

14348

No. _____

Supreme Court of Illinois

Hurd

vs.

~~E~~
Xatton.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 118

14248

Faint handwritten text, possibly a name or title.

1863

Prepared

Harvey B Hued
vs

Joseph H. Eaton
Susan B Eaton

Supreme Court of Illinois
April Term AD 1862

Suggestions in answer to the brief of
defendants & in correction of the
supplemental Abstract.

I

The supplemental abstract filed by the
defendants contains none of Benson's tes-
timony favoring the plaintiff & none of
the cross-examination showing the con-
tradictions & inconsistencies between
Benson's testimony, & that of Hill Otis
Davenport Hoag & Lee whose testimony
was taken by Hued to impeach Benson.

As we believe the answer
of Mr. Benson to the 78th cross-in-
terrogation shows his intent in the event
of the suit & fully justifies the ruling
of the court below in excluding
his testimony, we will simply quote
it here (as Mr. Woodbridge has left
it out of his Abstract) & rely upon
honors holding with the court below

that his testimony is incompetent

He says in answer to the question "Why did you try to get the judgments released?"

"Because I had neglected at the time I purchased the property of Duulap for Blaney to examine the records & I knew that Blaney did not have the records examined because he relied upon me."

If however your Honor should consider Mr. Benson's testimony as competent we should be glad to have the opportunity to show wherein he is impeached by the testimony of the other witnesses.

We make the following objections to the points in Mr. Woodbridge's brief

II

Point No 1

We shall not notice the $\frac{4}{7}$ argument as we can see nothing in it. But we will come directly to that part of the argument where Mr. Woodbridge claims that Duulap & Hurd were not in pari delicto. Hurd claims that there was no delict at all but insists that the on the showing of the bill Duulap stands in pari

Notes

with him and consequently is not entitled to relief. We ask the court to look at pages 5 6 7 & 8 of the record (pages 2 & 3 of abstract) where the court will see that Mr Woodbridge took quite a different view of the facts in the bill of complaint from what he ~~now~~ gravely urges now. He thus pretends to set out the manner in which the fraud was practiced and the purpose & all through insists that though the judgments were normally for Hinds benefit they were really for the benefit of Hinds Dunlap & Colburn

We say then the argument is in the face of the bill of complaint which puts Dunlap Colburn & Hinds in hain delicto.

Point No. 2

The solicitor for defendants insist under this point that Hinds executions might have been satisfied out of Dunlaps personal property. that they were returned Nov 17 1836 unsatisfied Blaney bought Dec 6 1836 therefore the judgments should not be liens
To this we object.

7th The bill makes no such

can & under it no such proof would have been allowed & it does not authorize relief upon any such ground no proof was offered to show such a case & the point is made in this event for the first time.

2nd We ask how could Blaney have been injured? The executions were returned Nov 17 1856 Blaney bought Dec 6th 1856. If he had looked upon the record he would have found the judgments unsatisfied. The fact would have stared him in the face. He might as well complain that Hurd had no right to take a note extending the payment of his demand or even that he had no right to loan Dunlap any money. Is it true that if an execution is returned unsatisfied that all real estate ^{of the debtor} sold after such return is thereby released from the lien of the judgments?

3rd In Mr Woodbridge's 2nd charge under this point he says: "Dunlap sold & conveyed to Blaney during the life of the execution." There is not a word of truth in this statement as appears from his own statement & abstract The Executions were returned

*See 6 pages
of depts book

Nov 17 & Blaney bought Dec 6. (see
1st p. Abstract & last page of supplemental
abstract). Therefore all the argument
based upon this statement falls.

4th In The Woodbridge 3^d change
made the point he utterly perverts the
testimony of Otis & Davenport in regard
to postponing Hurd's judgments. The facts
are as follows. Davenport & Otis held
a trust deed on Dunlap's Chicago
Avenue property for about \$3000.00
Hurd held the two judgments which
were prior to their trust deed, but
as one Manning had a trust deed
for \$1000. which ^{was} ahead of all & was
about to sell; by a mutual arrange-
ment ^{between Otis, Davenport & Hurd & Benson} Otis was to buy in the property
& hold it for a time & sell it as
best he could & out of the proceeds
pay himself the \$1000 purchase money
\$1100 or thereabouts of his demand & if any
balance remained to pay Hurd's
two judgments. Their testimony was
taken by Hurd to show Benson soon
falsely in saying Hurd admitted that
the judgments were not to be en-
forced against Dunlap as in that
negotiation he tried to provide for their
payment out of Dunlap's property in

resting upon their validity & Mr Woodbridge well knows that the facts appear in the record as we have stated them & that the object of the effort made by Beeson & Hunt with Otis & Deaver but was to provide for the payment of these judgments if possible without resort to Proch 47. & that no such point as this can honestly be made upon the bill or proofs. And although we would not wish to cast a reflection upon one who is so pure and upright as would seem from the unctious with which he denounces what appears to his dilating eyes as "a swindle of enormous proportions" we must be allowed to express our surprise at such unfair treatment of the record & throw ourselves upon your patience in examining into the record itself rather than rely upon Mr W's statements.

5th Some reliance is placed upon the statement that Beany & Eaton occupied & built houses upon the Proch & Hunt made no objection that he held a judgment lien. There is ^{no} ~~nothing~~ ~~over~~ the ~~facts~~ of this point but Beeson

testimony upon this point but Beason who
if incompetent disposes of that matter, or
if it should be deemed competent it
will be observed that Beason was
employed in June 1857. that in the fall
of that year he was treating with Hurd
about their judgments trying to provide
for their payment by Otis asserting
the validity of the judgments & it will
be further observed that Beason tes-
tified in this case in Aug. 1859
& says in his testimony that at that
time Blaney & Eaton had occupied
the block about two years. From
this it will appear that when they
commenced occupying & improving both
Blaney & Eaton knew of Hurd's judgments
& their agent Beason was treating
with Hurd about them.

III

Points No. 374

Under these points the most scrupulous
Solicitor for the defendants bases an
argument that is directly in the face
of his bill. Thus he says "Beason
quit claimed to Dr Blaney his title
to the premises under the Sheriff's sale.
The period of redemption having

Expend Blaney is entitled to a
sheriff's deed which voids out Hardy
judgment," Now if the court will
look to the amended or supplement
statement to the bill they will see
that Mr Woodbridge second though
is much shrewder if not more
scrupulous than his first for three ~~at~~
will be found following the state-
ment of this quiet claim deed
from Benson the following words
"And you water & saline
will insist that the said em-
pyment to said Blaney was
a full redemption of said Block
from ~~the~~ ^{said} ~~certificate~~ of ~~sale~~ ^{said} Execution
sale & that the certificate of sale
issued to said Benson was thereby
cancelled."

We do not wish in return
for the kind feeling of Mr Woodbridge
to convict him of wilfully mis-
stating the record but to show
the court that he has no fair
mistaken intention meaning as
to warrant ^{us} in asking you honors
in looking into the record before
forming in his desire for an amendment
of the criminal code or ^{or gratifying his desire} to ~~be~~

See his brother in the newspaper black
ened on the pages of the Illinois
Reports. We wish only to be tried
by the Record.

Hand Book & Polity
College for Pff.

115

Harvey B. Hunt
v. Hunt

Joseph H. Eaton
et al.

Suggestions in answer
to defendants' argu-
ment. &c.

Filed May 16, 1862
J. L. Landa
clerk

Harvey B. Hunt
vs
Joseph H. Eaton
et al

Supreme Court of Illinois
Appeal from Ad 1862

State of Illinois
In the Court of Appeals

Harvey B. Hunt

being duly sworn deposes and says that all of that part of the supposed testimony suggested by the affidavit in this case filed by the defendants, as being derived from the record are not & never were upon file or a part of the records in this cause. nor is there any evidence upon the record below that they were introduced as evidence. That if they were used upon the trial of said cause no evidence of that fact was retained upon the record that they are parts of records & papers in other & distinct cases. That at the time of the taking of the record in this cause that the witness offered to depose that said papers were read in evidence provided the said defendants attorney ^{John Woodbridge} could depose that other papers which had been read upon the trial of this cause had also been read & that certain books of account

of Duval & Wright & Co was read in evidence but said attorney refused to make such deposition, with this

deposition.

N. B. Hunt

subscribed for on a before me
April 25th 1862. N. B. Hunt

The plaintiff in error makes the following

requests

1st The testimony of Pearson is wholly immaterial. The decree shows that it was ruled out on motion of plaintiff in error & not considered in rendering the decree complained of. There can be no occasion to consider it under the error assigned & the affidavit does not claim that the defendants in error wish to sign cross errors. If they did it is admitted by Plff. in error they should be allowed to make it part of the record. The court will not allow an idle expense

2nd The other evidence spoken of cannot possibly be got into the record. The affidavit does not show it is in the record.

N. B. Hunt

118 27 -

Joseph H. Eaton
et al

Affidavit of
Hired

Filed April 25, 1862
S. S. [unclear]
[unclear]

1
State of Illinois }
Cook County } Superior Court of Chicago

Joseph. H. Eaton
and Susan. B. Eaton
vs
In Chancery.

Harvey. B. Sturd et al,
The Depositions of witnesses
produced and sworn on the part of the Complainants
before L. G. P. Freed Master in Chancery of Cook
County at his office in the City of Chicago by
consent and stipulation of the respective parties,
the same when taken to be used on the part
and behalf of said Complainants, subject only
to legal exceptions.

Francis. H. Benson.

1. What is your name age occupation residence
and do you know the parties to this suit.
The defendant Sturd objects to the
examination of the witness Benson
because he is a party defendant
and because he is interested in the
result of the suit.

Answer. My name is Francis. H. Benson. I am
35 years of age - Am engaged in laying out
and arranging Rose Hill Cemetery - I know
all the parties to this suit.

2. Do you know where the Deft Sturd resides
and if you say in Evanston in this County,

2
how long has he resided there - Are you acquainted with Block 47 in Savannah mentioned in the Bill of Complaint, how near is said Block to the residence of said Stued - Does any one live on said Block, and if you say Dr. Blaney and the Complainant live there, how long have they lived there - do you know whether or not they built the houses in which they live, and if you, do you know whether or not said Stued was aware that they were about to build said houses previous to such building, have you seen said Stued, or or near said Block during said building and previous thereto, do you know whether or not said Stued is acquainted with the Compt^s and said Blaney, and whether or not he has been accustomed to visit at their houses - and if you, how long and how frequently?

Ans: objected to for immateriality and as leading and improper.

Ans: The Defendant Stued resides two Blocks North from the residence of Dr. Blaney, and 700 or 800, perhaps 1000 feet from the Complainants in Savannah Block 47 - He has resided there since the fall of 1853 - I am acquainted with Block 47 in Savannah. The Compt^s Eaton and Dr. Blaney reside on the Block - They have lived there I think something over two years - They built the houses in which they reside - I do know that Mr Stued was aware that said Eaton & Blaney were about to build said houses, before they built them - that is he knew that they were

3 talking of building. I don't know that I saw said third or or near the Block while and before said buildings were ^{being} erected, but think I did. Mr. Sturo is acquainted with Compt. & says Blaney.

The said third was in the habit of visiting at their houses, during their residence, up to the time of the commencement of this suit. I would say he visited at their houses quite frequently.

3. Are you acquainted with the value of Real Estate in Evanston, and were you so acquainted in the fall of A. D. 1858. and if yes, were you particularly acquainted with the value at that time of said Block 47, with the improvements and if you are state the same?

Ans. I am acquainted with such value in some portions of Evanston. I was acquainted with the value in 1858, and with the value of Block 47 at that time. I would say Block 47 with the improvements was worth \$16,000. to \$18,000. I would pay for the ground \$3,000. and for the improvements pay \$14,000. or \$15,000.

4. Did you or not know of a sale under Execution of said Block 47, upon sundry Judgments - to some of which the said third and Dunlap were both parties defendant, which said sale is more particularly set out in the Bill of Compt & Answer - If yes, who induced said sale, and if you say, you induced said sale, state further if the same was induced

in pursuance of any arrangement or contract, and if yes, with whom did you make such contract, and if you say with said Hurd, state what was such contract, was the same in writing and if not in writing what did you say, and what did said Hurd say in reference thereto.

Int: objected to as improper, leading and immaterial.

Ans: I knew of the sale inquired of I indeed the sale in pursuance of an arrangement made with Mr Dunlap and Mr Hurd. The arrangement was not reduced to writing, merely a conversation. I have purchased said Book #7 for Dr Blaney of Robert S. Dunlap, with assurances from him that the title was all clear, after the purchase I discovered that there were judgments against Dunlap which were liens to a large amount on the property, and a Trust in the property, also executed by him, and among the judgments were two in favor of N. B. Hurd. N. B. Hurd was absent from the city at the time. Mr Dunlap assured me that there was an arrangement between him and Mr Hurd by which the two judgments referred to were to be held only as against one Thomas S. Sanford, and that Hurd would release them so far as that property was concerned. On Mr Hurd's return from the East I called on him and stated what Dunlap had said to me. I told him Dunlap had said to me that the two judgments in his favor were obtained by him to be held against Sanford and not against him. That one of the notes on which judgment had been obtained,

5
was given to him three after Dunlap had paid it.
The other one was in a note that was given
with a view of compelling Sanford to pay an
amount that he was owing to a firm, in which
Sanford, Dunlap & Hurd were interested. When I
made this statement to Mr Hurd, he acquiesced
in Mr Dunlap's statements, and I understood
him to say, that he held said judgments for the
purpose stated to me by Mr Dunlap and that
he would release Book 47 from the lien. I then
stated to him that I should go on and have a sale
(though I think this was subsequent to said
conversation that I so told him) under other
Judgments obtained against Dunlap, Hurd and
others, which have been assigned to me, and that
I would purchase said property at said sale, so
as to release it from the lien that they had upon it.
I did it with Mr Hurd's knowledge and consent,
purchased the property for a nominal price so that
the deficiency in the Judgments would be liens
upon any property that any of the defendants might
have. The object of so doing was that in case
Mr Hurd was compelled to pay me the balance
on the Judgments they might be collected from
the other defendants. The sole object of making the
sale was to clear Book 47, and Mr Hurd's
remedy was to be confined to other property
assumed objected to ^{refuse to} ~~accept~~ that part
stating what Dunlap said, and the
reply of Hurd.

6.

