probate Court, and, as such full faith and credit are due his acts.

Seal

Witness my hand and the seal of said Court at Cincinnati this 16th day of May AD 1863.

5¢ Rev Stamp

Alex Paddack
Probate Judge

and the Deposition of William Fowler which was Read as evidence in said cause, reads in words and figures as follows, towit;

The said William Fowler being first duly sworn by me, as a witness in the said cause previous to the Commencement of his examination, to testify the truth as well on the part of the plaintiffs as the defendants in relation to the matters in controversy between said plaintiffs and defendants so far as he should be interrogated, testified and deposed as follows;

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1 Interrogatory. Are you acquainted with the parties to the above Entitled Suit?

Answer. I am not acquainted with any of the Complainants except Eben Dunning. I know all the Defendants except Timothy B Mason - I have seen him, but dont Know that I would Know him now.

2 Interrogatory. Do you Know whether Eben Dunning is living or dead?

Answer. I Know he is dead.

3 Interrogatory. Do you Know whether Timothy B Mason is living or dead.

Answer. I do not.

4 Interrogatory. How long have you been acquainted with Mark Ayres and Theadore Ayres, and when did you first become acquainted with them?

Answer. I think it was sometime in the year 1853, when I first became acquainted with them. It may have been some time before that.

5 Interrogatory. Where were the said Mark & Theadore Ayres when you first became acquainted with them, and what were they doing?

Answer. They were living at Concord, in this County, engaged in selling goods.

6 Interrogatory. Where did you reside at that time.

Answer I lived in Concord in this County.

7 Interrogatory - State whether said Theadore Ayres and Mark Ayres were selling goods together, or Separately, or in what capacity, at the time you Speak of?

Answer, they were selling goods together at the time - I dont Know whether they were partners or not but think they were.

8 Interrogatory. State how long the said Theadore Ayres and Mark Ayres resided in Concord, as Spoken of by you above?

Answer. I think it must have been between two

th
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and three years. Theadore Ayres came first, and left first. to each one was there about the same length of time.

9 Interrogatory. Where did Theadore Ayres leave Concord, as you state, and where did he go when he left.
Answer. when Theadore Ayres left Concord, he moved on what is called the "Hollingsworth Farm" about the last of march, or the first of April 1854.

10 Interrogatory How long did Theadore Ayres reside upon the Hollingsworth Farm" from the time he went on it, until he left it, if he has left it all ~~it~~?
Answer. I think he lived there one or two years.

11 Interrogatory. What was he doing while on said farm?
Answer. He was cultivating and working the farm.

12 Interrogatory. What was Mark Ayres doing while Theadore Ayres was residing on said farm.
Answer. Mark Ayres was attending to the Store in Concord, part of the time Theadore was on the farm Mark Ayres sold out the Store to Charles Sherman about the last of December, 1854, or the first of January 1855.

13 Interrogatory. Did Theadore Ayres have a family while he resided on said farm, and if so did said family reside with him on said farm?
Answer - Theadore Ayres had a wife and two Children who lived on the farm with him until his wife died in February, 1855.

14. Interrogatory. did said Theadore Ayres and his family reside on said farm continuously from the time they moved on to the same, as spoken of by you above, until his wife died in February 1855 or did they have some other residence part of the time.
Answer. They lived on the farm from March or

April 1854. until February 1855.

15th Interrogatory. on what Sections or parts of Sections, is what
240th Page is called the "Hollingsworth Farm". located!

Answer. The "Hollingsworth Farm." is located on parts of Sections eight, and nine, Town twenty seven, Range Eleven West Iroquois County Illinois. there may be some in Section four, same Town and Range, but I do not Know Certain.

All of which is objected to by S. T. Bowie Esq Counsel for Defendants.

Cross Interrogatories, on part of Defendants.

1 Interrogatory. Do you Know of any portion of the "Hollingsworth Farm" Spoken of by you above, having been sold on a Mortgage, if so, State how much of said farm, and whether the improvements were on the same so sold and State all you Know in relation thereto!

Objected to

Answer. I have heard that there was a part of said land sold on a Mortgage, but how much I dont Know, but understood it was part of the improvement

Wm T. Fowler

Subscribed and Sworn to before me this 31st Day of May AD 1860.

A. H. McNeill J.P. Police Magistrate

The affidavit of J. Baird, ~~and~~ marked as Exhibit "A" and made a part of amended answer of Timothy B. Mason, is in words and figures following to wit—

241st Page

The State of Illinois }
Iroquois County } In the Iroquois Cir Court

Reeves etal vs Mason etal — Chancery —

Personally appeared before the undersigned Zebulon Baird who after being duly sworn upon his oath saith that in July 1858 he was retained by said Timothy B. Mason to act as his counsel in the defence of the above entitled chancery case, that at the time he was so retained he prepared on behalf of said Mason his answer which is now on file in said case; that since said answer has been filed the bill of complaint on file has been altered in the following particulars viz. 7th page 11th line by striking out 'Theadore' Same page 15th line by striking by striking out "were" & interlining "the said" Mark Ayers, Same page 19th line by striking out "they" & interlining "he the said Mark" page twenty three line 7 by striking out "Theadore Same page 27 line by striking out "Theadore" 2d page by striking out "Theadore" & inserting "Ayers" He further states that said bill as originaly drawn remained on file, without said alterations until after the filing of said answer, & that said alterations have been since made, but when or by whom he has no personal Knowledge, but he positively states that they were made without his ~~Knowledge~~ or consent — and as he believes without the Knowledge or consent of his said Client who is & has been a nonresident of this State ever

since the Commencement of said suit;
242 2 Page And he further states that so far as he has any personal Knowledge said alterations were made without the permission of said Court
He further states that he had no Knowledge of said alterations until since the hearing of this Case has Commenced before his honor Judge Starr at Chambers, during the present week.
He further says that said alterations according to his view seriously & very materialy change the nature of said bill, & requires a new & additional answer thereto. he deems it expedient that the defendant Mason should take additional evidence to meet the exigency which said alterations present
& further saith not

J. Baird

Subscribed and Sworn to
before me this 21st Day of July AD 1859.
L. R. Starr
Judge of the 20th Judicial Cirt of the State of Ill.

And afterwards to wit on the 23rd Day of June AD 1864 the same being one of the regular days of the June term of said Court for the year last aforesaid, and said Court being duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record in words & c as follows to wit;

243 D

" Mark E. Reeves. James E Reeves. Isaac Stephens,
" Francis L Good. William R. Phipps. Henry Falls,
" Martin Stadler. Max Stadler. Robert Mitchell,
" Frederick Rammelsburg. Calvin B Camp. John Perdue.
" Fitch B. Stacy. Edward H. Reynolds. William H. Hatcher.
" Samuel R. Haggard. Daniel O. Bradley and Abram
" Conghenour administrators of the estate of Eber
" Denning deceased — in the Fayette Circuit Court. To the June term 1864 In Chancery

" 33 vs

" Mark Ayers. Theadore Ayers. Jesse B. Ayers,
" and Abigal H. Mason, widow of Timothy B. Mason,
" and Lucretia M. Truax. Abbie H. Mason. Edward B.
" Mason. Helen M. Mason. and William M Mason.
" the children and heirs at law of Timothy B.
" Mason, deceased, and Anna M. Ayers. the grand
" child and heir at law of said Timothy B Mason.
" deceased. and Francis C. Briggs. Lewis C. Hopkins.
" and James M. Getchel. who together with the said
" Abigal H. Mason are the Executors of the last will
" and testament of Timothy B. Mason deceased.

" And now on
" this the 17th day of June 1864 it being the 4th day of
" June term 1864 of the Circuit Court of said County
" that this cause came on to be heard and the
" Court being fully advised in the premises doth
" order adjudge and decree that the Complainants
" hath no equity in their favor and that their said
" Bill be dismissed, and that the Defendants have
" and recover of the Complainants their costs
" and charges in this cause, and that the Defendants
" have execution for the same. To the decision of the Court
" dismissing the bill of Complaint, the Complainants by their
" Counsel enter their exceptions —

CERTIFICATE.—Culver, Page & Hoyne, Stationers, 128 and 130 Lake Street, Chicago.

STATE OF ILLINOIS,
IRIQUOIS COUNTY. } ss. **Office of the Clerk of the Circuit Court.**

I, **THOMAS VENNUM,** Clerk of the Circuit Court, in and for the said County, in the State aforesaid, do hereby certify that the above and foregoing is a true and literal copy of the proceedings of the Iroquois County Circuit Court in said Cause between Mark E Reeves et al Complainants and Mark Ayres et al Defendants, and that the same also contains a true copy of the papers filed in said cause forming any part of the Record of said Court in said Cause

In Testimony Whereof, I hereunto set my name and the Seal of said Court, at Office in Middleport, in said County, this fourth day of March A. D. 1865.