State whether or not you ever had a con-
versation with said Harvey B. Hurd with reference
to his two Judgments against the said Dunlap
Sanford & Holborn mentioned in said Bill of Complaint.

recovered October 15. 1856, if you, when or about when did said conversation occur, what indeed said conversation, did you go there on your own account, and if not, who did you represent, and if you pay the Compts & Dr Blaney, state why you called upon said Stued and held such conversation, and if you pay to discharge the apparent lien of said Judgments, state whether you had the means to discharge such liens, and if you, did you discharge such liens, if not, why not, if you say owing to a conversation which you then had with said Stued, state what you said and what he said in that conversation.

Ant: objected to as leading & improper.

Ans. I had a conversation with said Stued with reference to said Judgments. It was in the Spring of 1854, I believe, may be in the summer. I went at that time on my own account, I called upon him to know whether what Dunlap had stated was so, or not. I went to Mr Stued with the view of getting Block 47 discharged from the lien of the two Judgments referred to. I was prepared with the means to pay the Judgments, if necessary. I had the means and would have paid them, if he had demanded it. I had paid all the other liens or had them in process of arrangement at the time. I did not discharge the liens for the reason that Mr Stued told me he did not regard them as liens. I stated to him that Mr Dunlap had told me that he (Stued) held those liens for the purpose of collecting the moneys of Dunlap & Co-defendant Thomas S. Sanford, and that Dunlap said me

7 of the Judgments was obtained on a Note after he had paid it, and the other on a Note that was given for the purpose of compelling said Sanford to pay what he was owing to the firm of which Dunlap, Sturds & Sanford were members, or to compel Sanford to pay his proportion of the debts of said firm. I understood Mr Sturds to acquiesce in what Dunlap had told me and to agree that it was so. I don't remember the exact language Mr Sturds used. I went away from Mr Sturds persuaded that he did not regard the Judgments as paid.

6. What if anything did Mr Sturds say in the conversation detailed in your last answer as to his intention in reference to the apparent lien of said Judgments on said Block 47.

Ans. Mr Sturds said that he would release Block 47. from the lien of said Judgments.

7. Do you know whether or not said Sturds, Dunlap & Colborn were ever in business as partners in Chicago, if yes, when and the nature of their business.

Ans. ~~It is objected to as irrelevant.~~ I do not know whether Colborn was ever a partner of Mr Sturds or not. Mr Dunlap was a partner of Mr Sturds in the planing business, planing lumber, in this city. I don't remember what year it was in.

8. Do you know whether or not said Sturds sold out his interest in said joint business, if yes, when

and to whom, and if you say to said Thomas S. Sanford, state if you know what if anything said Sanford paid him therefor.

Ant objected to as immaterial

Ans. I knew nothing of the matter inquired of except what Messrs Sturd & Dunlap told me - Mr Sturd told me he sold Mr Sanford, but I don't know what he got from Sanford.

Cross Examination

1X Where and where was the conversation you speak of in reference to the two Judgments, who was present at the time besides yourself, and defendant Sturd.

Ans. The conversation was immediately after Mr Sturd's return from the East in the Spring or Summer of 1854 and was at Mr Sturd's office. I don't remember of any one being present except himself & myself.

2X Do you not recollect that at the time you entered Sturd's office he was writing at his desk, and Mr Webster was sitting at his desk in the opposite corner, and did you not commence by saying that Dunlap had said there was something about the Judgments and undertakes to give Mr Dunlap's story and say you could not distinctly recollect it, and did not Sturd reply to you that he would not state at that time how the matter was, but said there was something about the \$500 Judgment, if a certain other Judgment was paid

9
it would not be a lien or would be released
or something to that effect, and that the other
Judgment was on a Note given for money Shure
had loaned the firm preceding the one of which
Sanford was a Member, and which last note
had been given by that firm in pursuance of
their undertaking to pay the debts of the former
firm.

Ans. Mr Shure was sitting at his Desk, don't
remember that he was writing - I do not
remember whether Mr Webster was at his Desk
or not. I did begin by stating Quilaps property
and did state it - I did not say I did not
distinctly recollect his story - I don't think Shure
replied to me at that time, that he would not
state at that time how the matter was. I don't
recollect any such conversation as that inquired
of, in respect of the \$500 Judgment, nor did
understand Mr Shure to say the other Judgment
was for a loan of money by Shure to the firm
preceding that of which Sanford was a Member,
nor that the Note upon which the Judgment was
rendered had been given by that firm in pursuance
of their agreement to pay the debts of the former
firm. I wish here to explain that when I
introduced Mr Shure's affair, I addressed him saying
he came very near getting into a scrape during
his absence in having a large amount of his
property sacrificed, after conversing sometime upon
that subject - I introduced the Quilaps matter

Ex: adjourned to Friday July 22.
at 9 O'Clock.

3 X

18 And you or not living neighbour to Sturd between him & Blaney, and were you not during the year 1854 familiar at Sturd's house, and were you not while Sturd was absent at New York frequently at Sturd's house attending a Singing Meeting of the Musical Union, and at other times, and do you recollect of Mr Webster's stopping at Sturd's house, during the time of Sturd's absence to New York.

Ans.

I am living neighbour to Sturd between him and Blaney. I was at Sturd's house frequently in 1857. I was at his house attending the Musical Union about once a week during his absence, and I think very likely I was there at other times during his absence, don't remember distinctly. I am not positive that I saw Mr Webster at Sturd's house during his absence, though it is very likely he was there, as he was in the habit of meeting there.

4 X

How long after Sturd returned from New York that you called on him, as you have stated in the direct. State the number of days, or whether it was not the day after.

Ans.

I am not positive as to the number of days but it was soon after his return - very soon.

5 X

Were you not Sturd's Banker and upon very familiar terms with him during all the year 1859 and had you not seen so for a number of years previous.

Ans. My impression is that Sturd kept his Bank
account with me during all that year, and I
was on very good terms with him so far as
I know - I had been on familiar terms with
11 him for a number of years before.

Q. Do not Brown & Sturd about the year 1851
or '52 furnish money with which you purchased
Real Estate in which they allowed you a third
of the profits for your services, and did you
not on this arrangement purchase large amounts
and were you not during the year 1859 the agent
of Brown & Sturd in closing up and dealing in
such property, and were you not receiving
considerable amounts of money for them, and how
you not a considerable amount of money belonging
to Mr Sturd, as his portion of the avails of said
land in your hands, during the year 1854 and
how much, if any.

Ans: objected to by Compt's Solicitor
as immaterial.

Ans. They did furnish me money for the purpose
and upon the terms required of, and I purchased
large amounts of Real Estate, under the arrange-
ment - I was their agent or partner in closing
up those purchases. I made no transactions
in that year. I am not positive as to the
amounts of money I received in that year, on
that account, there was some, can't state
amount without reference to my Books - I am
not positive as to the amount of money in my
hands in 1854 of Sturd's share, there was some.

Q. Was there not an account stated about the close

12

of that year between Brown & Sturges and yourself in which there was found to be due Sturges between \$1700 and \$1800. I find by examining the account stated referred to that I had in my hands Jan'y 12. 1858. belonging to Sturges the sum of \$1571.76 upon this Real Estate account.

87 Was the sale that you speak of as being about to take place in the absence of Sturges wherein some of his personal property was about to be sacrificed during the absence of Sturges, referred to by you?

Ans. The Sheriff was about to make the sale during Mr Sturges absence, but was persuaded to wait until I could be sent for I went to the Sheriff's office, where I found several parties present creditors who insisted upon a sale taking place immediately - I got the sale stopped by the ^{payment} of one execution of \$500 to \$600 to one Brooks and assumed or agreed that Mr Sturges would settle the others as soon as he returned home if they would wait, and they agreed to wait on my assurance, that I would pay the amounts, if Sturges did not on his return.

98 Who were present at that time at the Sheriff's Office.

Ans. One Mr Lee. I don't know his first name, H. J. Hitchcock. M. J. Brooks. and one or two others whose names I don't recollect - Mr Dunlap was there.

10X
13 There you at that time the assignee of any of the Judgments, upon which the Sale was about to take place, cared if so, which?

Ans. I was not the assignee of any of them at the time I went for the Brooks Judgment upon which I paid the \$300 or \$400. I took an assignment of, there.

11X Did you buy the Judgment of Strong & Wiley and was that one of the Judgments?

Ans. I did buy it but not on that day I think - I think it was very soon after.

12X What of the Judgments on which the Sale was about to take place were against Sturd?

Ans. There was one held by Horatio H. Lee, two Judgments held by W. J. Hitchcock and one or more Judgments in favor of Strong & Wiley.

13X At whose solicitation did you buy the Judgment of Strong & Wiley & Brooks, and out of whose funds were they paid for at that time, or eventually?

Ans. I bought the Judgment of Brooks upon Brooks promise to assist me in getting the others to stop pressing the ~~same~~ Sale on that day, that was all the solicitation as to that, I don't recollect at whose solicitation I bought the other. The Brooks Judgment had never been paid to me, the other one it is my impression was arranged by Mr Sturd;

14 X 14 Did not R. L. Dunlap, or the firm of which he was a Member, do business with you at this time, and were they not indebted to you in a considerable amount, and was not Dunlap the person who informed you of the threatened sale and solicited your interposition.

Ans. The firm of which Dunlap was a Member did business with me at that time, I can't state as to their indebtedness without referring to my Books, Dunlap was the one who informed me of the sale; I am not certain about his interposing to prevent the sale, my recollections are that Dunlap came to my office and stated to me that they were about to make a sale of about \$4000. of Hurd's personal property, my impression is that Dunlap requested me to go and look after the matter.

15 X Was the danger of Hurd's property being sold the only reason urged by Dunlap for your interposition?

Ans: objected to by Joseph. Solis

Ans. I am not certain what Dunlap said, but my impression is that he stated to me that the Judgments were against himself, Hurd & Hurd, and that if a sale took place, they were to sell Hurd's personal property in which there would be no redemption.

16 X Was not Dunlap and others personal property the Planning Mill also levied on, and also Belk 147 the property question and some lots on the

North side on which Dunlap lived.

Int: objected to as not calling for the best evidence.

15- 17X I think all that property was landed on.

18X. How you got fees on some or all this property for money due you?

Int: objected to by counsel!

Ans. I had had a few, whether it existed at that time or not, I can't say.

19X Did you make the agreement you have spoken of in regard to selling Block #7. after the conversation with Sturd about his two Judgments and if so, how long after, and where and who was present?

Ans. I am not positive whether it was at this time or subsequent, I had several conversations with Mr Sturd on the subject, some of which were held in my office, I don't recollect who was present.

20X Will you give the words spoken by you, and by Sturd at any one conversation alluded to, or do you remember any single word or phrase used by Sturd, at any time, if so, state the same?

Ans. I don't know that I can give the exact words or phrases, or any of them.

21X Give the words spoken by Sturd, when you told him what Dunlap said in regard to the two Judgments of Sturd against Dunlap, Sanford

and others?

18

Ans. I could not give the exact the words, only the purport

22X Give any one word he said?

Ans. The same ~~language~~ was a great "Skizars"

23X So that the only word you remembered?

Ans. I don't recollect any other word just now, the language was couched.

24X Did Hurd not say that he would not at that time explain the matter, or words to that amount?

Ans. I do not recollect of his making use of any such language, think he did not.

25X Was it not rather an impression that was made upon your mind at that time, that Dunlap's story was true, than any particular admission of Hurd?

Ans. Dunlap had told me his story and I went to Mr Hurd and understood from him that what Dunlap had said, was so.

26X Was any other subject talked of at that time besides the danger of Hurd's property being sacrificed and this talk about what Dunlap had said in

17
regards to the Judgments, and if any, give the words spoken by you and by Hurd?

Ans. I don't recollect that there were any other matters talked of, it is my impression that other subjects were mentioned but I have forgotten what was said.

24x Have you always believed that Dunlap's story was as stated by you, and that Hurd admitted the truth of the same at the conversation spoken of?

Ans. I have always believed Dunlap's story since Hurd admitted, I did not know whether it was so or not before.

28x Was not the supposed admission made the first time you talked with Hurd about it, after Dunlap told you his story?

Ans. I believe it was.

29x Have you ever in the presence of any person admitted that you disbelieved Dunlap's story about the Judgments?

Answer objected to by Comptrol.

Ans. No Sir, ~~but since~~ Hurd's admission, I may have done so.

Answer objected to.

30x Did you not afterwards see Dunlap and talk with him in the presence of any person, and tell him what Hurd had said in regard to the Judgments and did he not then relate his story substantially as you have done it, was not the story of Hurd contradictory if, and different from his?

18 Ques. I have talked with him often. I talk with Sturo
and subsequent to Mr Sturo's refusal to release the
Judgments, as against Block 47. The Dunlop, from
the first down to the present has always related to
me the story as I have stated it. Sturo's story
since his refusal to release the Judgments was
different and contradictory to Dunlop's statement,
previous to his refusal to release the Judgment I
always understood him to acquiesce in Dunlop's
story.

30 X Ques. When did Sturo first refuse to release these Judgments,
was it at the time when an arrangement was
made with Blockgett or Johnson, in regard to some
securities on Block 47 in question, - give the date.
Ans. objected to as leading & improper.

Ques. It was I think at about the time an arrange-
ment was made with Blockgett & Johnson in reference
to some securities on Block 47. I have forgotten
the date. I am not positive that is the time,
I think so.

31 X Ques. Do you not recollect asking Sturo to release
said Judgments at a time when you & Sturo
& Blockgett, were going towards Coanston on the
cars, and was not that the first time?

18 Ques. My recollection is that the first time I asked
Sturo to release the Judgments was on the cars on
the way to Coanston. I don't recollect that
Blockgett was present.

19

32 X Did you not previous to that time have a conversation with Owlapt in which you undertook to tell him Hurd's story, and in which he spoke his, and in which the story of Hurd was opposed to and in contradiction of his and when Rev J. Jackson was present.

Ans. objected to by Campbell.

Ans. I don't recollect any such conversation.

33 X Was the release you made to Dr. Stacey, made before, or after, or at the time of your arrangement with Brodget & Johnson by you referred to - give the date of that arrangement.

Ans. I think it was after the time an attempt at an arrangement with Brodget & Johnson. I think this attempt at an arrangement was in the fall, and that the deed was made in the Winter following.

34 X Did you ever admit in the presence of L. B. Otis or of Mr Oliver Caneport that you believed the two Judgments of Hurd was good, and that Hurd had a right to collect them.

Ans. objected to as improper.

Ans. No Sir.

35 X Did you not at about the 1st October 1854 state in the presence of Mr Otis that Hurd's Judgments were good or right, or words to that amount.

Ans. No Sir.

20 36X Did you not make the same admission about
the same time in the presence of Mr Davenport?
Int. objected to as improper.

Ans. No Sir.

37X Do you recollect of joining in an arrangement
with Otis, Davenport & Sturd, by which Sturd
was to be paid the amount of said two Judgments,
after the payment of about \$2400. to said Otis,
or Davenport, one of the Sale of a Lot on the
North Side on which Dunlap lived. and were
papers made at that time, and do they bear
the date of said transaction

Int. objected to by Compts.

Ans. There was an arrangement made, I don't
know whether I joined in it or not, I don't
know whether those two Judgments were included
in it, or not, It is my impression that some
papers were made, in the shape of a receipt
from Mr Otis, or a Trust deed, I don't as to
the date, or whether they are of date with the
transaction.

38X Did you not take an active part in such
transaction, and often talk with Dunlap, Davenport
Otis & Sturd in relation thereto, and did you
not urge the making of such arrangements,
Int. objected to by Compts.

31
Ans. I did an active part and often consulted
with them on the subject - I did not urge I
think my inducements for taking the part I did
was to obtain a release of Block 47 and my
name from the back of certain Notes held by

Otis and Davenport

21 39X Did not Dunlop raise the question at that time of the validity of said Judgments and insist that he could have them removed
Int. objected to by Compt.

Ans. He did.

40X Did you not say to Otis or Davenport that Hurd had made the admission you before related?

Ans. I think I did.

41X Did you not during said negotiation say that you believed that Hurd had no right to have said Judgments paid.

Int. objected to by Compt.

Ans. I think not.

42X Do you not know whether you did or not.

Ans. I do not know, I do not know that I ever talked but one way in reference to those Judgments. I will say that I know I never did.

43X Did you ever say any words to that amount?
Int. objected to by Compt.

Ans. I think not - I said to Davenport & Otis that I was satisfied that Hurd had lost a large amount of money by his connection with Dunlop and that if I could get Block 47 passed it made no difference to me whether he did or did not collect his two Judgments, I think

That several conversations like the above took place during the time I was trying to get the matter arranged with them, & any interest I may have taken in the matter was with a view of releasing B&B 47. from the Judgment and my name from the Notes that they held and then of having Sturd and Dunlap to settle the validity of the two Judgments referred to.

44X What claim did Davenport & Otis hold against the property Dunlap received on, if there Notes, for how much, were you indorser on them, what was to be paid for the previous fees, and what was to be paid before Sturd's two Judgments and what after.

Ans. objected to by Comptrol.

Ans. My impression is they had a claim of about \$3000. I don't know about the Notes, there were two Notes on which I was indorser for \$1000 each. The balance of the claim I have forgotten the shape of. I don't recollect what was to be paid for the previous fees, nor what was to be paid before Sturd's two Judgments nor what after, there was a paper of some kind that set forth the facts in the case given by L. B. Otis.

45X In what arrangement was anything paid by you, or Sturd, or Otis, or Davenport, in regard to your being released as indorser on the Notes held by Otis & Davenport.

Ans. objected to by Comptrol.

Ques. I do not remember from the fact that there was a Memorandum given by Otis on which I acted

46X Did that Memorandum contain all the arrangements entered into by any of the parties at that time?

Int. objected to by Comptrol.

Ans. I presume it did.

47X When this negotiation was pending did not Dunlap pretend that he could and would have Shurds two judgments set aside, and get some affidavits to that purpose?

Ans. He did pretend that he could and would get the judgments set aside, and he had an affidavit of one Thomas Spear at that time for the purpose of getting the \$500 Judgment set aside.

48X Did you not in Shurds absence encourage Otis and Davenport that Dunlap would get these judgments set aside or out of them?

Ans. I do not remember, of speaking to them particularly, but if I did, I presume I said to them, that Dunlap had said that he could and would get the judgments set aside.

49X Did not Shurds during all that negotiation insist that the \$500 judgment note held by him as collateral for his going security on the Lee Note, and that the other was for borrowed money.

Int. objected to by Comptrol.

Ans. He did not so insist that I know of.

50X
24 Did he not insist that his Judgments were valid, and that Dunlap could not get them set aside at a conversation between yourself, Sturd & Davenport, in which conversation you allowed or assented to the correctness of Sturd's position.

Ans. objected to

Ans. I do not recollect of ever hearing Mr Sturd insist that his Judgments were valid never up to this morning - nor do I recollect of ever assenting to anything of the kind, because I have never known whether they were or were not valid.

51X Did he not insist that his Judgments were valid and that Dunlap could not get them set aside, at a conversation between yourself, Sturd, and S. B. Otis, in which conversation you allowed or assented to the correctness of Sturd's position.

Ans. objected to by Compt.

Ans. I do not recollect of ever hearing Mr Sturd insist that his judgments were valid up to this morning, nor do I recollect of ever assenting to anything of the kind, because I have never known whether they were or were not valid.

52X Did you during that negotiation ever mention to Otis or Davenport that Sturd had admitted the truth of Dunlap's story as given by you in your direct let;

Ans. objected to by Compt.

Ans. I do not recollect of doing so.

25

53X Did you not during the trial of said negotiation day in the presence of Andrew J. Sherman with reference to the contest about these Judgments. that there was a lie between Studd & Dunlap somewhere, you did not know where, or words to that amount?

Ans. objected to by Compts.

54X Were you not indorser upon a Note or Notes, in about the sum of \$2000. signed by Dr. Blaney & held by Mr Johnson, for the security of which two or three Notes secured by Trust deed or Mortgage on Block 47 in question, were turned out to Johnson.

Ans. I was indorser on a Note held by Mr Johnson signed by Dr. Blaney. I am not positive whether any Notes were turned out to Mr Johnson or not. My impression is that some Notes secured by Mortgage or Trust deed on that property were turned out to Johnson, but I don't know.

55X Are you not still held by Johnson upon the first Note of Johnson Blaney above mentioned?

Ans. I am.

56X Was not the negotiation in which these three Notes were turned out as such security, brought about by your Agency, and was not such negotiation the one mentioned by you in your Chop X. during which you tried to get Studd released from said Judgments.

Int: objected to by Comptrol.

Ans. My impression is that it was during a negotiation in which W. S. Johnson figured that I asked Mr Sturro to release said Block, the negotiation was consummated after that, but how I have forgotten. I think the negotiation referred to in the question was brought about by my agency.

57X Did you have conversations with H. H. Bledgett - Johnson's Attorney in the matter in regard to Sturro's said Judgments, and did you ever claim to him that Sturro had admitted the truth of Dunlap's story or that the Judgments were not good against said property.

Int: objected to by Comptrol.

Ans. I did converse with Bledgett in regard to the Judgments. I stated to him I think that Sturro had admitted it to me. I don't recollect of saying that the Judgments were not good against the property.

58X Do you recollect of a conversation between yourself & Mr Thomas S. Hoag & Sturro in our way to sell some property in an execution against a Mr Stone, in which these Judgments were spoken of?

Int: objected to by Comptrol.

Ans. I think I remember a conversation with the parties, and on the conversation referred to, I am not positive.

59X Did Sturro not at that time pay his amount

27

leave the question to me whether Sturd had acted unchristian in his transactions in regard to said Judgments and did you not assent to the same, and was not the case then fully stated to said Hoag for that purpose and the facts agreed upon by Sturd & yourself.

Ans. objected to by Campbell.

Ques. My impression is that the subject was talked of - but what was said or agreed upon I don't recollect.

60X

Did not Sturd say that he held the two Judgments in question, and that you had caused a Sale of Block 47 in question to be made upon certain Judgments, that such Sale was without the knowledge of Sturd, and that after he found it out, he went to you and insisted that unless some arrangement could be made by which he would have the advantage of such Certificate he would have to proceed to make the Judgments out of said property and that you agreed to hold the same for Sturd's benefit, but that at about the time, the time for redemption would expire Sturd went to you and requested you to assign such Certificate to him that he might have the benefit of it, that you refused to do so whereupon Sturd said I give you notice that I shall take such course as the law allows me in the premises, and that Sturd caused such Executions to be issued on the Judgments and sold to be made, and that the property was struck off to him for the redemption money.

Ans. objected to by Campbell.

28 Quid. I do not recollect that Shuro said on that occasion that he ruled the two Judgments, and do not recollect that he said anything about my having caused a sale to be made of Block 47, or that he said the sale was made without his knowledge. I don't think he did so then - Do you recollect anything about the conversation in my Hoags presence.

61X Did not Shuro then say also that the reason why he did not give personal notice to Dr Blaney of the intended sale or his recollections was that you had requested Shuro not to mention the matter of the Judgments to him?

Quid. I don't remember it.

62X Did not you and Shuro make a full statement of all the matters in reference to said Judgments and Shuro's right to proceed against said property upon them, to said Hoag at that time?

Int. objected to by Compts.

Quid. There was some conversation on the subject but what I have forgotten.

63X Did you at that time pretend that Shuro had made any admission against the validity of said Judgments?

Int. objected to by Compts.

Quid. I don't remember the conversation that took place.

57 64X Do you remember anything that was said

by Mr. Stur, Hoag or yourself at that time, if so,
state it.

Ans. I do not.

65X Did you not in a conversation with Mr. Stur
say to Mr. Stur that you had told Dr. Blaney when
you sold him that property, that it was clear of
all incumbrances, and that you had found
liens upon it, and that you were bound to
clear it?

Ans. objected to by Compts.

Ans. I did tell Mr. Stur in a conversation that I
had told Dr. Blaney at the time of the purchase
of the property, that I knew the title up to
the time of Dunlap's purchasing it, and knew
it to be clear of incumbrances, that I had
informed Dr. Blaney after finding out that there
were liens against the property, after some of
said liens had been released, and that I had
stated to him the story of Dunlap and the fact
that I had named it to Mr. Stur and that he
had agreed to release these judgments as against
Block 47, that the balance of the judgments
that were liens against said Block had been
settled and assigned to me, and that I held
them for the benefit of Mr. Stur, except as
against Block 47. I did not say to Mr. Stur
that I told Dr. Blaney at the time I sold him
the Block that the title was clear of my own
knowledge - I told Mr. Stur that I told Blaney
that Dunlap said the title was clear, and that I
knew it was clear when Dunlap bought it, and
that if there were any liens on it Dunlap ought

to know it. I told Hurd that I had found him upon it and that under the circumstances I felt morally bound to clear it.

66X Did you not say that you would clear it if you had to pay the whole yourself, Blaney should lose nothing by it?

Ans. Not that I remember.

67X Do you not remember making such a statement to other persons?

Ans. objected to say so

Ans. No Sir.

68X Did Dunlap request you to make sale of the Books for him?

Ans. He did.

69X Did he pay or allow you a commission for making the sale?

Ans. I do not recollect.

70X Did you keep a minute Book for the entry of Lands to be sold by you for others?

Ans. I did.

31 71X Will you produce the Books of 1856 kept for that purpose?

Ans. I will if I can find them.

72 X

How long before you sold the Block to Blaney, did he make such request?

31

Ans.

I don't remember.

73 X

Did not Sturc apply to you a short time before the time of redemption in said Certificate had run out, and request you to assign the same to him, and on your refusing to do so give you notice, that he should take such proceedings as the law would allow him to enforce his judgment against said Block?

Ans.

I do not recollect the dates when Mr Sturc called on me. He never called on me and requested me to assign the Certificate of Sale that I recollect of. I do not recollect of his ever giving me notice, on my refusal, that he would take legal proceedings to collect his Judgment on the Block.

74 X

At the time you called upon Sturc with Dunlap's story, or at the time you say Sturc agreed to release said Judgments, how you any funds of Dunlap's or Blaney in your hands to purchase such release, or pay the Judgments, if so, state what amount them?

Ans.

I don't know that I have any of their funds in my hands at the time for that purpose.

75 X

Did you offer any payment to Sturc, or did you pay Sturc anything for such release, or in account of said Judgments?

Ques. I did not offer, or pay him anything for such
32 release.

'76 X Did you inform him you were ready to do so?

Ans. I think not.

'77 X Were you employed by Blaney or Eaton to
remove these judgments, if so when?

Ans. I never was employed by either of them to do so.

'78 X Why did you do so, or endeavor to do it.

Ans. Because I had neglected at the time that I
purchased the property of Dunlap for Blaney to
examine the Records and I know that Blaney
did not have the Records examined because he
relied upon me.

'79 X When the Judgment of Lee was assigned to
you did you inform Sturd that you expected
him to release Block 47 from its lien, if so,
state Sturd's words in reply?

Ans. I don't recollect whether I do inform Sturd
at the time of the assignment of the Lee
Judgment.

80 X When the Wilson Lyon & Co. Judgments were
assigned to you did you inform Sturd you
expected him to release that Block from their lien,
if so, what did he say?

Ans. I don't recollect whether I did or not.

81X, I know they were so assigned was it not agreed that you should prefer them for Harris benefit against Dunlap & the other defendants.

Ans. The Wilson, Lyon & Co judgments were brought by me of one H. V. Hitchcock without anything being said as to who they should be held against - This is my impression, I am not positive - As to the Lee Judgment I don't remember whether there was any agreement at the time of the Assignment -

Lee: returned to Friday July 29. 1856.

Lee: returned to July 30. 1856 2 P.M.

82X Will you give a statement of all the notes of R. L. Dunlap. Dunlap Sanford & Co. Dunlap Hitchcock & Co. - Dunlap Maurick & Co. & Dunlap Colburn & Co and William J. Hitchcock, say from 20th May 1856, during that year and the year 1857 on your Books.

Ans: objected to his, complete Solr.

Ans. I have a statement of my notes that I recollect of from August Dec 1856 - since that date and for the remainder of that year and the year A.D. 1857, I find the following

- 1 Note dated Aug²³. 1856 made by Dunlap Colburn & Co & Andrew J. Brown at 90 days for \$5000
- 1 Note dated Aug²⁵. 1856 made by same makers payable to J. H. Benson at 60 days for \$5000

There was left as collateral to the above Dunlap
Collorn & Co Note for \$600.