Thomas Vennum Clerk.

State of Illinois }
Livingston County } ss I Charles R Starr Judge of the Twentieth Judicial Circuit in the State of Illinois do hereby certify that the foregoing Record contains a true Copy of the whole and only evidence produced and read to the Court on the trial of the above entitled cause tried in the Iroquois County Circuit Court at the June Term A D 1864 thereof

Given under my hand and seal this 21st day of March A D 1865

C. R. Starr
Judge of the 20 Judicial Circuit

245 Ms

State of Illinois } In Logan Circuit Court
Third Grand Division } To April Term 1865

Record Stephens Hes et al
vs
Mark Ayers et al } Assignment of Errors -

And now the said plaintiffs in Error come and say, that in the Record and proceedings aforesaid, there is manifest Error in this To wit;

1st The Circuit Court Erred in rendering a decree for the defendants in error instead of the plaintiffs in Error

2d The Circuit Court should have rendered a decree infavour of the plaintiffs in Error according to the prayer of their bill and not infavour of the said defendants in Error

3d The Circuit Court erred in permitting the defendants to amend their answer after the cause had been submitted

By reason Whereof the plaintiffs pray that said judgment & decree may be reversed &c

#4th The Circuit Court erred in not suppressing the deposition of Mark Ayers

George B Young &
James Hilton
Att'ys for Plffs in Error

And now come the said defendants in Error, and say that in the said Records Proceedings & judgment there is no Error for which the same should be reversed =

John Clark
for defts in Error
B. J. K. Cooper

187 64

Mark E. Reeves et al
vs
Mark Ayres et al

Feb's Ath. 5. 1865
Leland Clk

Clerks fees
making transcript
$60.00

SUPREME COURT,

STATE OF ILLINOIS.

Third Grand Division.

APRIL TERM, A. D. 1865.

REEVES, STEPHENS & CO., et al.,
Creditors of MARK AYERS & THEODORE AY[illegible]
PLAINTIFFS IN ERRO[illegible]
vs.
MARK AYERS AND THEOD[illegible]ORE AYERS, JE[illegible]
SE B. AYERS AND TIMOTHY B MASON, et a[illegible]
DEFENDANTS IN ERROR.

ERROR TO IROQUOIS.

JOINER & FLETCHER,
ATFORNEYS FOR PLAINT[illegible]FS IN ERROR.

JOHN CLARK AND S. G. BOVIE,
ATTORNEYS FOR DEFENDANTS IN ERROR.

Points and Brief of Auth[illegible]ities of Plaintiffs.

MIDDLEPOR[illegible], ILLS.
IROQUOIS PRES[illegible] PRINT.

STATE OF ILLINOIS, IROQUOIS COUNTY.

SUPREME COURT, STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

REEVES, STEPHENS & CO., et al.,
Creditors of MARK AYERS & THEODORE AYERS,
PLAINTIFFS IN ERROR.
vs.
MARK AYERS AND THEODORE AYERS, JESSE B. AYERS AND TIMOTHY B MASON, et al.
DEFENDANTS IN ERROR.

ERROR TO IROQUOIS.

Points and Brief on the part of the said Plaintiffs in Error.

This was a suit in chancery commenced by the said complainants against said defendants, to set aside certain mortgages and deeds, and to satisfy the judgments in favor of complainants and against said Mark and Theodore Ayers.

The facts in this case are briefly these: Mark Ayers and Theodore Ayers engaged in the mercantile business at Concord, in Iroquois County aforesaid, in the year 1852, as partners, under the name and style of Ayers & Co., and they, as such partners, continued in business until the year 1855, and as such partners did a large amount of business, as such merchants, in buying and selling goods, wares and merchandise, and in buying and selling land, &c. That during that time they, as such partners, became largely indebted to the said complainants for goods, wares and merchandise purchased of them. That they, the said Mark and Theodore principally purchased on credit, &c.— And that out of the proceeds of said goods, wares and merchandise they purchased the lands in question, together with other lands, and took the title to the same in the name of Mark Ayers only, instead of Mark and Theodore. The said Mark and Theodore during the time they were engaged in business, as aforesaid, purchased two farms, one called the Hollingsworth farm, and the other called the King or Sherman farm, and they took the titles to both of said farms in the name of Mark Ayers only, instead of Mark and Theodore Ayers; and that both of said farms were purchased by said partners, and paid for out of the proceeds of the sales of their goods, wares and merchandise at Concord, aforesaid. That soon after they purchased the Hollingsworth farm, the said Theodore Ayres moved on, and lived upon said Hollingsworth farm, and remained there and cultivated said Hollingsworth farm, and was in full possession thereof at the time the mortgage was given by Mark Ayers and wife to Timothy B. Mason, and at the time Mark Ayers and wife deeded said Hollingsworth farm to Jesse B. Ayres, all of which is

fully shown by the pleadings and evidence in this cause.

The Hollingsworth farm was mortgaged by said Mark Ayers and wife to Timothy B. Mason—and while said Mark and Theodore were so indebted to said complainants as admitted in the answer of T. B. Mason,—on the 19th of September, 1854, and the Sherman farm was mortgaged by them to said Mason, on the 9th day of February, 1855.

And on the 7th day of April, 1856, said Mark and wife conveyed said Hollingsworth farm to Jesse B. Ayers, and on the same day said Mark and wife conveyed the Sherman farm to said Jesse B. Ayers; all of which is fully shown by the record, and the record fully shows also that at the time said mortgages and deeds were given, the said Theodore Ayers was in the full and entire possession of the said Hollingsworth farm.

The pleadings and evidence in this cause fully show that said Mark and Theodore Ayers were in partnership at Concord, and that out of the proceeds of their partnership property the said Hollingsworth farm and King or Sherman farm were purchased, and the deeds to the same were taken in the name of Mark Ayers, instead of Mark Ayers and Theodore Ayers, for convenience, and to facilitate and expedite conveyances of said lands in the case of the sales of said lands, and that said lands, after said deeds were taken in the name of Mark, were held by Mark and Theodore as partnership property, and for their benefit as such partners.

There is nothing in the record which shows that

Theodore Ayers ever at any time gave his consent to said Mark Ayers (or to any other person) to mortgage or deed said lands; but on the contrary the whole record shows that said Mark and wife mortgaged and deeded said lands as aforesaid without the consent or knowledge of said Theodore.

It is further shown by the pleadings and evidence in said cause, that said Mark Ayers and wife mortgaged to Timothy B. Mason, the father-in-law of said Mark, to secure an individual indebtedness moving from said Mark to said Mason, and said Mark and wife deeded to said Jesse B. Ayers, without any consideration paid by said Jesse B. Ayers. But it is claimed that the consideration for said deeds was an old indebtedness moving from Mark and Theodore to Jesse B. Ayers, but it is not shown anywhere that the notes given by said Mark and Theodore Ayers to said Jesse B. Ayers were ever cancelled or given up to said Mark and Theodore Ayers.

And the said record shows that at the April term of said Iroquois Circuit Court for 1855, the said Reeves, Stephens & Co., Henry Falls, Martin Stadler & Bro., Robert *M*itchell and Fred Rammelsberry, and Calvin B. Camp obtained their respective judgments against the said *M*ark and Theodore Ayers for the amount of their claims which they held against said *M*ark and Theodore Ayers at and before the date of said first mortgage to T. B. *M*ason, upon which judgments executions were issued and returned by the Sheriff of Iroquois County: no property found, &c.

And at the October term of said Circuit Court, for 1856, of said County of Iroquois, the said complain-

ants, Perdue & Stacy, et al., recovered their respective judgments which are set out in the record of this cause, upon which executions were issued and returned: no property found, &c.

Thereupon the said complainant's filed their bill in chancery to set aside said mortgage to Timothy B. Mason and said deeds to Jesse B. Ayers, and to obtain a decree to sell said lands to pay the claims of the said complainants, which had been reduced to judgments against the said Mark and Theodore as partners, as aforesaid. Fraud is charged against said Mark, Mason, and Jesse B. Ayers, and that no consideration was paid by said Mason for said mortgages, and no consideration was paid by the said Jesse B. Ayers for said deeds, &c.

The said Timothy B. Mason sets up as a defence that he was an innocent mortgagee without notice of the equitable title of Theodore Ayers or the interests of said complainants, or in other words, that he is a bona fide mortgagee, and should be protected as such.

Jesse B. Ayers sets up the same facts and claims that he is a bona fide purchaser, without notice.

From the above state of facts, we present to the consideration of the court the following points, argument and brief in this cause, to-wit:

I.

The said lands in controversy are partnership property, they having been acquired by said Mark and Theodore Ayers with the proceeds of the goods, wares, and merchandise of said firm, although the title to the

same was taken in the name of Mark, instead of Mark and Theodore.