- 1 Note made by Dunlap Collorn & Co. & A. J. Brown
dated Aug. 30, 1856 - 90 days payable to said
Benson for \$500.00
- 1 Note made by Dunlap Collorn & Co payable
to their own order dated Oct. 9, 1856 payable
60 days after date for \$650.00
- 1 Note made by said Dunlap payable to his
order and indorsed dated Nov 22, 1856
at 4 mos 1600.00
- 1 Note made by R. L. Dunlap and J. G.
Collorn dated Jan 5, 1857 payable to
J. H. Benson & Co or order 4 mos after date for \$1000.00
- 1 Note made by said Dunlap & Collorn indorsed
by themselves dated Jan 13, 1857 payable
at 4 mos for 1000.00
- 2 Notes by Dunlap Hitchcock & Collorn payable to
themselves dated March 11. & 15, 1857 payable at 3 &
4 mos. for \$1000 Cash 2000.00
- 1 Note made by Dunlap & Collorn payable to J. H. Benson
& Co; dated April 25, 1857 payable at 60 days \$1600.00
- 1 Note same makers dated 27, April 1857
at 60 days for 2000.00

35-
1 Note same makers dated May 23, 1857
payable to A. J. Brown at 3 mos . . 12000.00

1 Note made by W. F. Hitchcock payable to
A. J. Brown dated June 8, 1857 at 60 days
for \$1000.00

83 X What do you mean when you say you bought
the three equipments of Hitchcock?

Ans. I mean to say I bought them.

84 X When did you buy them?

Ans. I don't recollect the date. I think it was
about July 20, 1857.

85 X What did you pay for them, or who paid
for them?

Ans. I have forgotten the amount. I think I paid
for them at the time.

86 X Did not Hurd pay for them at that time,
and when Hurd paid for them was not a note
given by Hitchcock of the date of Hurd's payment
to pay for them?

Ans. I think Hurd did not pay for them at that
time, he did pay for them some after by giving
his note I think - I have forgotten the cir-
cumstances of the payment - My impression is that
Hitchcock did give a note some way in
connection with the transaction, but I can't

tell how.

87) Are not you and Mr Hurd on bad terms and have you not had difficulty?

Ans. I have no hostile feelings towards Mr Hurd that I know of. There has been difficulty between us in reference to the disputed matter of this suit, we were on the best of terms before, and our friendship ceased on Mr Hurd saying to me that I must assist him in collecting some \$4000 out of Dr Blaney, or on my refusal to do so, our friendship must forever cease. I declined acceding to his wishes, and from that day to the present we have not spoken, that I recollect of except on matters of business where we were compelled. I believe that is about the extent of the hard feeling.

87) What did the \$4000 consist of that Hurd wished you to aid him to collect from Dr. Blaney?

Ans. It consisted of a Judgment in favor of Lee and against Daulap & Hurd for about \$1027.17
Two Judgments in favor of S. N. Wilson
J. O. Lyon & H. N. Stead against Daulap
& Hurd for (in the aggregate)
the sum of \$1164.15
And the two Judgments in question in favor
of Mr. Hurd for about \$800 or \$900.
The aggregate of these, claims with costs interest
&c amounted to about \$4000 as I recollect.

37

88X

Did not Hurd at the time spoken of insist that the Leo & Helen & Lyon Cuyamuts have been assigned to you on the agreement that they were to be enforced against Dunlap's property?
Ans. objected to by Compts.

Ans. I think he did at that time.

89X

Was it not because you refused to carry out that agreement as he insisted that the alienation took place?

Ans. I should say not.

90X

Will specify what it was, as they occurred?

Ans.

I will specify it again if you wish it. The alienation took place because of my refusing to call Mr Hurd in collecting about \$4000. out of Dr Blaney.

91X

How did he want you collect it or assist him?

Ans.

At the time he asked me to do it, I don't think that he stated any particular way for me to proceed, but used the language that he was in my power and that I could either help him or not and that as to whether I got his money or not depended upon the course that I pursued in reference to the judgment that had been assigned to me. I offered to assign them to him so soon as he would release Block 47 from the lien that he had on them as he had agreed to do. This did not seem to please him and he said that our friendship must cease.

Direct resumed.

1. State whether the Note mentioned in the examination by defendant as belonging to one Johnson was or was not given by Dr. Blaney, as his own Note, and if not for what purpose was it given by the said Blaney and to whom, does it belong to pay the same?

Int. objected to by Def. Hines.

Ans. The Note mentioned by Johnson was given by Dr. Blaney for my benefit, and it belongs to me to pay the same.

2. Have you any interest in the event of this suit directly or indirectly, express or implied, if yes, state the same?

Ans. I have no legal interest in this suit directly or indirectly.

Re Lerops Ex:

1. X. What did you say further in answer to the last question foregoing, as to interest?

Ans. I said I felt a moral interest in the matter.

2. X. What was the balance in favor of Hines in your Bank on the 21st July 1856.

Int. objected to by Counsel for Def.

2. Ans. The sum of \$ 817.56

3. X. What was deposited on that day?

Ans. The sum of \$ 2389.50

from which there was drawn out on that day
Sumers to and subscribed
before me this 1st day of
August 1859
S. C. P. Free
Master in Chancery
Cook Co. "

1554 " 94.
J. W. Benson. "

39

(Copy Executions)

" State of Illinois
County of Cook } S.

The People of the State of Illinois
To the Coroner and acting Sheriff of said County
Greeting:

That we command you that of the Lands and Tenements,
Goods and Chattels of Thomas L. Sanford, Robert
L. Dunlap, & Joseph C. Colburn, Defendants in
your County, you cause to be made the sum of
Five hundred and forty three dollars which
Harvey B. Hurst, Plaintiff, holds in the Cook
County Court of Common Pleas of said County
at a term thereof begun and held at Chicago in
said County on the 2nd Monday of September last past
recovered against the said Defendants and by which
the said Court was adjudged to the said Plaintiff
for his damages.

And also the further sum of Four dollars and
seventy cents which were adjudged to the said Plaintiff
for his costs and charges in that behalf expended
whereof the said Defendants were convicted as
appears to us of record And have you these moneys
ready to render to the said Plaintiff for his damages.

and costs aforesaid and make a return of said writ with an endorsement thereon in what manner you shall have executed the same in thirty days from the date hereof.

Witness Walter Kimball Clerk of our
said Court and the Seal thereof at
Springfield said County the 15th day
of November A. D. 1856.

Walter Kimball. Clerk "

(Endorsed thereon is the following)

"The Sheriff will please return this
Execution, no part satisfied. Novr 17th, 1856
H. B. Ford."

"This execution is returned no part satisfied
by order of Jeff as per his endorsement on this
Writ - this 17th day of November 1856.

James L. Beach
Coroner & Acting Sheriff
By J. J. Buckley

By Jeff "

"State of Illinois }
County of Cook }
} "

The People of the State of Illinois
to the Coroner & Acting Sheriff of said County,
Greeting:

We command you that if the Lands and Tenements
Goods and chattels of Thomas L. Sanford, Robert L.
Dunlap & Frank C. Colburn, defendants, in
your County, you cause to be made the sum of
Three hundred and eighty five dollars, which
Harvey B. Thur, Plaintiff, lately in the Cook
County Court of Common Pleas of said County
at a term thereof begun and held at Chicago,

in said County on the 2nd Monday of September last last recovered against the said Defendants and by which the said Court was adjudged to the said Plaintiff for his damages.

Also also the further sum of Four dollars and Seventy Cents which were adjudged to the said Plaintiff for his costs and charges in that behalf expended whereof the said Defendants were convicted as appears to us of Record and have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid, and make a return of said Writ, with an endorsement thereon in what manner you shall have executed the same in thirty days from the date hereof

Seal.

Witness Walter Kimball Clerk of our said Court, and the Seal thereof at Chicago in said County the 15th day of October A. D. 1856

Walter Kimball - Clerk "

(Endorsement thereon is the following)

" The Sheriff will return this execution no part satisfied. Nov 17th 1856.

J. B. Finch "

" This execution is returned no part satisfied by order of Plaintiff, as per his endorsement on this Writ, the 17th day of November 1856

James S. Brush

Clerk of the Office Acting Sheriff

By J. S. Buckley

Deputy Sheriff "

"State of Illinois
County of Cook

Thomas B. Carter clerk of
the Superior Court of Chicago, in the County of
Cook and State of Illinois Do hereby certify
the above and foregoing to be a full true and
perfect transcript of a certain Deposition now
on file in my office, of Francis H. Benson on
the part of the Complainant in a certain suit
heretofore pending in said Court on the Chancery
side thereof, wherein Joseph H. Eaton et al were
Complainants and Robert G. Dunlap and others
were Defendants, together also with two certain
Executions now remaining on the files of said
Court, which were produced and read in
evidence on the hearing of the above entitled
Cause.

In testimony whereof I have here
unto set my hand and affixed the
Seal of said Court at Chicago
in said County the first day of
May A.D. 1860.

Thomas B. Carter Clerk



Robert L. Dunslop

Switzer Transcript

118

Filed May 9, 1862

J. L. Lusk
Clerk

Wm. Williams
S. Woodbridge & Sons
Printers

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fifth day of March in the year of our Lord One Thousand Eight Hundred and Sixty Four and of the Independence of the United States of America the Eighty Fourth.

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Saml H. Higgins } Judges.
Grant Goodrich }

Charles L. Harris Prosecuting Attorney.

John Gray Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it Remembered, that heretofore to wit, One the twelfth day of October, in the year of our Lord One thousand, eight hundred and fifty eight, Joseph H. Eaton and Susan P. Eaton filed in the office of the Clerk of the Cook County Court of Common Pleas, their certain Bill in Chancery, which is in the words and figures, as follows to wit

In Chancery.

Before the Hon John M Wilson Judge
of the Cook County Court of Common Pleas
within and for the County of Cook
and State of Illinois.

Complaining shew unto your Honor, your ^{Orator} Joseph P
Eaton and Susan P Eaton wife of the said Joseph P
Eaton of Evanston in said County that on or about the
sixth day of December AD 1856, one Robert L Dunlap
claiming to be seized in fee of Block N forty seven (47)
in the Village of Evanston aforesaid, made his
warranty deed of that date (his wife joining) in
and by which for a consideration therein named
he then and there conveyed said Block forty seven
(47) to one James P Blaney. as by the said deed
now in the possession of your Orator, and ready to be
produced as this Court may direct, will more fully
appear

And your Orator and Oratrix further shew
that on the seventeenth day of October AD 1857
the said James P Blaney and wife made his
warranty deed of that date in and by which for
a consideration therein named the said Blaney &
wife conveyed to your Oratrix Susan P Eaton,
Lots. One (1) two (2) three (3) ten (10) eleven (11)
and twelve (12) in said Block being the south half
thereof, and that afterwards on the eleventh day
of October 1858 the said Blaney & wife by their
quit claim deed of that date for a consideration
therein named conveyed to your Oratrix and
Susan P Eaton the same number of said lots

And your Orator and Oratrix further shew
that the aforesaid conveyance of

What is said in the ...
referred to either ...
have obtained ...

- 1st A judgment in the ...
in favor of Horatio St Lee and ...
Dunlap and one Henry P. Kurl dated October
28. 1856 for \$1021⁶⁴ and costs.
- 2nd A judgment in the same Court in favor of
Joseph J. Brooks, and against said Dunlap
dated October 29th 1856 for \$632⁹⁴ and costs
- 3rd A judgment in the same Court in favor of Francis
P. Buckley and others & against J. L. Sanford,
Josiah Colburn and said Dunlap for \$611⁴⁴
and costs dated Nov. 5th 1856
- 4th A judgment in this Honorable Court in the
law side thereof in favor of David O. Strong and
others and against said Dunlap and Sanford
dated September 10th 1856 for \$223³⁰ and costs.
- 5th Another in favor of Sextus A. Wilcox and others
and against said Dunlap said Kurl and
one Abel P. Knight. dated November 6th 1856 for
\$506⁷¹ and costs and
- 6th Another in favor of Sextus A. Wilcox and others,
and against said Dunlap Colburn & Kurl
dated November 6th 1856 for \$657⁴⁴ and costs.

And your Orator & Oratrix further shew
that at the time said Blaney purchased said
Block as aforesaid neither said Blaney nor
your Orator nor your Oratrix had any knowledge
of the existence of said several judgments or
of either of them & that the first knowledge
they had upon the subject was about the
middle of June A.D. 1857. when they had occasion
to procure an abstract of title to said Block, that

^{his}
immediately employed J. M. Benson to procure
a discharge of said judgments, that the said
Benson induced the said Court to pay all
judgments to which he was a party defendant &
purchased the other judgments.

The said Benson thereupon insisted that
said judgments should be satisfied in full and
discharged of Record; but the said Court by
earnest solicitation induced the said Benson to
allow said judgments still to remain on Record
apparently unsatisfied, pretending that said
Dunlop should have paid all of said judgments
& that he said Court desired to keep said judgments
alive in order to enforce them against said Dunlop;
that said Benson annexed as a condition to his
assent to the proposals of Court that said Block
should be sold upon executions issued upon all
of said judgments and bid in for the benefit
of said Blaney and your Orator and Oratrix in
order to defeat the apparent liens of said judg-
ments upon said Block; that accordingly the
Sheriff of Cook County went through the form
of a judicial sale upon said several executions
on the 6th day of July 1857, and the said Block
with other property was struck off to said Benson
and a certificate of purchase issued to him.

And your Orator and Oratrix state that said
Benson bid off said Block and received said
Certificate in trust for said Blaney and your
Orator & Oratrix and that said Court was well
aware of the fact.

And your Orator and Oratrix
show that previous to the said
execution said Benson had purchased

5
and about 20th day of May 1850 in
planing mill and in the manufacture of
sash and blinds in the city of Chicago.
on or about said 20th day of May 1850
said Hurd sold his interest in said joint business to one
Thomas S Sanford who thereupon took the
place of said Hurd in said firm, that on
or about the second of June 1850 at divers times
the said Hurd informed said Daulap &
Colburn that as part consideration for the
interest of said Hurd in said joint business
said Sanford had agreed to assume and pay
the liabilities incurred by Hurd in said joint
business but that said Sanford was behaving
strangely, and said Hurd feared that he was
intending to violate his contract and to leave the
old firm to wit. said Daulap, Colburn &
Hurd to pay all its liabilities - and it was
then agreed between said Daulap, Colburn &
Hurd that in order to hold said Sanford to
his contract the said new firm should make
their certain promissory judgment note, payable
to the said Hurd two months from date with
ten per cent interest for the sum of three hundred
and fifty four dollars, the said note although
nominally made for the benefit of said Hurd
to be peddled for the joint benefit of said Hurd
Daulap & Colburn, the said Hurd distinctly
agreeing to use said note only against said
Sanford when necessary to compel said Sanford
to pay his share of the debts of said firm and
never to use the same in any manner against
said Daulap and Colburn

And your Obedt and Obedt

further show that said Durlap and Colburn signed said judgment note in pursuance of the aforesaid agreement & the said Hurd induced the said Sanford to sign the same in manner following -

The said Hurd held a note of Durlap Wright & Co for the sum of Three hundred dollars of which said firm said Hurd Durlap and Colburn were partners and he represented to said Sanford that it was one of the debts which belonged to him said Sanford to pay and presented the said judgment note signed as aforesaid by said Durlap and Colburn as a substitute, the said Hurd claiming the difference between the two notes, to wit the sum of fifty four dollars as interest computed at the rate of 20 per cent per annum; and the said Sanford relying upon the statement of said Hurd that said three hundred dollar note was wholly due & unpaid, and perceiving that said Durlap & Colburn had signed said judgment note, likewise signed the same.

And your Orator and Oratrix further shew that at the time said Sanford signed said judgment note as aforesaid and for a long time previous thereto the said three hundred dollar note had been about two thirds paid up; that the said Hurd owned four ninths of the business of Durlap Wright & Co. & was liable to 4/9 of the debts, that when said Sanford signed said judgment note, not more than (\$56) fifty six dollars was really due on said three hundred dollar note, and the said Hurd shewed the said Sanford as a mere partner in order to induce the said Sanford to sign said judgment note.

And your Orator and Oratrix do not
insist that said contract between said
Colburn & Durlap was illegal, that the ground
of said judgment note was fraudulent in good
and that said judgment note was void is wholly
fraudulent and void.

And your Orator and Oratrix further show
that on or about the third day of September 1856
said Durlap and Colburn paid said ~~four~~
forty eight ⁵⁰ dollars to be applied on said three
hundred dollar note which with a disputed
account for interest which said Durlap and
Colburn claimed largely (overpaid) overpaid
said note and left said Hurd in debt.

And your Orator and Oratrix further
show that at the time said Hurd sold his interest
in said copartnership business to said Sanford
one Aaron Miller held a claim against the
firm for five hundred dollars. that on or about
the 2nd day of June 1856 the said Durlap
Colburn & Sanford in order to obtain further delay
of payment from said Miller, executed their
promissory judgment note for that amount
either to said Miller or to said Hurd for his
benefit payable in one month from date with
ten per cent interest, that said note was subse-
-quently endorsed to one Isaac Spear; that said
Durlap Colburn & Sanford paid to the said
Spear the amount of said note in full and the
said note was delivered to the said Durlap and
Colburn as a voucher.

And your Orator and Oratrix further show
that the said Sanford verified the fears of
said Hurd, that he totally neglected the interests

judgments rendered in favor of your Orator & Oratrix
 could have still out-landed and apparently
 upon said Block; that said Court was
 that said Maney was about 16 years of age
 informed said Maney that he claimed a lien
 upon the premises by virtue of said judgments,
 but stood by in silence & permitted said Maney
 to purchase said Block, that since said pur-
 chase said Maney and your Orator & Oratrix
 have made extensive and valuable improvements
 upon said Block, amounting in value to about
 \$12,000, that said Court has frequently returned
 the progress of the improvements and has never
 by word or sign intimated either to said
 Maney or your Orator or Oratrix that he
 intended to claim a lien upon said premises;
 but on the contrary thereof by his frequent com-
 mendation of the Shrubbery and other improve-
 ments upon said block has incited your Orator
 and Oratrix to larger endeavours to cultivate
 and adorn it; And your Orator and Oratrix
 do and will insist that said Court has raised
 his lien if he had any by thus standing by in
 silence and permitting the purchase and
 improvement of said Block as aforesaid.

And your Orator and Oratrix further
 shew that on or about the 31st day of August
 AD 1858 the said Court in fraud of the rights
 of your Orator and Oratrix and in violation
 of his express agreement with said Deuelop
 and Keelburn attempted to redeem said
 Block from the sale thereof made under
 execution as above stated, pretending to be a
 judgment creditor of said Deuelop by virtue

of the two void judgments above named and to that end attempted to sue out an execution upon the judgment entered upon the three hundred & fifty four dollar judgment and deposited the sum of twenty eight ^{05/100} Dollars being the amount of the former sale of said Block and interest, and on the 23rd day of September 1858 pretended to purchase said property for the amount of said redemption money.

And your Orator & Oratrix further shew that said Block was advertised for sale, was sold by the Sheriff and purchased by said Hurd in gross & that the same was true of the sale under said said Executions, whereas there was a legal subdivision thereof at both times on record, by which it was subdivided into 12 lots, and there were two distinct improved homesteads upon it, and the same could have been sold to better advantage if sold in parcels and your Orator & Oratrix do and will insist that both sales were void.

And your Orator further sheweth that the execution, under which the said premises were attempted to be sold by said Hurd was not signed by the Clerk of the Court and your Orator, and ^{oratrix} do and will insist that the said execution and the sale attempted to be made thereunder was & is wholly void.

And your Orator and Oratrix further shew that the said Hurd attempted to redeem from a sale of said block made on an execution in favor of David O Strong and Christopher Wiley (as will more fully appear by the return of the Sheriff of the County of ... Court whereas said former sale was made

10
upon the execution of said judgments as above stated and your Oratrix do and will insist that said pretended redemption was a nullity for that reason.

And your Orator and Oratrix further shew that at the time of the sale of said Block under the six executions ^{of said} ^{the} ^{executions} issued upon both of said judgments in favor of said Hurd were in the hands of the Sheriff and that if a valid sale could have been made under said Hurd Executions it was made at that time and the lien of said Hurd judgments if they ever attached to said Block was thereby divested.

And your Orator and Oratrix further shew that at the time of the levy and sale of said Block under said six executions the said two judgments standing in the name of said Hurd were a lien (if they ever were) upon said Block and in that case constituted an equitable interest in said Block subject to levy and sale upon execution; that to three of said six Executions said Hurd was a party defendant and that his right to redeem said Block from said sale terminated in twelve months from the date of said sale.

And your Orator and Oratrix further shew that the Sheriff has made a deed of said Block to said Hurd under said pretended redemption and the same is a cloud upon the title of your Oratrix to said Block.

And your Orator & Oratrix do & will insist that if said Hurd acquired any rights under said Sheriff's deed it enured to the benefit of said Dunlap who in his turn holds in trust

for the benefit of the said Blaney as his grantee
And your Orator has frequently requested
the said Court to quit claim the said Block to
your Oratrix and well hoped that the said Court
would have complied with such your Orator's
reasonable request, but now so it is, may it
please your Honor that the said Court com-
bining and confederating with said Robert
L Dunlap, Josiah E Colburn and Thomas L
Sanford and with divers other persons unknown
to your Orator & Oratrix whose names when discovered
your Orator & Oratrix pray may be inserted in their
bill of Complaint with apt words to charge them
as parties thereto to injure and aggrieve your
Orator & Oratrix in the premises wholly refuse and
declines to quit claim said Block to your
Oratrix

All which acting doings and pretences
are contrary to equity and good conscience
and tend to the manifest wrong and injury
of your Orator & Oratrix, in better consideration
whereof and for as much as your Orator and
Oratrix are perilled in the premises by the
strict rules of the Common Law & can only
obtain relief in this Honorable Court where
matters of this nature are properly cognizable
and plevable,

To the end therefore that the said
Hearsey B. Ward Francis H. Benson, Robert L
Dunlap Thomas L Sanford and Josiah E
Colburn and their confederates, ^{and} ^{their} full
direct and perfect ^{and} ^{sole} ^{and} ^{single}
and singular ^{and} ^{sole} ^{and} ^{single}
and charged (Your Orator and Oratrix)

main judgment of the Court (and that the
 the evidence of such judgments being made
 under the oaths of perjury (and being all
 of them) and that as fully and completely
 as if the same were here repeated and they
 thereto severally and specifically interrogated
 and that they shall so answer not only as
 to the best of their several and respective
 Knowledge and remembrance but also as
 to the best of their several and respective
 hearsay information and belief

And that the two judgments obtained
 by said Hurd and the redemption of said
 Block by said Hurd and his purchase of said
 Block may all be declared to be fraudulent
 and void and that the said Hurd may
 be perpetually enjoined from issuing any
 Execution or Executions upon said judgments
 in order to effect the title to said Block
 and from commencing any suit or suits
 in Equity to obtain possession of said Block
 or of any part thereof and from interfering
 in any manner with the full enjoyment
 of said Block by your Orator and Oratrix
 or by any person or persons claiming under
 them or that the said purchase of the said
 Hurd may be decreed to have been for the
 benefit of your Oratrix, and he may be
 decreed to quit claim the said Block to your
 Oratrix by a proper and sufficient conveyance
 or in case of his default that a Commission
 may be appointed by this Honorable Court
 to convey to your Oratrix the apparent title of
 the said Hurd

And that your Orator and Oratrix may have such further or other relief as the nature of their case may require and shall be agreeable to equity -

May it please your Honors to grant unto your Orator & Oratrix the writ of summons. to be directed to the said Harry B. Heard, Francis H. Benson, Robert S. Dandolph Josiah Colburn and Thomas S. Sampson commanding them & each of them by a certain day and under a certain penalty therein to be inserted. to be and appear before your Honor in this Honorable Court & there to answer the premises and to abide such order and decree therein as shall be agreeable to equity & good conscience and your Orator and Oratrix shall pray &c

Joseph H. Cabot
Susan P. Cabot.

William Woodbridge & Grant.
Sols for Compls.

And your Orator and Oratrix further shew that the said Benson after purchasing said Block under said six Executions made a general assignment for the benefit of his Creditors to John C. Beveridge and William P. Moss Jr. and that on the 4th day of January, A.D. 1858 the said Beveridge Moss and Benson & Wife by their deed of that date conveyed to said Nancy the title (if any) to said Block & that the said Benson acquired under said deed &c &c that said deed was filed for record in the

records office of said Court
 5th day of January 1851 and
 in said office in Book of Deeds
 mine (H.C.) of Deeds page 440. effects
 will more fully appear by a reference to
 said deed which is now in the possession of
 you Orator and Oratrix and ready to be
 produced as this Court shall direct

And you Orator and Oratrix do and
 will insist that the said Conveyance to
 said Mary was a full redemption of
 said Block from said execution, ^{Sale} and that
 the certificate of sale issued to the said
 Benson was thereby cancelled and that
 the pend of said deed was full and
 complete notice thereof to the said Board

And afterwards, to wit on the same day and
 year aforesaid, there issued out of the office of
 the Clerk of said Court. the Peoples writ of
 Summons. which said writ and the Sheriff's return
 thereon enclosed is in the words and figures as
 follows. to wit

State of Illinois }
County of Cook } ss.

The People of the State of Illinois,
to the Sheriff of said County Greeting:

We command you that you summon
Harvey B Beard, Francis H Benson, Robert L
Dunklap, Josiah C Colburn & Thomas L Sanford
if they shall be found in your County, personally to be
and appear before the Cook County Court of Common
Pleas, for the County of Cook, on the first day of
the next term thereof, to be holden at the Court House
in the City of Chicago, in said County on the first
Monday of November next to and answer to Joseph
H Eaton & Susan B Eaton in their certain Bill
of Complaint filed in the said Court, on the
Chancery side thereof

And have you then and there this
mit, with an endorsement thereon,
in what manner you shall have ex-
ecuted the same.

Witness Walter Kimball Clerk of
Our said Court, and the Seal
thereof, at the City of Chicago
aforesaid, this 12th day of
October, A.D. 1858.

Walter Kimball Clerk

Served this mit on the within named Harvey B
Beard. (the other defendants not found in my
County.) by delivering a copy thereof to him the
12th day of October 1858. John L Wilson Sheriff
by George Anderson Deput.

And afterwards to wit on the tenth day of
November, in the year aforesaid, said day being
one of the days of the year aforesaid, signed
of said Court, the following among other proceed-
ing was had and entered of Record in said Court,
to wit.

Joseph H Eaton +
Susan P Eaton

vs.

Harry P Hurd
Francis H Benson.
Robert L Dowlap
Josiah P Colburn +
Thomas L Sanford

Bill

This day comes said Complain-
ants by William Woodbridge + Grant their Solicitors
and Harry P Hurd in person, and Eastman
Bertridg + Sumbard Solicitors for defendants Dowlap
Colburn + Benson. also come, and on their motion
and by consent of said Complainants Solicitors
it is ordered that the time for said defendants to
appear herein to plead, answer or demur to said
Complainants Bill in this cause be and is hereby
extended to twenty fifth day of November instant,

And afterwards to wit on the first day of December
in the year aforesaid, the following among other
proceeding was had and entered of Record in said
Court. (said day being of the November 2nd 1/2 Term of said Court)

Joseph H. Eaton &
Susan B. Eaton

vs.
Harry P. Hurd.
Francis H. Benson
Robert L. Doulap
Josiah E. Colburn &
Thomas L. Sanford

Bill

And now at this day again
comes the said Complainants by their Solicitors
aforesaid as well the said Harry P. Hurd in
person, and the said Defendants - Francis H. Benson,
Robert L. Doulap and Josiah E. Colburn by Estuan
Perridge & Lombard their Solicitors also come,
and upon agreement of said parties who appear
herein, It is ordered that the time for said defend-
ants Hurd, Benson, Doulap and Colburn to
answer said Complainants bill in this cause be
and is hereby further extended to first day of
January next.

And afterwards to wit, on the twenty ninth day of
of December in the year aforesaid H. P. Hurd
filed herein his certain answer, in words and
figures as follows to wit.

In Chancery

Cook County Court of Lane Ills.

The several Answer of Harry B Heard one of the defendants to the bill of Complaint of Joseph H Eaton & Susan B Eaton Complainants - against this defendant and Francis H Busse Robert L Dentlap. Thomas L Sanford & Josiah Colburn defendants.