3 *Kent Com.* 36, 37, 38, 39, 40,
Storey on Partnership, §92, 93, 94, *and notes*,
1 *Storey's Eq.* §674,
2 *Storey's Eq.* §1207,
Adams' Eq. 553, §245–246,
4 *Metcalf R.* 541, *Burnside vs. Merrick*,
7 *Foster* (*N. H.*) 37, *Jarvis vs. Brooks*,
21 *Penn. R.* 9 *Harris* 257, *Maddernell vs. Millison*,
15 *Geo. R.* 445, *Black vs. Black*,

II.

The said lands being partnership property, the said Mark Ayers had no power to mortgage the same to secure his individual debt to his father-in-law, Timothy B. Mason. The power which one partner has to sell, assign, mortgage, or in any way dispose of the partnership property, is confined exclusively to the partnership business, and does not extend to his selling such property for the benefit of one of the partners, for his own benefit, or to secure his individual indebtedness.

Storey on Partnership §93–94–95, *and notes.*
Storey on Partnership §101.
Storey's Eq. §674–675–676–677.
14 *Ill. R.* 405, *Newell vs Buckingham.*
4 *Gil. R.* 36, *Ladd vs. Griswold.*
4 *Scam. R.* 429.
7 *Wen. R.* 326 *Evengham vs. Ensworth.*
3 *Kent Com.* 43 *to* 46, *and note.*
Storey on Partnership, 212.
11 *Wen. R.* 75, *Whitaker vs. Brown.*
14 *Wen. R.* 141, *Joyce vs. Williams.*
12 *Peter's R.* 221, *Rogers vs. Batchelor.*

We might quote many other authorities on this point, but deem it unnecessary, because the position is too well settled to admit of contradiction: that each partner, in a partnership transaction, must confine himself, when selling or mortgaging the partnership property, to the business of the partnership business, and cannot, under any circumstances, except by and with the other members of the partnership, sell or mortgage the partnership property for the benefit of one of the members of the firm.

III.

Each partner, in a partnership business, has a lien on all the partnership property, for the purpose of paying the debts against the firm, and for the purpose of satisfying himself the amount due to him, after the partnership debts are paid off and satisfied, and no partner has any right to apply the partnership property to his own benefit, without the consent of all the members of the firm.

1 *Story's Eq.* §675 *to* 678.
Story on Partnership §360, 361, 326,
Adam's Eq. 546, §243, *and notes to* 549,
4 *Gil. R.* 36,
4 *Scam.* 435
3 *Kent Com.* 65 *to* 66,
2 *John's R.* 280, *Gibbs vs. Corwin*,
16 *John's R.* 102, *In matter of Smith.*

IV.

The same lien which each partner has upon all partnership property, the creditors of the firm have, and have a right to enforce such lien, or in other words

they have a right to work out that lien for their own benefit.

4 *Gil.* 36 *Ladd vs. Griswold*,
4 *Scam. R. Tallcott vs. Dudley*.
1 *Story's Eq.* §546 *and notes to* 549,
Story on Part. 97 *to* 98—326 *to* 361;
3 *Kent Com.* 65 *to* 66,
2 *John's R.* 280, *Gibbs vs. Corwin*,
16 *John's R.* 102, *In matter of Smith*,
2 *Story's Eq.* 1207–1243–1253,

Therefore the said real estate so mortgaged to the said Timothy B. Mason and deeded to the said Jesse B. Ayers, is still liable, notwithstanding said mortgages and deeds, and should be subjected by a decree to pay the debts in favor of the said complainants, as the creditors of Mark and Theodore Ayers, the said Theodore never having given his consent to the mortgaging or deeding said lands.

V.

The said deeds of the said Jesse B. Ayers cannot interfere with the judgments of the said Reeves, Stephens, & Co., Henry Falls, and others, whose judgments were rendered in April, 1855, because their judgments were rendered and became a lien long before the deeds were given by said Mark and wife to the said Jesse B. Ayers. And as to the said mortgages given by said Mark and wife to said Mason, they cannot prevent said complainants from recovering, because said Mason was not a bona fide mortgagee in the eye of the law. Nor is the said Mason a bona fide mortgagee, in the meaning of the law, as against any of said complainants, although their judgments were not rendered

until after said mortgages were given, even if the court should be of the opinion that there was no fraud between the said Mark and the said Mason, for the following reasons, to-wit:

The said Mason did not advance any new consideration for said mortgages, nor did he relinquish any security for his pretended pre-existing debt which he pretends he held against the said Mark, but on the contrary it is shown that the consideration of said mortgages, if any there was at all, was money loaned by said Mason to the said Mark while the said Mason and Mark were in partnership in Cincinnati, in the buying and selling of goods there, as such partners, for which the notes mentioned in said mortgages were given a long time before said mortgages were given; and the said Mason did not give up said notes, or relinquish any security which he had of said Mark, before said mortgages were given. Therefore he was not a bona fide mortgagee within the meaning of the law.

To constitute a bona fide purchaser or mortgagee, the purchaser or mortgagee must advance a new consideration or relinquish some security for a pre-existing debt, and without any notice of the rights of third parties.

4 *Paige's R.* 215, *Dickenson vs. Tillinghast.*
4 *Scam. R.* 389, *Powell vs. Jeffries.*
23 *Ill. R.* 606, *Metropolitan Bank vs. Godfrey.*
18 *Ill. R.* 346, *Brown et al. vs. Welch.*
10 *Peter's R.* 210, *Boon vs. Chiles.*

It is also shown that said Theodore lived on and had full possession of the Hollingsworth farm at the time said mortgages and deeds were made, and had

full possession of the same; therefore his possession was notice to all the world of his interest in said lands.

1 *Story's Eq.* 395 *to* 404.
1 *Vesey* 437; 16 *Vesey* 249.
4 *Scam. R.* 151, *Dyer vs. Martin et al.*
15 *Ill. R.* 542, *Rupert vs. Mark.*
16 *Wen. R.* 213, *Tuttle vs. Jackson.*
5 *Gil. R.* 186, *Putnam vs. Gaty.*
3 *Scam. R.* 339.

VI.

Under the state of facts in this case the said Mark Ayers did not and could not deprive the said Theodore of his legal and equitable interest in said lands, set forth in said bill of complaint, unless the said Theodore gave his consent to the mortgaging and deeding said lands; and the said Theodere never gave his consent. Therefore the creditors had a right, and have now a right, to work out the lien which the said Theodore had upon said lands, and sell said lands under a decree of court, and appropriate the proceeds thereof towards the payment of their respective claims according to the prayer of said complainants' bill.

VII.

The assent of Theodore cannot be implied. If it were given at all, it must have been expressly given. The assent of one of the members of the firm to the appropriating of the partnership property for the payment of the individual indebtedness of one of the members of the firm, must be express, and cannot be im-

plied, and more especially must the assent be expressed where the property is real property.

1 *American Leading Cases*, 442 *to* 454.
10 *Wen. R.* 461, *Mercein vs. Mack.*
4 *John Ch. R.* 523–525.

Therefore the said Mason was not an innocent mortgagee for a valuable consideration, without notice, and his mortgages should be postponed and declared void so far as they interfere with the judgments of said complainants. And that said deeds of the said Jesse B. Ayers should be declared void so far as they interfere with the said judgments of said complainants, because he was not an innocent purchaser for a valuable consideration, without notice. That said creditors have a right to said lands to pay off and satisfy their judgments because they sold to said Mark and Theodore, as partners, on the faith of the partnership property, while said Mark and Theodore were engaged in business as such merchants at Concord, and had a right to have the partnership property of Mark and Theodore applied to the payment of their claims against said partners, in preference to the individual creditors of the said Mark; and because the said lands were purchased with the proceeds of the goods, wares and merchandise which the said complainants had sold them, and for which the said Mark and Theodore owed said complainants, and for which said judgments were rendered in favor of said complainants and against said Mark and Theodore; and because said Theodore never gave his consent to the making of said mortgages to said Mason, nor did said Theodore give his consent to the making of said deeds to said Jesse B. Ayers; and because said Mason was not an innocent mortgagee

without notice of said complainants' demands against said Mark and Theodore Ayers; and because said Jesse B. Ayers was not an innocent purchaser, without notice, for a valuable consideration. But should it be considered that said Jesse B. Ayers was an innocent purchaser, without notice, within the meaning of the law, his deeds do not interfere with the judgments of Reeves, Stephens & Co., and others, whose judgments were rendered long before the deeds of said Mark and wife were made to said Jesse B. Ayers, and became a lien upon said lands before said deeds were made, and were, at the time said deeds were made, a lien upon all said lands.

Therefore the decree rendered by the Circuit Court in this cause should be reversed.