This defendant now and at all times saving & reserving to himself all advantage and benefit of exception to the errors and imperfections contained in the said bill of Complaint of the said Complainants for answer thereto or to so much thereof as he is advised it is material for him to make answer unto he answering admits that on or about the 6th day of December 1855 said Robert L Dentlap deeded Block Forty seven (47) in the village of Brandon to James V B Planey. and that the said Planey afterwards on the 17th day of October 1857. deeded lots one two three. ten. eleven. & twelve in said Block to said Susan B Eaton & that afterwards on the 11th day of October 1858 said Planey deeded the balance to said Susan B Eaton by a quit claim deed but whether said deed was for a valuable consideration this defendant does not know.

And this defendant further answering admits that the judgments mentioned in said Complainant bill were liens on said Block at the time the same was purchased by said James V B Planey and in answering order to wit.

1st Jdgt. Said Eaton vs. Robert L Dentlap

morally bound to clear said property from said encumbrances even if he had to pay off the same himself. That he was determined that Blaney should not suffer on account of his representations & ever since that time the said Benson has pretended to be acting as such agent of said Blaney and of said Complainant. But whether the said Complainant or said Blaney did know of said lien at the time the said Blaney purchased of Dunlap or when they first found it out this defendant cannot say but charges that they were all of Record at that time & were legal notice to all persons.

And this Defendant further answering denies that the said Benson induced him to pay any or all of the judgments to which he was defendant or that he insisted that said judgments should be satisfied or that said Benson annexed as a condition to his taking an assignment of & holding said judgments, that the said Block or any property should be released from the lien thereof or that said Block should be sold on any execution or executions to defeat the apparent liens on said Block or for any purpose or that this defendant had anything to do with said sale or ever knew of its title after it had taken place but he charges the facts to be that ever since the year 1852 this defendant & said Benson had been engaged in buying & selling property together & this defendant had befriended the said Benson in many ways & the said Benson was continually receiving large sums of money for this defendant & was acting as his agent & his friend as he says & where he could do anything for him.

the year 1857. The said defendant was a large landholder in the
 said Person, that while this defendant was
 absent at the East on business sometime about
 the last of January or first of February AD
 1857 said Horatio N. Lee & the said Wilcox
 et al levied upon the property of said Durlap
 and said Heard & were about to sell the same
 at public Auction & the said Person claimed
 that happening to be present when the sale was
 about to be made assured the said Lee that if
 he would ~~not~~ wait till this defendant returned
 he this defendant would arrange the matter
 & he the said Person agreed to be personally
 responsible for his so doing, and as soon as
 this defendant returned, said Person preten-
 ding to be the friend of this defendant & to
 have done him a kindness for the sake of
 friendship, represented said matter to this
 defendant & this defendant did on or
 about the 18th of February 1857, make an
 arrangement with said Lee that said Lee
 should take an acceptance of said Person
 for said judgment & assign said judgment
 to said Person which assignment was to be
 delivered to said Person on the payment of
 said acceptance & this defendant at the same
 time arranged with the said Person that he
 should hold said assignment for the use
 & benefit of this defendant & that said
 judgment should thereafter be prosecuted &
 made out of any of the property of said
 Durlap upon which it might be a lien that
 said acceptance was duly paid when due
 out of the money belonging to this defendant.

and which this defendant had procured, ^{in the purchase} although said Benson was then & at the time of said acceptance largely indebted to this deponent.

And this defendant further charges that at the time this defendant's property was about to be sold on said judgment said Quulap personal property was about to be sold and that said Benson had a lien upon the same and an interest to get the money out of this deponent's that account.

And this deponent further answering says that at the time the said Quulap property was about to be sold as aforesaid the said Quulap was a customer of said Benson & on their application it was arranged by and between said Wilcox et al & said Quulap, Colburn Benson & one Hilber & Hitchcock who was at that time a partner with said Quulap & Colburn that the said Benson should loan to said Hitchcock the amount of the said Wilcox et al judgment & the said Hitchcock gave to said Benson his note for \$1400, or thereabout upon which money was raised & the said Hitchcock paid to said Wilcox et al the amount of said judgment, & had the same assigned to said Hitchcock and the sum of

held the said judgment on the
the 16 day of July 1850, when
after several applications on the
part of said Hitchcock to have
the defendant pay said judgment
said Benson came to this defendant
& said he (said Benson) held said
Hitchcock's note for \$1400. dollars
& that it was then due or soon
to become due & urged the de-
fendant to make some arrange-
ment with Hitchcock whereby said
Hitchcock's note could be paid &
proposed that he could get said
Hitchcock to give the defendant
his note due six months after
date for \$500 & assign the said
judgments, so that the defendant
could make them out of the
other defendants, and the said
Benson urged this defendant to
make some arrangement so that
he could get his money on said
note as he was then in great
need of money & claimed as a
matter of friendship to him that
this defendant ought to try and
help him get the amount of said note of
Hitchcock. It was finally
agreed that this defendant should
give his note for \$1400. payable
to said Benson three months after
the date thereof which should pay

the said Hitchcock's note & the
said Hitchcock should assign
the said judgments to said
Penson to be held & used for
the benefit of this defendant, &
if possible made out of the
property of the other defendants.
This defendant did so give his
note & the assignment was so
made. At the time the said
judgments of said Lee & Wilcox
Lyon & Co. were assigned to said
Penson, nothing was said about
said Block forty seven or of there
being liens upon said Block or
of the said Block being released
or that the said judgments should
not be enforced against the said
property or any other property of
either of the said defendants
Except this defendant. nor was it
avowed to be any part of the
object or purpose of said Penson
to relieve said Block 47 from
said judgments, on the contrary
the said Lee judgment was so
assigned long before the said
Penson was employed as the
agent of said Complainants &
said Blaney, & as to the said
Wilcox Lyon & Co's judgments the said
Penson advanced the money to said
Hitchcock to buy them in order
to relieve the personal property

of said firm of ~~Smith & Co~~ to-
 Cock & Co which was then in danger
 of being sold, & that said
 Hitchcock made an unconditional
 assignment of said ^{judgments} ~~property~~, and
 that he afterwards interested him-
 self in the arrangement between
 Hitchcock & this defendant as
 above set forth to get his pay
 upon said Hitchcock's note of
 \$1400, said amount being larger
 than said judgments & if he had
 any other purpose in his mind
 he studiously & fraudulently
 kept it from this defendant at
 the same time ^{that} he pretended to
 be acting as his friend and
 agent.

And for further answer this
 defendant says that the said
 judgment was procured
 against this defendant in this
 wise, some time about the 21st
 day of July 1856 said Dowlap
 applied to this defendant for a
 loan of one thousand dollars,
 this defendant put off the said
 Dowlap by saying he would see
 if he could loan the amount
 to him, afterwards he met said
 Dowlap & offered to loan him
 the amount but said Dowlap
 said he could borrow the money

of Messrs Greenebaum & Bros if they
deft would sign the note with
him as surety which he did
on said Duulap's promising
upon his honor that he would
meet the note promptly when
due & on his giving this defendant
a note hereinafter mentioned as
Collateral security.

When said note to said
Greenebaum & Bros fell due the
said Duulap failed to meet it &
judgment was entered by Confession.
This defendant was only security
on said note & received no
part of the proceeds thereof &
should not in justice have had
to pay it.

And as to the judgments of
Wilcox Lyons & Co the indebtedness on
which the 8th above mentioned
judgment was obtained was in
part for indebtedness which was
incurred by said Duulap as
this defendant has been informed
for the firm of Duulap Colburn & Co
of which this defendant was a
member till the 20th May 1856,
& the balance about \$252,000
dollars was incurred by the
firm of Duulap Fayford & Co or
Duulap Stitches & Co in which
this defendant was not concerned
which this defendant is not
Collusion of said Duulap & Co

Quulap with some Milcox Lyon & Co
 was fraudulently recovered
 against this defendant in Company
 with said Quulap & Colburn.
 And the other judgment was upon
 indebtedness of Quulap Wright & Co
 of which firm this defendant
 was a member but which this
 defendant believes was once
 fairly ^{paid} by turning out note or
 notes of one of the debtors of
 said firm but afterwards received
 by said Quulap in this way. The
 said Quulap procured the said
 debtor or debtors of said firm Har-
 riott or Harriott & McDonald to
 build a house for him the said
 Quulap & agreed to turn in said
 note or notes in payment for
 building said house which he
 did by receiving the same back
 from Milcox Lyon & Co &
 the same to said debtors & this
 received the said indebtedness
 in fraud of the rights of the other
 parties of said firm & in fraud
 of this defendant.

And this defendant charges
 that in fact the said Quulap
 ought to pay the whole of the
 said Lee judgment and the whole
 of the said Milcox Lyon & Co judg-
 ment against Quulap Wright & Co

and the said Quulap & Colburn
and Sanford ought to pay the
whole of the

And this defendant has a right
to enforce the said judgments
against the said Quulap and
against any and all property
of said Quulap upon which they
are or were liens.

And this defendant further
answering admits, that from the 26th
March 1854 till the 20th day of May
he was a silent partner in the
firm of Quulap Wright & Co & was
the owner of four ninths of the
business & property of the said
firm and was liable for four
ninths of the debts incurred &
entitled to the same proportion
of the profits made during that
time, and that previous to
that time he was the owner of
two ninths of the same part of
the time in company of said Quulap
Colburn & Wright & part of the
time with John C. Dore & Joseph
P. Brooks & that on the 20th day
of May 1854, this defendant sold
his interest to Thomas
L. Sanford with the assent of said
Quulap & Colburn upon the
agreement with

that he should in all respects
 occupy the position necessary for
 Credits Coming to & pay the
 share of the debts due from said
 Ward in said Concern. That
 said Sanford went into said firm
 upon said agreement with the
 knowledge Consent & approbation
 of said Quulap & Colbam & they
 received him instead of the de-
 feudant and did not make any
 entry in their books of accounts
 nor did they take any account
 of lumber materials & property on
 hand but in all things took to
 substituted said Sanford in the
 place of this defendant and for
 some time acted upon the said
 agreement & understanding & con-
 tinued to do so till they found
 that said Sanford was misbehaving
 taking the property of said Concern
 without charging the same to him-
 self pledging the Credits of the
 firm for his individual indebt-
 edness, abstracting lumber and
 other things, and this defendant
 denies that he was the first to
 discover the improper conduct
 of said Sanford or that he knew
 any thing about it till informed
 by said Quulap. and he denies
 that he knew or was informed

that said Sanford was misbehaving
at the time either the said three
hundred & fifty four dollar note
or the said five hundred dollar
note was given. This defendant
believes that at that time the
said Duulap Colburn & Sanford
were satisfied with each other
& intended to carry out the true
intent and meaning of the par-
ties & that they signed the said
notes freely on request of this
defendant & without any repre-
sentation on the part of this
defendant. Except that the three
hundred & fifty four dollar note
was for money this defendant
had advanced the firm including
interest that had accrued thereon
& that the five hundred dollar
note was for money borrowed by
said firm of one Aaron Miller.
The said Duulap then mentioned
the individual account against
this defendant & proposed to have
it allowed on said \$350 note
but this defendant replied that
he would not so allow it, that
he had an account against
said firm for legal services
running through all of the time
of the existence of said firm
& the previous firms & that he
would afterwards call said

accounts, upon which the notes were signed, without further objection, with the full understanding that this defendant should use the note to him as his own property & for his sole use and benefit & without any understanding that it should be used for the benefit of said Quilap & Colburn & without any agreement to use the note against Sanford only or any understanding to that effect.

And this defendant always supposed he had a perfect right to use said note against any and all of said parties & he denies all and any intention to deceive said Sanford or said Quilap or Colburn & denies all fraudulent intentions in the matter & denies that the said note was procured by falsehood and that either said note or the judgment thereon is or was fraudulent & void.

And this defendant insists that he is not bound in law to answer whether any sum was added into said note as usurious interest.

And this defendant further answering denies that the said Quilap, Colburn or any other person ever paid him any sum

to be applied on said Note & he avers that the same is wholly unpaid to this day & is justly due this defendant.

And this defendant further answering admits that at the time this defendant sold out his interest in said concern that Aaron Miller held a judgment note against said firm, which they were bound to pay for the sum of Five thousand dollars & that on or about the 2nd day of June 1851 the said Dunlap Colburn & Sanford in order to obtain further day of payment from said Miller Executed their promissory judgment note to that amount payable to this defendant or order in one month from its date with ten per cent interest & that it was subsequently endorsed to one Isaac or Thomas Spear, & that the same was paid to said Spear but he denies that it was paid by Dunlap Colburn & Sanford but he believes & so charges the fact to be that it was paid by Dunlap out of funds belonging to

and this defendant admits that the said Note was delivered to said Dunlap but this defendant avers that before the said note

was so paid or soon after and
 at the time the said Note to
 Greenbaum & Bro was signed as
 security by this defendant if was
 signed by said Duulap that said
 Five Hundred dollar note should
 be placed in the hands of this
 defendant & that this defendant
 should hold the same as collateral
 security for his signature on said
 note to G & Bro in as much as
 the money to be raised on said
 note was to go to pay the debts
 of said firm of Duulap Sanford,
 & Co & according to the best of
 this defendant's recollection & belief
 a part of the money so raised was
 used to take up said five Hundred
 dollar note, or to repay what
 had been advanced therefor, and
 in as much as a difficulty had
 arisen between said Duulap &
 said Sanford, so that it was doubt-
 ful if said Sanford would sign
 said note to Greenbaum & Bro,
 and said Five Hundred dollar
 note was so placed in this de-
 fendant's hands by said Duulap
 at or about the time of the signing
 of said Note to Greenbaum & Bro.
 & this defendant admits that said
 Duulap failing to pay said Note
 this defendant applied to said

Quulap to know what should be done & the said Quulap requested this defendant to enter up judgment on the said Five Hundred Dollar note with a view to holding the property of said Sanford who was then no longer a partner of said firm but was in many ways trying to cheat the same & this defendant soon after or on the same day said Conversation was had entered up judgment on both the \$354 & \$500 note & had executions issued on the same but this defendant denies that he ever distinctly or agreed to use the said notes or judgments or either of them only against the property of Sanford or that the proceeds thereof should go to pay the debts of said firm or that there was any agreement or understanding that they should not be used against the said Quulap and Colburn as well as against the said Sanford & he denies that the assent of said Quulap & Colburn to the entry of said judgment was upon the condition that they were only to be used against said Sanford, but he admits that they hoped by their entry that said Sanford could be made to pay some part of his property to the

payment of the debts of said firm, &
 this defendant insists that both
 of said judgments are valid,
 judgments got in good faith
 against the said Quilap & Colburn
 and that the said Quilap & Colburn
 have no joint or other interest in
 them with this defendant; that
 they were not got by fraud or
 deceit and that the said Com-
 plainants have no right to en-
 quire into the Consideration or
 regularity thereof & that they were a
 valid & bona fide lien on said
 Block forty seven.