JAMES FLETCHER,
GEORGE B. JOINER,
Atty's for Plaintiffs in Error.

A° 187

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION

APRIL TERM. 1865.

MARK REEVES *et al.*,

vs.

MARK AYRES *et al.*

Error to Iroquois.

BRIEF FOR DEFENDANTS IN ERROR.

Filed Apl. 25, 1865
Clerk.

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION

APRIL TERM, 1865.

MARK REEVES *et al.*,

vs.

MARK AYRES *et al.*

Error to Iroquois.

BRIEF FOR DEFENDANTS IN ERROR.

The facts in this case are briefly: That the Defendant Mason, residing in Cincinnati, Ohio, desiring to assist his son-in-law, Mark Ayres, and to enable him to start in business as a merchant at Concord, Ill., loaned him upwards of ten thousand dollars in money, about $5,000 of which Mason himself borrowed upon a mortgage of his own homestead. That Mark gave him no security for this loan, but promised, that as soon as he became the possessor of lands in Illinois, he would secure the loan on such lands; (it seemed to be in the contemplation of the

parties, either that Mark would invest a part of this loan in lands or would invest the proceeds of the sale of his merchandise in lands, in Illinois.) Mark accordingly commenced the mercantile business at Concord, and took into the firm his younger brother Theodore, as a co-partner, the style being Ayres & Co. Theodore, however, was without capital. The *capital* of the concern consisting of the money so loaned by Mason to Mark, (see answer of Mark to 25th Int). Out of the proceeds of the business, lands were purchased, and among others, certain lots in Concord, and lands known respectively as the Hollingsworth and Sherman or King farms. The title to these lands and lots was taken in Mark, and the records showed Mark to be the legal owner thereof. Mason learning from Mark that he had acquired these lands and lots, requested a fulfilment of his promise from Mark that he would secure him on these lands and lots, and accordingly Mark made him a Mortgage on the Hollingsworth farm and the lots in Concord, and subsequently released the Mortgage on the lots and took in lieu thereof a Mortgage on the Sherman or King farm. At the time these Mortgages were made, the firm of Ayres & Co. was still doing business as usual, not having dissolved. Mason resided in Cincinnati, and had no knowledge of the existence of the co-partnership of Mark and Theodore, but supposed the mercantile business at Concord was being carried on solely by Mark, and supposed and believed that the lands and lots so mortgaged were owned by Mark alone, and had no knowledge that Theodore had or pretended to have any interest in the mercantile enterprise at Concord, or the lands so mortgaged; and in fact until after the filing of this bill of complaint, Mason had no notice or knowledge of the co-partnership of Mark and Theodore. The joint and several answers of Mark and Theodore disclose the fact, that the Mortgages to Mason were made with the knowledge and consent of Theodore; indeed, Theodore resided in the County of Iroquois, and a portion of the time on the Hollingsworth farm; and as Theodore was aware that the capital of the firm was furnished by Mason, he of course freely acquiesced in the execution of the Mortgages by Mark to Mason. The complainants are judgment creditors, Mark and Theodore having obtained their judgments subsequent to the making of the several Mort-

gages to Mason, and accordingly they file their bill, alleging that the Mortgages are fraudulent and void. That they were made without consideration and to hinder, delay, and defraud them and the other creditors of Mark and Theodore in the collection of their said demands, and they pray that the said Mortgages may be set aside and the lands sold to satisfy their judgments. The Bill was amended as hereinafter mentioned, and Mason's answer to the original and amended Bill, as well as the joint and several answers of Mark and Theodore, set up the foregoing facts, and the proof in the case conclusively establishes them.

It is now contended by the Plaintiffs in Error, that these lands so mortgaged were co-partnership property, and, as such, must be applied to the payment of their judgments, although they were mortgaged to Mason for a *bona fide* indebtedness from Mark to him. That it was a fraud upon the co-partnership creditors to convey the lands by way of mortgage for the individual debt of Mark, although the title to the lands was vested in Mark, and Mason had no notice of the equitable interest of Theodore, and that at least the interest of Theodore should be applied to the payment of their judgments, upon the ground that he had a lien on these lands as co-partner, and this lien can be worked out by the complainants for their benefit. They, however, assume in this argument that it appears the Mortgages were made without the consent of Theodore, which is not shown, nor even averred in the Bill. It is further contended that as the mortgages were made to secure a *pre-existing* debt, therefore, they cannot stand against the prior equity of the complainants.

It is conceived that these positions of Plaintiffs in Error proceed upon a total misconception of the rights and equities of the creditors of a copartnership in the property of the firm, the title to which has been vested in one of the members, and which has been applied to the payment of the individual debts of that member.

The following propositions of law, we hold, are well established by

authority, and are applicable to, and must govern in the decision of this case.

1st.—That copartnership creditors have no specific lien, legal or equitable, upon the copartnership property, no more than an individual creditor has a lien upon the private estate of his debtor.

Allen et al., *v.* Centre Valley Co., 21 Conn. 130.
Ex parte Ruffin, 6 Vesey, 119.
Story on Partnership, § 326.

2d.—A bona fide purchaser, or mortgagee, who obtains the legal title to partnership lands, from the partner who holds the title, without notice of the equitable rights of others in the property, as a part of the funds of the copartnership, is entitled to protection in Courts of Equity as well as Courts of law.

Buchan *v.* Sumner, 2 Barb. C. R. 165.

3d.—That as the creditors of the copartnership have no specific lien on the property, but the lien being that of the several copartners, and only to be worked out through *them, and by their assent*, in favor of the creditors, if the several copartners surrender that lien to an individual creditor of one of them, bona fide, by a mortgage, or otherwise, such act is valid, and there is nothing remaining to be worked out by the creditors.

Story on Partnership, § 97, § 326, § 360, and cases cited.
21 Barb. S. C. R. 596.

4th.—Where the fee in real estate not *used* for copartnership purposes is held by the members of a copartnership, a mortgage by one of them of his individual interest therein, to a bona fide mortgagee, for his separate debt is valid, even against his copartners.

McDermot *v.* Lawrence, 7 Serg. and R. 438.
Forde *v.* Herron, 4 Munf. 316.

5th.—And if the doctrine as held by the Supreme Court of Pennsylvania, in the case of McDermot *v.* Lawrence, is the law, *a fortiori*, the mortgagee would hold, where he found the legal title vested in one of the copartners without notice that it was held as partnership property, as in the case at bar.

6th.—A party is not allowed to state one case in a bill, or answer and make out a different one by proof. The *allegata* and *probata* must agree. The latter must support the former.

McKay *v.* Bisset et al, 5 Gil. 499.

The case stated in the bill is that Mason took the mortgages in question from Mark Ayres *without consideration*, and in collusion with Mark, in order to hinder, delay, and defraud the creditors of Mark and Theodore, and that Mason *knew* that the lands were the copartnership property of Mark and Theodore, which case is expressly and clearly negatived by the evidence; and the complainants then seek to recover upon another and a totally different state of case.

7th.—Before a dissolution of the copartnership, and while the copartners are administering their own funds, the copartnership creditors have no specific lien upon the joint funds, and if in good faith, the partnership property is mortgaged by the consent of the firm to a creditor for a separate debt of one of the copartners, it will be valid against the joint creditors and all others.

Kirby et al., *v.* Schoonmaker et al, 3 Barb. Ch. R. 46.

In this case the first mortgage was made to Mason, Sept. 19th, 1854, while the firm of Ayres & Co. were carrying on their mercantile business, and the second mortgage was made to make good the security of the lots in Concord, which were released from the first mortgage. It is not alleged in the bill that the firm was insolvent at the date of either of these mortgages, nor in fact that it was insolvent at any time; but the bill alleges that the title to these lands was taken in Mark by arrangement betweenMark and Theodore, in order to delay and defraud

their creditors, and that the merchandise was bought on credit, to be sold, and the proceeds invested in real estate, and the titles placed in Mark, to defraud creditors, and that the several mortgages to Mason were a part of the previously concerted fraudulent scheme of Mark and Theodore. It is not alleged that Mark and Theodore, being *insolvent* and knowingly so, made the mortgages to secure the *individual* debt of Mark, in fraud of creditors.

That point is not made in the brief, nor anywhere intimated in the bill or proofs, and it would only be in such a case, and where the insolvency was known to the individual creditor, that a Court of Equity would interpose in behalf of creditors.

The doctrine in reference to the administration of copartnership assets for the payment of copartnership debts and individual assets for the payment of individual debts, has application to cases where the copartnership is insolvent, or to cases of dissolution, or where one of the copartners dies, when the respective assets are then marshalled under the direction of a Court of Equity.

Ladd *v.* Griswold, 4 Gil. 25.