And this defendant admits that
 at the time said Blaney purchased
 said Block forty seven said
 judgments were a lien in favor
 of this defendant & were unpaid
 & unsatisfied but this defendant
 denies that he was aware that
 said Blaney was about to purchase
 said Block forty seven or that he
 had purchased it till a long time
 after it was purchased & he denies
 that he ever asked this defendant
 about said property or that this
 defendant had any opportunity
 even to inform said Blaney of
 the same. He admits that said
 Blaney & the said Complainants

have made extensive improvements upon said property but whether of the value or not of \$2000. this defendant cannot say & he leaves the said Complainant to prove. but he avows the facts to be that a large portion if not all of said improvements have been made since the said Blaney & said Complainant had actual notice of said judgments including the judgments of said Lee and said Wilcox & others against said Ouelap & a large part of said improvements have been made since this defendant has been urging his said judgments against said property & he admits he has witnessed the said improvements as he has other improvements in & about Evanston with pleasure & that he has frequently admired & commended the taste displayed by the said Complainant & by said Blaney & he admits that he has never to this day spoken with either of them in regard to said liens or this present suit but this defendant charges that the said Francis H. Benson has pretended to act as the agent of said Blaney & said Complainant ever since this defendant knew he had any lien on said Block and that whenever this defendant

had any opportunity to urge his claim against said property he has done so & the reason this defendant did not speak with said Blaney & said Complainants about the same is that said Benson pretended that he had the whole matter in charge & often requested this defendant not to trouble them with it, sometimes promising that he would pay said judgments out of funds & assets he was soon going to have belonging to said Quilap & Quilap & Colbam and sometimes pretending that he could and would enable this defendant to make the same out of other property belonging to said Quilap & at other times saying that he would hold the Certificate of sale for the use & benefit of this defendant & this defendant charges that said Benson expressly agreed on several occasions that he would hold said Certificate so that this defendant should be enabled to make his judgments (including the Lee & Wilcox & others judgments) out of said Block forty seven, which said agreements he afterwards denied to have made & refused to fulfil & this defendant charges

that as the agent of said parties
& for the purpose of discharging
what he pretended to be a moral
obligation to clear said Block of
incumbrances said Benson was all
the time secretly trying to defraud
this defendant out of his liens on
said property while he was pre-
tending to be this defendant's friend
& professing that he would pro-
tect his interests & this defendant
denies that there was any agreement
or intention on his part to waive
or give up his liens on said
property.

And this defendant further
answering says that about the 30th
of August 1858 he went to said
Francis A Benson & requested him
to assign to this defendant the
Certificate of sale to this defendant
or cancel the same or make some
arrangement that would insure the
faithful performance of the said
Benson's agreement to hold the said
Certificate for the benefit of this de-
fendant which the said Benson
then refused to do. The said Benson
then declared that neither the said
Blaney & Quilap nor any other
person had redeemed from said
sale. This defendant then informed
said Benson that he should take
such means as would insure,

his rights and told him that he wished said Benson to take notice of that part as he did not wish any Complaint that this defendant had acted unfairly. And, ^{nevertheless} although this defendant sued out the executions as set forth in said Complainant's bill & attempted to redeem from the said sale and sold the said property & bid the same in the manner prescribed in the Statutes & a deed was made therefor to this defendant.

And this defendant admits that said Block was advertised & sold by the Sheriff & purchased by this defendant in gross that being the manner that the same was sold to said Benson from which sale this defendant redeemed & this defendant admits that there was a legal subdivision of said Block into 12 lots & that there were at the time of either sale two distinct improved homesteads upon it, and this defendant believes that the said Block could have been better sold at each time in separate lots, or in two parcels, but he submits whether under the circumstances this defendant was not bound to pursue the same manner of levy advertising & sale as the said Benson

as the agent of the said Com-
plainants & says Blaney had adopt-
ed & whether they are not estopped
from saying that said sale was
not properly & legally made

And this defendant admits that
the execution on which the sale
to this defendant was made was
issued without the signature of
the clerk of this Court but he
avens that it was in all other
respects regular on its face &
was afterwards by order of this
Court made on the 10th day of
November amended nunc pro tunc
and that the same now stands
regular in all respects properly
amended by the signature of
said clerk

And this defendant denies
that the said Executions on said
two judgments in favor of this
defendant were in the hands of
said Sheriff or that any sale
was made under them.

And this defendant denies
that a sale of said Block was
made to said Benson upon
any execution wherein this de-
fendant was a party defendant
or that this defendant's interests
were sold by virtue of said sale
and he avens that he has been
informed and believes that the

return of the Sheriff on said Executions is not true so far as they bear any interpretation to that effect and this defendant charges the fact to be that the said sale was only made upon the judgment in favor of said Strong & ~~Hilcox~~, ^{Wiley}.

And this defendant further answering denies that the said Blaney or said Complainant or any person ever requested this defendant to quit claim said Block from said sale under said execution but the said Complainant by their Counsel John Woodbridge pretended that the said Complainant would settle with this defendant & pay him his just claims against said Block up to the time of the service of the writ in this cause.

And this defendant further answering admits that on or about the 5th day of January A.D. 1858 the said Benson and his assignees did execute the deed mentioned in said Complainant's bill, but whether for the purpose of relieving the said Block from said Certificate of sale this defendant cannot say, but he denies that it was for that purpose & he denies that the same was

thereby released & this defendant had no notice of such pretended release till he was informed by said Complainants bill, that at the time of making the redemption by the defendant said Deason informed this defendant that said premises had not been redeemed by any persons.

And this defendant offers to quit claim all right he may have obtained to said Block under & by virtue of said attempts & sale provided the same can be so done without affecting his other rights in and liens upon said property.

All which matters and things this defendant is ready to aver maintain and prove as this Honourable Court shall direct & humbly prays ^{to be} herein dismissed with his Costs and Charges in that behalf ~~expended~~ most wrong fully sustained

N B Ward
In proper.

N B Ward

* and his levy upon the same and redemption.

Isaac Eaton et al } In Chancery
Harry B Hard et al }

It is hereby stipulated that the note of \$500. dated June 2nd 1859 & signed by Rowland Sanford & Co was given under the following circumstances

Aaron Miller was making a trade with Isaac Speer, through Harry B Hard in which trade he was to pay said \$500. That said Miller handed to said Hard on the night of the first of June 1856 a certain note for which the said Five Hundred dollar note was given and said to him, "you (meaning Harry) must collect this and apply it in payment of said \$500 & that the said note was turned out to said Speer or his brother Thomas as a part of said payment of \$500. immediately after it was taken, and that it was made payable to Harry B Hard or order instead of to said Miller to enable him to so apply it said Miller having left the City of Chicago on the night of the said 1st day of June 1856.

William Woodbridge & Grant
Sol for Comp.

And afterwards to wit on the twenty third day of February in the year of our Lord one thousand eight hundred and fifty nine, suit day being one of the days of the February term of said Court the following among other proceedings was had and entered of Record in said Court to wit.

Joseph H. Eaton &
Susan P. Eaton. }
vs.
Harry P. Beard.
Francis H. Benson
Robert L. Mumfolt
Leitch C. Colburn
Thomas L. Sanford }

Pile

And now at this day comes the said Complainant by William Westbridge & Grant their Solicitors, and the said defendant Harry P. Beard in person also comes, and on his motion it is Ordered that said Complainant file application herein to his answer filed herein within ten days, or in default, cause set for hearing on Bill and Answer.

And afterwards to wit on the seventeenth day of March, in the year last aforesaid, said day, etc. being of the February term of said Court the following among other proceedings was had and entered of Record to wit.

Joseph H. Eaton &
Susan P. Eaton }
vs.
Harry P. Beard & other }
Pile

And now at this day again comes the said Complainant by William Westbridge & Grant their Solicitors and the said defendant H. P. Beard in person, and on his motion and by consent of the said Complainant Solicitors it is ordered that the rule heretofore entered herein requiring the said Complainant to file application to bail defendant Answer herein within ten days or cause set for hearing on Bill and answer, be and the aforesaid rule, is hereby extended ten days from this day.

And afterwards to wit on the twenty first day
of March in the year last aforesaid, the
Complainants filed herein their Replications in
words and figures as follows, to wit

North County Court of Common Pleas
In Chancery.

The Replication of Joseph H Eaton and Susan B Eaton, Complainants to the separate Answer of Harry P Heard one of the defendants, to the Bill of Complaint of the above Complainants against Harry P Heard. Francis H Benson, Josiah H Leckman, Thomas A Sanford and Robert S Demlap.

These repliants, saving & reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said Answer, for replication they say: That they will aver and prove their said Bill to be true, certain and pertinent in the law to be answered unto and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants, 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 and will be ready to aver and prove as this Honorable Court shall direct, and humbly pray, as in and by their said Bill they have already prayed.

Williams Woodbridge & Grant.
Sols. for Compls.

And afterwards to wit on the twenty second day of February March in the year last aforesaid, said day being one of the days of the March term of said Court. the following among other proceedings was had and entered of Record in said Court to wit

Joseph B. Catow &
Susan B. Catow
vs.
Harry B. Hurd & others } Bill

And now at this day comes again the said Complainant by their Solicitors and the said Defendant H. B. Hurd in person also comes and submits his ~~motion~~ to close proofs in this cause

And afterwards to wit, on the twentieth day of December, in the year last aforesaid there was filed herein, by the said Defendant H. B. Hurd a Certain Deposition, in words and figures as follows to wit.

Interrogatories

Interrogatory 1st

What is your name age residence and occupation and are you acquainted with the parties to this suit?

Interrogatory 2nd

Are you the plaintiff in a suit in the Circuit Court of Cook County vs Nancy B Hard & Robert H Rumlaf wherein a judgment was obtained or entered by Confession on or about the 28 October 1856 for \$1121.67 or thereabouts?

Interrogatory 3rd

Where you present when any arrangement was made between yourself Nancy B Hard, Robert H Rumlaf & Francis H Benson in regard to the assignment of said judgment to Francis H Benson. If so or if you know of any arrangement in which such an assignment was made or was to be made. State all that was said and done at that time by either and all the parties. State whether an acceptance was given you. If so by whom. whether the said judgment was assigned & to whom & for what purpose or purposes & what was

the understanding in regard to what should be done with the judgment in case Hurd had to pay, the acceptance if any thing who was to have control of the same?

Interrogatory 4th

Was there any understanding that any property of said Duulap or any one holding under or through him should be released from said judgment.

Interrogatory 5th

Did you understand from Robert L. Duulap or any person in his presence during said arrangement or at any time in what capacity Hurd was party to said judgment, or who was primarily responsible to pay the said judgment as between said Hurd & Duulap, if so state fully. State whether Hurd was regard as surety on the note on which the judgment had been entered.

Interrogatory 6th

Do you know of any other matter or thing of benefit to said Hurd in this cause if so state the same fully as if you

were hereunto particularly inter-
rogated.

The Deposition of Horatio N. Lee
Esquire of the County of Armstrong
and State of Pennsylvania a wit-
ness of lawful age; produced sworn
and examined upon his Corporate
oath on Saturday the nineteenth
day of November in the year of
our Lord one thousand eight
hundred and fifty nine at my
office in the Borough of Kittanning
County of Armstrong and State of
Pennsylvania by me a Commissioner
ex dolo appointed by a Decree
potestatum or Commission issued
out of the Clerk's office of the
Superior Court of Chicago of Cook
County in the State of Illinois,
bearing teste in the name of
Walter Kimball Esquire Clerk,
with the seal of said Court,
affixed thereto and to me directed
as such Commissioner for the
examination of said Horatio N. Lee

Esquire a witness in a certain cause and suit and matter in controversy now pending and undetermined in said Superior Court of Chicago wherein Joseph H Eaton et. al. are plaintiffs and Nancy B Sturd et. al. are defendants in behalf of said defendants upon the Interrogatories of the defendants (no cross-interrogatories having been enclosed with the Commission) which were attached to and enclosed with said Commission and upon none other, The said Horatio N Lee Esquire having been first duly sworn by me as a witness in said cause previous to the commencement of said examination to testify the truth as well on part of the plaintiffs as of the defendants in relation to the matters in controversy between the said plaintiffs and defendants so far as he should be interrogated, testified and deposed as follows -

Interrogatory first, "What is your name, age, residence & occupation, and are you acquainted with the parties to this suit?"
To which said Horatio N Lee

answered as follows: "My name is Horatio N. Lee. I am of mature age. I reside in Armstrong County and am at present engaged in the science of agriculture. I am acquainted with Harvey B. Hurd, Robert L. Daulap and Francis H. Deussen but believe I have no acquaintance with any of the other parties to this suit."

Interrogatory Second

Are you plaintiff in a suit in the Circuit Court of Cook County as Harvey B. Hurd and Robert L. Daulap wherein a judgment was obtained or entered by confession on or about the 28th October 1856 for \$1021.67 or thereabouts?"

To which second Interrogatory said Horatio N. Lee did answer and say as follows.

"I was the plaintiff in a judgment in the Circuit Court of Cook County State of Illinois, wherein Harvey B. Hurd and Robert L. Daulap were the defendants, obtained by confession on warrant of attorney probably about the 28th of October 1856. I am not certain of the date. The judgment was for about \$1000. not certain of the precise amount. Think Colburn's name was somehow

Connected with the judgment or note on which it was entered—"

Interrogatory 3?

Were you present when any arrangement was made between yourself, and Harry B. Ward, Robert L. Dunlap and Francis A. Benson in regard to the assignment of said judgment to Francis A. Benson. If so, or if you know of any arrangement in which such an assignment was made or was to be made, state all that was said and done at that time, by either, and all the parties. State whether an acceptance was given you, if so by whom, whether the said judgment was assigned and to whom, and for what purpose, ^{or purposes,} and what was the understanding in regard to what should be done with the judgment in case Ward had to pay the acceptance, if any thing, who was to have the control of the same."