It is further insisted in this case that Mason is not a bona fide mortgage as against the complainants, because he advanced no new consideration, and relinquished no security, but received the mortgages to secure a pre-existing debt. But this doctrine as recognized in the authorities cited, cannot be invoked to the assistance of the complainants in this case, because they never had any specific lien upon or equitable claim against the real estate so mortgaged.

The first case cited by complainants on this point is that of Dickerson et al. *v.* Tillinghast et al. 4 Paige, 215, which has a case under the registry laws, when land had been conveyed to one by mortgage, and the mortgagee neglecting to record it, the mortgagor conveyed it subsequently to another in fee, to secure a pre-existing debt and the Chancellor says: "If a person has an equitable *title to*, or an equitable *lien*

upon real estate, a subsequent purchaser who obtains a conveyance of the legal estate, *with notice* of that, equity cannot in conscience retain such legal title, as he has no equity united with it, so if he merely takes the legal estate in payment of, or as security for a previous debt, without giving up any security, or divesting himself of any right or placing himself in a worse situation than he would have been if he had received notice of the prior equitable title or lien previous to his purchase, this Court will not permit him to retain the legal title he has thus obtained to the injury of another."

The case of Powell et al. *v.* Jeffries et al. 4 Scam. 387, cannot aid the complainants, for Mason, who obtained the legal title to premises on which he also held a previous mortgage, obtained such legal title with notice of an existing recorded mortgage, and he paid no new consideration for his deed. The adverse equity was that of one having a *mortgage* on the very premises in question, and the Court in this case cite the above case of Dickerson *v.* Tillinghast as authority. The next case cited is that of Brown et al. *v.* Welch et al. 18 Ill. 343, which was a case in which land was bought by Welch, taking a bond for a deed and paying part of the purchase money. Brown & McCahan afterwards obtained the legal title, with *full knowledge* of Welch's equity, and they had paid none of the purchase money.

The case of The Metropolitan Bank *v.* Godfrey et al. 23 Ill. 579, although involving many other points, recognized and cited the cases of Dickerson *v.* Tillinghast, and Brown *v.* Welch. But the facts in the case, which are voluminous, and therefore not repeated here, disclose a very different state of circumstances, and of a totally different character from those involved in the case at bar.

The case of Boone et al. *v.* Chiles et al. 10 Pet. 177, is not in point for complainants. It was a contest between persons having legal and equitable claims upon the specific property and did not grow out of copartnership transactions or transfers for pre-existing indebtedness.

There is also another class of cases not referred to by complainant in his brief, in which the doctrine contended for is applied, and it is where property is obtained by one man from another by *fraud*, and is again transferred to a third person, who takes it without notice of the fraud. In such case it is held that the *original owner* shall recover it from the innocent purchaser without notice, if he received it for a pre-existing debt, for as he has given up no security, nor placed himself in a worse situation than he would have been if he had had notice of the equity of the first owner, he shall not be permitted to hold it against such owner.

As to the point that Theodore was in possession of a part of the lands, the (Hollingsworth Farm), and that Mason is therefore visited with notice of his interest therein. It is sufficient to answer that he was not in possession adverse to the title of Mark, and the law presumes that he was in possession in subordination to the title of the true owner, and Mark being such owner of Record, Mason was not bound to make further inquiry.

But even if this case were put upon the broad ground of the respective equities of Mason and the complainants in this property, independent of Mason's legal title, that of Mason would prevail. His money, so loaned Mark, constituted the capital of the firm of Ayres & Co., and was invested in these very lands. Mason's own homestead, in his old age, was mortgaged to raise this money for Mark, and to enable him to start this mercantile enterprize at Concord. True, the complainants furnished the firm some merchandise, and it is possible that the proceeds of that merchandise, or some part, was invested in these lands, but there is no proof of it; but the proof is express that a portion of the money of Mason was invested in real estate (see deposition of Mark Ans. to 30th Int.) amounting to about $3000, and in fact that is about the value of this security now to the heirs of Mason. The prior incumbrancers taking the remainder.

It will appear by reference to the Record, though omitted in the

Abstract, that on the 27th of April, 1858, the complainants obtained leave to amend their bill, "so as to require Timothy B. Mason, one of the defendants, to answer the said bill of complaint under oath," by the first of September following. Pursuant to that order and under the supposition that the bill had been or would be so amended, said Mason filed his answer *under oath*, on the 24th of July, 1858. But the complainants finding said answer a full and complete denial of the allegations in the bill, that defendant Mason had notice at the time of the execution of the Mortgages to him, that the land so mortgaged was the copartnership property of Mark and Theodore Ayres, and that said Mark and Theodore were copartners in business, and that said Mark and Theodore solicited him to take said Mortgages, and that the same were taken without consideration and as a mere cover, to place the lands beyond the reach of the creditors of Mark and Theodore, and that he also denied all knowledge of the fact, that Mark and Theodore, or either, was in debt as alleged, and that in fact he supposed Mark was in business for himself alone, and that the Mortgages were given to secure an actual *loan of money* from the defendant Mason to Mark, of about ten thousand dollars,. In fact, finding that the sworn answer of Mason entirely negatived the case made in the bill of complaint, and left them no standing in Court, the complainants entirely omitted to amend the bill, pursuant to the said order taken by them, and allowed it to stand in that particular as it was, waiving Mason's answer under oath. The Court, however under the circumstances, ought to treat the answer as a sworn answer in the case, and allow it, as evidence, the same force and effect as though the bill had been amended pursuant to the order obtained.

On the the 12th of January, 1859, the complainants also obtained leave to amend the bill, "by erasure and interlineation thereof, *so* as to require the said Jesse B. Ayres to answer the same under oath." But the complainants being desirous of making material changes in the bill as originally drafted, and doing so by "*erasure and interlineation*," on the 29th of November, 1859, procured the said order of January 12th, 1859, to be so modified as to read as follows: "This day come the

parties to this cause, by their Solicitors; and the Court, after hearing the arguments of solicitors on the motion for leave to amend Record heretofore entered in this cause, ordered that the Record in this cause, of the January term, 1859, be, and the same is hereby amended, so as to read, instead of "That the complainants have leave to amend their bill by erasure and interlineation thereof, so as to call upon Jesse B. Ayres to answer under oath," that "the complainants have leave to amend their bill by erasure and interlineation thereof, *and* by calling upon Jesse B. Ayres to answer under oath." And pursuant to said order, the bill was amended and the allegation "that Mark *and Theodore*, determining that all the lands so held in the name of Mark should be placed beyond the reach of their creditors, and to that end, in order to hinder and delay their creditors, *they* applied to said Mason, and solicited him to accept the said Mortgages," was erased and interlined so that, as thus amended, it charged that *Mark* Ayres, determining that said lands, so held by Mark and Theodore in the name of Mark, should be placed beyond the reach of their creditors, and to that end, in order to hinder, delay, and defraud their creditors, said Mark applied to Mason and solicited him to accept the said Mortgages. The object of this amendment was to change front and assume the position that the Mortgages to Mason were made by Mark, without the consent of Theodore; and it is affirmed in the plaintiff's brief, without, however, one scintilla of evidence in the answers or proof, that said Theodore never gave his consent thereto. But in fact, the answer of said Mason to the bill so amended, expressly avers that the said Mortgages were made with the knowledge and consent of Theodore. Mason further states in his answer to the amended bill, that he denies that the lands were purchased in the name of Mark, *as* partnership property, but insists that at the time of the purchases thereof, they were regarded by Mark and Theodore not as partnership property, but as the separate property of Mark, and this is not inconsistent with the admission in his answer to the original bill, that the lands were purchased with the *proceeds* of the copartnership business.

And Mason further alleges in his said answer to the amended bill,

(which in the Abstract of plaintiffs is miscalled Mason's *amended* answer,) that the whole of the proceeds of his said loans to Mark (about $10,000, without the interest,) were invested by Mark in the purchase of the said lands so mortgaged to him Mason.

The Plaintiffs, by inadvertence or typographical error in the abstract of Mason's answer to the original bill, make him say that the lands were *un*incumbered by prior mortgages, when in fact he says they were incumbered to the extent of about $6,000, by prior mortgages, and the fact appears that the poperty is not worth over and above the prior incumbrances, exceeding $3,000; and, in fact, Mason's heirs will not realize from the lands exceeding that amount.

It is insisted by plaintiffs that the Record shows that the lands were mortgaged by Mark, without the knowledge or consent of Theodore. This fact is not true, nor is it alleged in the bill. Not being alleged in the bill, directly or by inference, it is not of course directly denied in the answers to the original bill; but the bill being amended so as to allege that *Mark* (and not Mark and Theodore as first alleged) applied to Mason to take the Mortgages. The *inference* might be raised that it was done without the consent of Theodore; but this *inference*, which might be drawn from the language of it stood alone, is negatived by the other portions of the bill, in which it is alleged that Mark and Theodore were selling out their stock of goods and making chattel mortgages and deeds, and doing other acts as mere covers, and to hinder, delay, and defraud creditors, and that the Mortgages to Mason were but a part of the general plan adopted by them for that frudulent purpose.

There are some material averments in the answer of Mason, omitted in the Abstract, to which we will advert without furnishing an additional Abstract.

The answer of Mason denies that he had any knowledge of the co-partnership of Mark and Theodore Ayres until after the execution of

the notes and mortgages to him, *and* until sometime in the summer of 1855, until which time he had always supposed that said mercantile enterprise at Concord had been carried on in the name and for the benefit of Mark. (Record p. 64.)

That until after the execution of said Mortgages to him, he had no knowledge that Theodore had any interest in the lands, legal or equitable, (p. 66) nor that they were purchased with copartnership means, (p. 66.) He says that at the time of the execution of the said mortgages he had no knowledge that Mark and Theodore, or either, was indebted to any considerable amount or at all in embarrassed circumstances, (p. 68). That there were, and still are, incumbrances on the lands prior to his, of about $6000. Therefore, the security to him is not unreasonable, (p. 69). That nearly all the money so advanced by him to Mark was used in the copartnership transactions, as he has been recently informed, and verily believes, (p. 70).

The joint and several answer of Mark and Theodore Ayres, also contains some material averments not contained in the printed Abstract as follows: That the indebtedness from Mark to Mason was for money loaned, and which was placed and put into the said firm of Mark and Theodore, and formed a large part of the capital of the firm when they commenced business.

The answer of Mason to the amended bill is also incorrectly and partially abstracted.

He does not deny that the lands were purchased *with* partnership property, as alleged in the Abstract (91), but says: "This defendant denies that said lands were purchased in the name of Mark Ayres *as* partnership property, but insists that at the time of such purchase they were regarded by said Mark *and Theodore*, not as partnership property, but as the separate property of said Mark" (p. 91). That the whole of the proceeds of said loans and advancements to Mark by him

were used and invested in the purchase of said lands, and that said lands were therefore really purchased with his means (p. 91).

In the Abstract, Plaintiffs in Error say that the third exception was sustained; this is a mistake, it was overruled (pp. 93, 94).

ADDITIONAL ABSTRACT OF THE DEPOSITION OF MARK AYRES.

DIRECT EXAMINATION.

Answer to 25th Int.:

The capital with which business was commenced at Concord (by Mark and Theodore) was furnished by Mark Ayres, and was a part of money borrowed of Timothy B. Mason, while I was in business at Cincinnati.

Answer to 26th Int.:

I borrowed of Mason previous to commencing business at Concord, between ten and eleven thousand dollars, and the whole amount remained unpaid at that time (when they commenced business at Concord).

Answer to 27th Int.:

Some time during the year 1851, and previous to commencing business at Concord, Timothy B. Mason borrowed for me, and my express benefit, the sum of five thousand dollars, of one Clark, and gave his own note for the payment of the same, secured by a mortgage upon a house and lot, (his homestead, in Cincinnati).

Answer to 29th Int.:

The (said) five thousand dollars was paid over to me by Mason.

Answer to 30th Int.:

The amount borrowed of Mason at or about the time of commencing busines at Concord, was invested in a stock of dry goods and real estate, about nine thousand dollars in merchandise, and about three thousand dollars in real estate.

Answer to 32d Int.:

The largest part of the capital borrowed of Mason was put into the business of said firm of Ayres & Co. and continued as a portion of the capital of the firm.

Answer to 33d Int.:

Both members of the firm of Ayres & Co. knew of my indebtedness to T. B. Mason, and that said capital was carried into the firm, and formed a part of the capital of said firm.

Answer to 40th Int.:

Mason resided in Cincinnati, Ohio, at the time of giving the mortgages, and also during the whole time that Ayres & Co. were doing business at Concord.

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Steam Press of H. A. Newcombe & Co., 51 Dearborn Street, Chicago.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1865.

MARK E. REEVES, et al.
vs
MARK AYERS, et al.

Page of Record

ABSTRACT OF RECORD:

On the 3d day of January, 1857, the appellants filed their bill against said defendants stating therein: that about the year 1851, the said Mark and Theodore Ayres, as co-partners, commenced business in the town of Concord, in Iroquois County, Illinois, under the name and style of Ayres & Co., and so continued, until the year 1855, to carry on the general merchandising business and did a large business therein, as also in purchasing lands, purchasing their goods in Cincinnati, Ohio, Lafayette, Ind., and in Chicago, and thereby became largely indebted to complainants for said goods—generally purchased on credit—and seldom paid for anything they purchased, and that out of the sale of said goods, wares and merchandise they entered and purchased a large amount of land in the County of Iroquois,
4 and took the title of said lands in the name of Mark Ayres alone, for the purpose of defrauding creditors, and while so carrying on said business became indebted for goods, wares and merchandise to said complainants, as therein specified, and that out of the proceeds of the sales of the goods, &c., of Mark and Theodore
5 Ayres, they purchased, with consent and request of Theodore Ayres, the following described lands, and

took the title thereto in the name of Mark Ayers, in order to delay, hinder and defraud said complainants out of the just demands which they then held and do now hold against the said firm of Ayres & Co., to-wit:

West half of southwest qr., sec. 9, bought 18th day of May, A. D. 1854,
Also, ne qr se qr sec. 8, bought Sept. 19th, 1854,
6 Also, ne qr sw qr sec. 4, bought, Dec. 7th, 1853,
Also, w½ nw qr and ne qr nw qr and nw qr ne qr of sec. 8, bought Jan. 14th, 1854,
Also, the se qr neq of sec. 8, and the sw qr nw qr sec. 9, bought Dec. 15th, 1853,
Also, n½ s½ of se qr nw qr sec. 21, bo't March 21st, 1854,
Also, se qr nw qr of sec. 8, and se qr sw qr sec. 4, also sw qr se qr sec. 4,
All situated, lying and being in Township 27 N. R. 12 West in said County of Iroquois.

That Mark W. Ayres became the purchaser, also, on the 3d day of January, A. D. 1855, of the e½ se qr
7 of sw qr of sec. 29 in Town 27 N. R. 12 W.; also, the w½ of sec. 35, also, e½ ne qr sec. 35, also, e½ se qr sec. 34, all in Township 27 N. R. 12 West, and containing in all 1072 acres.

And further, that when Mark and Theodore Ayres discovered that said creditors became alarmed for fear that they intended to cheat them out of their just
8 demands, on the 3d day of January, A. D. 1855, sold the remnant of their stock to Charles Sherman, together with the store house and dwelling house, and invested the proceeds in a portion of said lands, and took the title thereto in the name of Mark Ayres alone.

That Sept. 19th, 1854, the said Mark Ayres fear-
9 ing that the said creditors might discover this fraudulent design, and desiring to place the said lands out of the reach of said creditors, applied to Timothy B. Mason, who was the father-in-law of said Mark Ayres, and solicited him to take a mortgage on said lands, in order to wholly cover up said lands; and that said Mark Ayres and Alma, his wife, did then and there make a mortgage to said Timothy B. Mason on a portion of said lands and on all of which they then owned.

And that said Mason took said mortgage with a
10 full knowledge that Mark and Theodore Ayres were general partners in mercantile business, and that the lands were purchased with the proceeds of the part-

nership property, and without paying any good or valuable consideration therefor, and with a view to hinder, delay and defraud creditors.

That on the 9th day of February, A. D. 1855, said Mark Ayres mortgaged the same lands above described, which were purchased of Charles Sherman, to
11 the said Timothy B. Mason, (exhibit B. of Bill) with a full knowledge that partnership existed between Mark and Theodore Ayres, and that the said lands were paid for out of the partnership assets, and without having paid any good or valuable consideration for said mortgage, with a view to hinder, delay and defraud creditors.

That about the time said Mark gave said last men-
12 tioned mortgage to said Mason, and about the time the said Mark and Theodore sold out as aforesaid, a part of said complainants commenced suit against said Mark and Theodore Ayres, in the Iroquois Circuit Court, to recover the claims against them, and at the
13-14 April term, A. D. 1855, of said court, judgments were rendered against the said Mark and Theodore Ayres.

15-16 Executions were issued and returned by Sheriff: no property found wherever to levy.

Other complainants recovered judgment against
17-18 said Mark and Theodore Ayres at September term,
19-20 1856, and executions issued thereon, and returned: no property found wherever to levy.

That on the 7th day of April, A. D. 1856, said Mark and Alma, his wife, conveyed by a certain deed, (marked exhibit O,) all the lands described as in town 27 N. R. 12, to Jesse B. Ayres, without any consideration whatever, though the consideration expressed is
21 $2,002 02, and with the express purpose of hindering, delaying and defrauding creditors; and that on the said 7th day of April, 1856, conveyed all the said lands, described as in Town 27 R. 11 West, to said Jesse B Ayres who is the father of Mark and Theodore Ayres, and that said deed was made without any good or valu-
22 able consideration paid by said Jesse B. Said Mark also gave mortgage to Jas. W. Lawrence on all his personal property to secure a fraudulent note of $700, and when said note and mortgage was presented to said
23 Lawrence, said Mark requested him to assign it to said Timothy B. Mason, which he then and there did, with-

out any consideration whatever, and to cover up all of said personal property.

24 Said property so mortgaged was worth $23,440, and placed beyond the reach of process.

That Theodore has an interest of an equal undivided half of said lands which should be applied to the
25 payment of said complainants' judments, and which in equity remains in him.

That Mark has removed from this County and gone to Milwaukee, in Wisconsin, where the said Timothy B. Mason resides, and said Mark has taken all of
26 said personal property with him, and left no property here except said lands, nor has Theodore any property except his interest in said lands.

27 Formal part of bill.

That defendants answer without oath, which is waived. Prayer that Mark and Theodore be decreed to pay said several judgments to said complainants; that said Theodore may be decreed to be entitled to
29–30 one undivided half of said lands, and that the said mortgages so given by said Mark Ayers and wife to said Timothy B. Mason, be decreed to be null and void, and that the interest of said Mark and Theodore in said lands be sold to pay said judgments and costs, and that the said deeds from said Mark and wife to said Jesse B. Ayres be wholly set aside and declared null and void, and for general relief and good.

31 Praecipie.

32 to 34 Exhibit A,—mortgage from Mark Ayres and wife to Timothy B. Mason.

35 to 37 Second mortgage.

37 to 53 Exhibit of judgments and executions of said complainants.

54–55 Deed from Mark Ayres and wife to Jesse B. Ayres.

56–57 Second deed from Mark Ayres and wife to Jesse B. Ayres.

58–59 60 Mortgage from Mark Ayres to James W. Lawrence.

61–62 Exhibit X,—orders of court.

63 Defendant Mason files his answer July 24th, 1858; says he has no personal knowledge as to the indebtedness of Mark and Theodore Ayres to complainants, until since the filing of said bill, and believes said Mark and Theodore are indebted to them in their several amounts, and that judgments have been rendered as in said bill is alledged, and that the allegations in relation
64 thereto are true. Admits that Mark and Theodore, who are brothers, were at the time stated partners in the mercantile business, at the place named, but denies any knowledge of it until after the execution of the notes and mortgage to him sometime in the summer of 1855.

65 Admits that Mark became the owner in fee simple of the lands named in complaint, at the time and for the consideration named, and been informed since the commencement of this suit, and believes the same to be true, that said lands were purchased with partnership means of Mark and Theodore Ayres, and that Mark held the title, not for the purpose of defrauding creditors, but to facilitate the execution of deeds in case of sales; supposed and believed, until af-
66 ter the execution of his mortgage, that said lands were purchased with the exclusive means of Mark Ayres; admits that Theodore executed a deed to Mark in 1855, as stated in said bill, but knew nothing of it until long after the execution of the mortgage to him.

Admits that on the 19th of September, 1854, the
66 said Mark Ayres, who is the son-in-law of said respondent, and Alma, his wife, executed said mortgage, marked exhibit A, but denies it was done to defraud creditors but to secure an indebtedness justly due from Mark to said respondent, nearly all of which was for borrowed money; denies that it was executed at the solicitation of Mark and Theodore Ayres, but in pursuance of a previously existing understanding that Mark should, in some way, save respondent from loss of claims.

67 Admits that on the 9th of February, 1855, said Mark Ayers and wife executed to him the said second mortgage, marked exhibit B, but denies that it was to defraud creditors, but to secure an indebtedness due him; denies that it was done at the solicitation of
68 Mark and Theodore Ayres, or either of them; denies

that he had any knowledge that Theodore had any interest or that the same had been purchased with partnership funds, at the time of the execution of said second mortgage; that both mortgages were given to secure same indebtedness which is still due.

68

Denies all knowledge of the J. W. Lawrence mortgage until July 1855, when it was handed to said respondent, endorsed by Lawrence to him, for additional security.

69

Denies the value set on the lands, but says the value is about $15 per acre; that said lands were unencumbered by prior mortgages; denies that Theodore had any interest in said lands which should be applied to the payment of said judgments; denies all fraud; admits that Mark and Theodore are insolvent and that Mark now resides in Milwaukee, Wisconsin; denies that any portion of the money advanced to Mark was as a marriage portion.

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73 Answer of Mark and Theodore Ayres.

Admit that they carried on the mercantile business as stated in said bill, and that they purchased lands of individuals but none of the government; admit that they purchased a portion of their goods on credit in Cincinnati, Lafayette and Chicago. Admit that they bought lands and took the title to Mark Ayres, not for the purpose of defrauding creditors but to facilitate the making deeds in case of sales; admit that they became indebted to said complainants, as stated, and judgments thereon.

74

Admit that they bought the lands as stated in said bill, but deny fraudulent intent in the purchase of goods on credit or taking title to lands in Mark Ayres' name.

75

75 Admit that what lands were conveyed to the firm were subsequently conveyed by Theodore and Mark for the convenience of respondents.

Admit that they sold the remnant of their goods and town property in Concord to Charles Sherman for a portion of the lands mentioned in said bill, about the time stated in said bill, and took the title thereto in the name of Mark Ayres alone. Deny that they, or either of them, applied to Mason to take or receive a

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75 mortgage from Mark and Alma Ayers, for the purpose of hindering, delaying or defrauding creditors.

Admit that on the 19th September 1854, Mark Ayres and Alma, his wife, executed to T. B. Mason the mortgage referred to, marked exhibit A; deny fraudulent intent, but to secure debt due from Mark to Ma-
76 son; deny that they solicited Mason to receive it, but was made in pursuance of a previous understanding that said Mark should in some way secure Mason.

Admit that Mark and Alma Ayres on the 9th of February 1855, executed to said Mason the mortgage, marked exhibit B, in bill, to secure indebtedness from Mark to Mason; deny that the same was made at so-
77 licitation of Mark and Theodore, or either of them, but at Mason's request; deny that at the time of the execution of said mortgage Mason had any knowledge that Theodore had any interest in said lands or that the same had been purchased with partnership property; admits that both mortgages were given to secure the same indebtedness.

78 Admit that plaintiffs recovered judgments and issued executions thereon, and return thereof, as stated in bill.

Admit that Mark and Alma, on the 7th day of April, 1856, conveyed a portion of said lands to Jesse B. Ayres, as stated in bill and exhibit V, which was
78 for a good and lawful consideration, as stated in said deed; deny fraudulent purposes in making deed.

Also admit the making of the second deed to Jesse B. Ayres by Mark and Alma for the sale of the
79 lands, marked exhibit W in bill, which was made for a good and valuable consideration, and not to defraud creditors.

79 Admits the making of the chattel mortgage to J. W. Lawrence, but not to defraud creditors, &c.

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82 Replication filed and several answers.

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90 Amended answer of Timothy B. Mason. Says

that the mortgages so executed to him as stated in said original answer, were made with the consent and knowledge of Theodore Ayres; that it is not true that said
90 mortgages were executed in fraud of said Theodore Ayres or his creditors, or without his consent; that he had no knowledge that Mark and Theodore were partners or that said lands were purchased with partnership assets until after the commencement of this suit.

Denies that said lands were purchased with part-
91 nership assets, but was regarded as Mark Ayres' property; that the loans and advancements so made by him to Mark were invested in the said lands.

Exceptions to amended answer of T. B. Mason.

1st. In original answer Mason denies that he had
92 any knowledge of the rights of Theodore Ayres of, in, and to said lands, specified in said mortgage; and in the amended answer said Mason avers that said mortgages were made with the knowledge and consent of Theodore Ayres.

2d. In original answer Mason admits that said
92 lands were purchased with partnership property of Mark and Theodore, &c.; in the amended answer Mason denies the said lands were purchased with partnership property-

92 3d. That said amended answer is in other respects contradictory, irrevalent, &c.

Third exception sustained, and 1st and 2d over-
93–94 ruled. Motion of Mason to answer over and denied and exception. Motion to suppress Mark Ayres' deposition.

Death of T. B. Mason suggested, and leave given
95 to file bill of revivor against legal representatives.

95 Bill of revivor by complainants filed. States that said Mason departed this life A. D. 1859, leaving last
96 will, and also leaving certain heirs which are made par-
97 ties to said suit, and prays that said suit may stand in same plight and condition against heirs that it did against Timothy B. Mason.

98 Affidavit of non-residence.

99 Summons issued to heirs; returned: not found.

Leave to supply answer of Jesse B. Ayers—filed. Admits that Mark and Theodore carried on business at Concord, as stated in said bill; knew nothing of Theodore having any interest in said lands until after the commencement of this suit, since which he has been informed and believes that said lands were purchased and title taken to Mark Ayers for convenience, and in usual course of mercantile business.

Admits making deeds by Mark and Alma Ayers to him, as stated in bill, but denies it was for a fraudulent purpose or without good consideration, but for money loaned and advanced to Mark and Theodore.

Answer of defendants to bill of revivor.

Proof of publication as to non-residents filed and approved.

Robert Doyle appointed guardian ad litum for infant heirs, and answers filed.

Replication.

Case set down for hearing.

EVIDENCE.—DEPOSITION OF J. W. LAWRENCE.

States that Mark Ayers gave him a mortgage; dont remember how long ago, but was for between $600 and $800; dont know why he gave it unless he was owing him a trifle; the first he knew of it was a long time after it was made; Ayers presented the mortgage to him and requested him to assign it to T. B. Mason, and he did so; it was in his possession about one minute, and he has not seen it since; Ayers was owing witness $150 or $175; he held his notes for about $200, but Ayers had an account against him; since the assignment Ayers has paid him in full; knew nothing of the mortgage until Ayers presented it to him for the assignment; Jesse B. and Theodore Ayers came to Concord to reside first; Jesse B. Ayers moved on the Hollensworth place first, and resided there about a year or so, then Theodore went there.

Jesse B. Ayers was engaged for the company the

first six months in Concord, then went on the Hollensworth place and resided one year, then to the Park's place a year or two, then on the King place.

122 Jesse B. moved on the Hollensworth farm after Ayers & Co. purchased it.

127 DEPOSITION OF MARK AYERS.

Is acquainted with all the parties; commenced business in Concord, Iroquois County, Illinois, November
128 1852, in company with his brother, Theodore Ayers, in the general goods business; sent $3,000 of goods from Cincinnati to Concord.

129 Purchased 572 acres of land known as the Hollensworth farm, and of Charles Sherman the King farm,
130 and lots in Concord; name and style of firm was Ayers
131 & Co.; said lands were purchased with joint property of Ayers & Co. and titles taken in the name of Mark Ayers for the greater convenience of transfer in case of sale; was in business in Concord a little over two years; Mark resided in the village and Theodore on the Hollensworth farm most of the time.

138 Gave mortgage to Mason on the Hollensworth farm and lots in Concord, to secure $10,000 or $11,000 he had previously borrowed of him, and prior to commencing business in Concord.

The Hollensworth farm and town lots are the same
138 as mentioned in exhibit A, of bill. Also gave Mason mortgage on the Sherman farm for same debt, subject to prior mortgage, and same referred to in exhibit B, of bill.

139 Mason resided in Cincinnati at the time of giving each of said mortgages.

140 Dont know whether Mason knew how the lands
141 mortgaged were purchased, or whether he knew that they belonged to Ayers & Co., or Mark Ayers alone, at the time of taking mortgage; Mason was in Cincinnati, Ohio, at the time of giving each of said mortgages.

Never solicited Mason to take said mortgages to
142 defraud creditors. Mason is my father-in-law; I married his daughter.

There was an understanding between Mason and me, previous to giving said mortgage, that when I became possessed of real estate in Illinois I should se-
145 cure him upon such real estate.

145 Gave Mason my individual notes for the sums I borrowed of him, one $5,000 and one $5,447; given in the fall of 1853.

145 Deeded said farms to Jesse B. Ayers in good faith and for considerations specified in deed, subject to incumbrances.

146 CROSS EXAMINATION:

147 I commenced business with one Lupton, under the name and style of Lupton & Ayers, in 1846 or 1847, and continued until 1850.

147 Did not succeed well; lost money; the creditors of Lupton & Ayers lost about four thousand dollars; in 1850 I made a proposition to the creditors of Lupton & Ayres to pay them about sixty per cent. in en-
148 dorsed notes, which they accepted in full discharge; the notes were given by myself and endorsed by T. B. Mason; think they amounted to $6,000 or $8,000, and were all paid by me as they became due from six to eighteen months from date.

149 Did business afterwards in the name and style of M. Ayers & Co. from July 1850 to summer or fall of 1852, in Cincinnati, Ohio; the firm was Mark Ayers &
150 T. B. Mason, though I received the entire benefit.

I borrowed ten or eleven thousand dollars of T. B. Mason in various sums and at different times, from
152 the summer of 1850 to the summer of 1852; borrowed for the benefit of the business which I was engaged, in Cincinnati, and all paid out by me for my benefit; dont think there was any note given until 1853.

I gave $3,200, in goods, for the farm in Indiana, and in the fall of A. D. 1853 sold the same to T. B. Mason for $3,000, about $2,800 of which was to pay back interest on borrowed money, and of the balance $300 or $400 was for one or two accounts which Ma-
171 son had paid for the firm of Ayers & Co. to merchants in Cincinnati, and the balance of the purchase money

was paid by Mason's note of $120 in two or three months.

Mason wrote to know if the account against Ay-
173 ers & Co. were good; I replied it was; this was in the spring of 1855.

175 Mason paid me the note of $120, balance of the farm, by the time it became due.

In the spring of 1855, I gave J. W. Lawrence a
187 chattel mortgage on personal property and growing crops to secure $700; was indebted to him for borrowed money, but cannot state the amount; he assigned said mortgage to Mason after I paid the amount due;
188 Lawrence never requested me to give him said mortgage; Mason knew nothing about the mortgage until I had assigned it to him; value of property in mortgage, $800 or $1,000.

Think there were judgments rendered against the
191 firm of Ayers & Co. about the time of making said chattel mortgage.

Theodore Ayers and I were owing Jesse B. Ayers in the amount of a note of $2,000 given to him before
192 removing to Illinois, and it was perhaps some interest added the consideration of said deeds to Jesse B. Ayers of the Hollensworth and King farms; dont recollect whether the note was taken up or not when the deeds were made to Jesse B; there was no other consideration for said deeds.

193 Nosker resided on the Hollensworth farm before it was sold to Josse B. Ayers, and was rented to him by Theodore Ayers.

I paid J. W. Lawrence two or three hundred dol-
196 lars, as near as I can recollect.

197 I sold some of the articles named in the chattel mortgage before I removed to Milwaukee; since I so removed, my father, said J. B. Ayers, had a sale of stock, agricultural implements, &c.; think some of said articles were sold at said sale.

199 Notes attached are notes given to Mason, and same embraced in mortgage to Mason.

Since my cross examination have reflected more on
201 the settlement with Mason; at time of conveying Jas.

per County land to him and am satisfied that $1,800 of the amount was for interest on the two notes.

202 Copy of notes.

D. B. GARDNER'S DEPOSITION:

203 States that it was the custom with him to purchase lands and take title in his own name, though bought for benefit of himself and partner who resided in La-Salle County, Illinois, and Theodore Ayers resided in Iroquois County during the time the firm of Ayers & Co. were doing business in Concord.

204 Record of the suit of Reeves et al. vs. Mark and
205 to 211 Theodore Ayres, in which said judgment was rendered
to 224 and execution issued, referred to in bill and marked exhibits C, and I, respectively.

Records of the several cases in which said judg-
224 ments were rendered and executions issued thereon, referred to in said bill.

225 Mortgages of Mark Ayers and wife to T. B. Mason.

225 Deeds from Mark Ayers and wife to Jesse B. Ayers.

Chattel mortgage.

226 Record of last will of T. B. Mason and probate
to 237 thereof.

DEPOSITION OF WILLIAM FOWLER:

238 Thinks it was in the year 1853 that I first became acquainted with Mark and Theodore Ayers; may have been before that time; they were living in Concord, in this County, selling goods.

239 When Theodore left Concord he went to what is called the Hollensworth farm in March or April, 1854; lived there one or two years; was cultivating said farm; Mark was attending to the store in Concord part of the time; Mark sold out the store to Charles Sherman in December 1854, or January 1855; Theodore had a wife and two children who resided wich him on

said farm until his wife died in February 1855; resided there continually.

The Hollensworth farm is located on parts of sections 8 and 9 Town 37 N. R. 11 West and may be some on section 4 in same town and range.

CROSS EXAMINATION:

Some of the Hollensworth farm been sold on a mortgage, dont know how much.

Affidavit of Z. Bond.

Decree of dismissal.

Certificate.

GEO. B. JOINER & JAS. FLETCHER,
Att'ys for Complainants.

18/

M E Reeves et al

vs

Mark Hayes et al

Abstract

Filed A/D 5. 1865

L Selander Clk