To which said Horatio N. Lee did answer and say, "I made an assignment of the judgment referred to in the 2nd Interrogatory to Francis A. Benson. Cannot tell the date, believe it was some

time in the winter of 1856-57 during the negotiation which led to the assignment of the judgment. Hurd and Benson & Know were present and believe Raulap was also present at least part of the time. The negotiation was consummated in Mr Benson's office. Cannot state what was said by either, or any of the parties particularly. An arrangement was made by which I was to receive Mr Benson's acceptance at a short date, for the principal & interest, not including the costs of the judgment, and I was to assign the judgment to Benson. I received the acceptance which was paid at maturity at George Smith's Bank and I assigned the judgment to Francis A Benson. The object of the assignment of the judgment to Benson as I understood it, was to secure Benson for the acceptance given to me, and also in the event of Hurd being obliged to pay Benson the amount of the acceptance, that the judgment should remain open as against Raulap for Hurd's benefit and subject to his control."

57
Fourth Interrogatory.

Was there any understanding that any property of said Duulap or any one holding under or through him should be released from said judgment?"

To which said Horatio N Lee did answer and say as follows.

"I have no recollection that there was any understanding that any property of Duulap or any one holding under or through him was to be released from the lien of said judgment. I have no recollection of anything having been said upon that subject"

Fifth Interrogatory

Did you understand from Robert L Duulap or any person in his presence during said arrangement, or at any time in what capacity Ward was party to said judgment, or who was primarily responsible to pay the said judgment, as between said Ward and Duulap. If so state fully. State whether Ward was regarded as surety in the note on which judgment had been entered"

To which said Horatio N Lee did depose and answer as follows.

"I understood from some person during the negotiation

referred to that Quulap, was primarily liable for the judgment, that the note on which the judgment was entered had been signed by Hard to enable Quulap to raise money to carry on his business. I cannot say I heard it from Quulap or that Quulap was present when I heard it, or who mentioned the fact. I further state that my recollection of the transaction - except so far as I was interested myself is rather indistinct - and may be somewhat confused, as to the parties, and that I did not pay much attention to what was said by the parties respectively, being only desirous to secure the payment of the money to myself, and when that was effected the whole matter passed from my mind."

Interrogatory Sixth. "Do you know of any other matter or thing of benefit to said Hard in this case, or so state the same fully, as if you were hereunto particularly interrogated?"
To which said Aoratio,
It be did answer and say


"I do not know of any thing further that would be material to Mr Hurd or any of the parties unless it be the fact that Mr Hurd was to pay the costs which he offered to do. but some difficulty arising between him and the deputy Sheriff as to the amount of the Sheriff's costs. the payment was deferred until that could be adjusted.

Said & subscribed Horatio N Lee
before me this 19th
day of November
A.D. 1857.
Edward J. Golden
Commissioner

State of Pennsylvania
Armstrong County, Sch. J. Edward
J. Golden of the Borough of
Kittanning County of Armstrong
and State of Pennsylvania a
Commissioner duly appointed to take
the deposition of Horatio N. Lee
Esquire a witness whose name
is subscribed to the foregoing Depo-
sition (on the inside of the page)
the said deposition covering pages
1. 2. 3. 4. 5. 6. 7 do hereby certify
that previous to the commencement
of the examination of said Horatio
N. Lee Esqr as a witness in the
suit between the said Joseph N.
Eaton et al plaintiffs and the
said Nancy B. Hard et al defen-
dants. the said Horatio N.
Lee was duly sworn by
me as such Commissioner
to testify the truth in relation
to the matters in controversy
between the said Joseph N.
Eaton et al plaintiffs and
the said Nancy B. Hard et al
defendants so far as he
should be interrogated, con-
cerning the same; That said
deposition was taken at my
office in the town of Kittanning
in the County of Armstrong

and State of Pennsylvania
 on the 19th day of November
 A D 1859. and that after said
 Deposition was taken by me
 as aforesaid, the interrogato-
 ries and answers thereto
 as written down were read
 over to said Horatio N Lee
 Esq. and that thereupon
 the same were signed and
 sworn to before me by sai.
 Witness and deponent Horatio
 N Lee Esq. the oath being
 administered by me as such
 Commissioner at the place
 and at the day and year
 last aforesaid.

Witness my hand
 and seal as Com-
 missioner

Eduardo S Golden 
 Commissioner

And afterwards to wit, on the twenty first day of December in the year last aforesaid, said Day being one of the days of the December term of Superior Court of Chicago. the following among other proceedings was had and extract of Record in said Court

Joseph H. Eaton &
Susan P. Eaton }
vs. } Bill
Harry P. Hurd et al }

On Motion Complainants it is ordered that defendants be required to enter into an agreement to close proofs to be taken herein by first day of the next term.

And afterwards to wit on the nineteenth day of January, in the year of our Lord one thousand eight hundred and sixty. the Complainants filed herein certain depositions in words and figures as follows to wit

Superior Court of Chicago
In Chancery.
State of Illinois
Cook County

Joseph N Eaton &
Susan B Eaton
Nancy B Hand
vs

The depositions
of witnesses produced & sworn on
the part of the Complainants before
L. C. Davis, Master in Chancery
of Cook County at his office in the
City of Chicago by consent and
stipulation of the respective parties,
the same when taken to be used
on the part and behalf of said
Complainants subject only to legal
exception.

F S Buckley.

1 What is your name age occupation
and residence and do you know
the parties to this suit.

Ans My name is F S Buckley. I am
48 years of age, am not in business,
and reside in Chicago. I am
not acquainted with the Complain-
ants. Know all the defendants.

66 some of them only by sight.

I took at the two Executions now shown you issued from the Cook Co Court of Common Pleas upon the two judgments in the Bill of Compt^y referred to, and found among the files in the two sets of Nancy B. Hurd against Thomas L. Hauford Richard L. Duulap and Josiah E. Colburn, Executions numbered respectively 6652 and 6653 and state whether you ever had said Executions in your hands, and if so in what Capacity, and if you say as Deputy Sheriff of Cook County, state whether you demanded payment thereon from Robert L. Duulap, if yea what did said Duulap say, give the date as near as may of such demands did you thereupon report to said Nancy B. Hurd, did you have a conversation with him, if yea, give the date thereof, what was said by you, and what by said Hurd (but objected to as leading & incompetent)

and I have looked at said Executions and I had said Executions in my hands as Deputy Sheriff of Cook Co - I did not demand property of Robert L. Duulap on said Executions -

I called on said Daulap with
the Executions several times, he
said there was an understanding
between him and Mr Hurd, that the
executions were not to be enforced
against him but were to be col-
lected of Sanford. This was in
the month of November from the
1st to the 17th and I think I
called on him in October 1856
I reported what Mr Daulap told
me to Mr Hurd. I told Mr Daulap
that if there was any such un-
derstanding with Mr Hurd, I
wanted something from Mr Hurd
to show the understanding or an
indorsement on the Executions.
Mr Daulap furnished me with no
such authority, and I then called
on Mr Hurd and reported what
Daulap said - Mr Hurd told
me that he did not want the
Executions enforced against Daulap
but wanted them collected of San-
ford. He said there was some
understanding between him and
Daulap, I do not recollect
whether he stated what it was.

This Conversation with Mr Hurd
was between the first and 15th
November 1856. I should think

(Answer objected to.)

68
B.

When did you return these Executions and at whose instance, if at the instance of Mr Hurd did you at that time call his attention to the Conversation alluded to in the last answer. What was said by either you or Mr Hurd.

(Not objected to by Dept)

Ans I do not recollect the date of the return. It was prior to the Clerks filing on the back. I returned them at the instance of Mr Hurd - I could not say positively whether there was any thing said at the time as to the subject matter of the former Conversation

Cross Ex.

At the close of the Direct Ex the witness returned aside with the defendant Hurd for consultation with consent of parties.

1 x Did not overlap at the conversations or some one of them that you have mentioned inform you that Safford had some lumber with which he was erecting a house in Terrace Block and desired you to

levy on that instead of on
the property in his (Quulap's)
possession and did you not
make an Effort to do so.

Ans Well, as to lumber in the building
in Terrace Block if I ever heard
of it I do not recollect it now,
Quulap did tell me that Sanford
had some lumber on Wells Street,
it is my impression, it was
something in the shape of a
lumber yard - Quulap desired
me to levy on the lumber, and
I made an effort to do so.
I made inquiries, and it
seemed some one else claimed
to own it, and from the best
information I could get, he did
not seem to own it, and I
did not levy on it.

2. x Did you not learn from Hurd
at the conversations above alluded
to, that Hurd wished simply to
favor Quulap, and the other
defendants except Sanford for
that time only - Did Hurd not
say that he did not wish to
break up Quulap and was
not Quulap running a Flaming
Mill at that time

(But objected to)

Ans Mr Hard mentioned to me at one of the Conversations that he did not want to enforce the judgments against the other defendants except Sanford. that he did not wish to break them up, or he might have said. it would break them up. - Paulap was running a Planing Mill at that time.

Q Did not Hard only say. that he did not wish you to levy on Paulap and the other defendants property except Sanford, and was that not the language instead of that he did not wish to enforce the judgments or are you sure as to the language?

Ans I am sure he stated that he did not wish to enforce them against them and that was the reason I did not levy on their property.

Q If Hard had told you that he did not wish you to levy on their property would you still have made a levy on it.

Ans I should - I informed Paulap

So, and informed him that I wanted it in some shape to justify me in not levying.

5x When you as Deputy Sheriff were directed not to make a levy upon the property of any particular defendant, did you not consider that you were justified in not making such levy,

Ans I did.

6x When are you confident that Ward directed you not to make a levy upon Daulap's property (Ward objected to as calculated to mislead the witness)

Ans I have answered that question before by stating that Mr Ward said he did want to enforce the Executions against the other defendants. I don't know that he said any thing about a levy.

7x Do you not recollect that at these conversations Ward expressed his Confidence that he could collect these judgments of Daulap and others without a levy, and without breaking

72 him up in their business.
(But objected to acts etc form)

Ans I have no recollection as to such Conversations. I am not prepared to say whether there was or was not such Conversations - I don't recollect. What concerned me I recollect.

Q x Would you be likely to recollect the whole of such a Conversation or would you be most likely to forget all except to what concerned your immediate action.

Ans I presume I would not be likely to recollect the whole of such a Conversation unless my attention were called to it Circumstantially. I suppose I would be most apt to forget what did not concern my immediate action.

Q x Were there not several Conversations some of which were of considerable length.

Ans. I have no recollection of any lengthy Conversations. I don't recollect of several

Congregations. I would not
say there was not more
than one,

F. S. Buckley

Sworn to and
subscribed before me
this 19th day of July
1857.

L. L. P. Street,
Master in Chancery

Robert L. Quilap,

What is your name age occupa-
tion and residence and do
you know the parties to this
suit?

The Defendant Ayrd objects
to the Examination of the Witness
Quilap, on the ground of interest
and that said Witness is a party
to the suit.

73
Ans My name is Robert L. Quilap

I am 35 years of age, am in the produce business and reside at Iowa City in Iowa. I know the Complainant Joseph H Eaton by sight don't know the other Complainant. I know the defendants.

2 Were you ever, if so when connected with the defendant Harry Bhard in business, if yes what business, whether there were other partners, if so whom, when did the connection commence and when end and how declare,

(Don't objected to as important.)

Ans I was connected with said defendant in the business of buying, selling, trading in and sawing lumber - There were two other partners - There were two firms, the first one organized March 15, 1855 composed of H Bhard, J C Done, A P Wright and my self. Mr Done went out of this firm in July following and J C Done took his place the firm then continued till April 1859 I think when Mr Bhard bought Mr Wright out, and the firm then con-

tinued till May 20. 1854 when
Mr Ward sold out to Mr Sanford
which ended Mr Wards con-
nection with the firm.

Q Have you examined the Bill
of Complaint in this cause so
far as relates to the two judy
gments recovered by the defendant
Ward against said Sanford
Culburn and yourself, if you
declare what you know as to
the Consideration of the notes
on which said judgments were
recovered and the objects for
which said Ward recovered
the same.

Ans objected to by deft Ward

Ans I have examined the Bill in
respect of the judgments referred
to - one of the judgments was
rendered on a \$1000 note signed
by Daulap Sanford & Co payable
to N B Ward or order. - The note
was given to take up a note of
the same amount signed by
N B Ward and J C Dore, pay-
able to Aaron Miller and
held by him. I suppose the
Miller note was given for
money used by the firm
of Daulap Wright & Co of which

Aird Wright Dore & myself
 were the members — The con-
 sideration of the notes upon
 which the other judgment was
 rendered was as follows.
 The note was for \$304 I think
 signed by ^{Sauford} Duylap & Co and the
 warrant of attorney by each
 member of the firm and was
 payable to H P Ward or order.
 This note was given on an
 unsettled account between Ward
 and Duylap Sauford & Co — Mr
 Ward held a \$300. note against
 Duylap Galbam & Co or Duylap
 Wright & Co of which firm Ward
 had been a member — The
 Company had an unsettled ac-
 count against Ward which
 was an offset against the
 note that is to say the \$300
 note. The \$304 note was given
 from the fact that Sauford
 had assumed to pay Ward's
 share of the indebtedness of the
 firm and have his part of the
 assets — Ward and Sauford
 both told me this. — By
 Sauford's taking Ward's place
 in the firm Ward recommended
 him to be all right, that if
 he was not he would make
 him so, with that understanding

I accepted him as a partner, and finding that Sanford was giving notes and accepting orders in the name of the firm to pay his private debts, I came to see Ward about it, who said he guessed he was a Skeck, and he would attend to him, and he then proposed that the \$300 Note to Miller as it was signed by Dore and him, a new note should be given by the firm of Dunlap Sanford & Co and that the \$300 should also be assumed by Dunlap Sanford & Co - I objected to giving the \$300 note upon the grounds that we had no account of it, upon computing the interest on the account at 20 percent it would nearly if not quite pay the \$300 note. Ward said that we could give the note, and he would try Sanford on it to test his sincerity in averring that he would not pay Ward's share of the indebtedness of the firm, and that if at any time I would bring in the account he would settle and apply it on the note we were about to give or cause said note at any time I should call upon him so to do

that he did not wish to use the note for any wrong purpose, but merely to bring Sanford to terms, either terms or something to that effect. —

I then signed both the new notes, and I believe the other men signed them. — The \$500. note was transferred to Thomas or Isaac Spear, I think Thomas, and placed in Union Bank when it came due, supposing it to be a note given by Sanford I paid no attention to it. The note was protested and brought to the office of the Company by Mr Spear. I told him if he would wait two or three weeks I would pay it. That the note had been wrongfully sold, and I did pay it. And carried the note in my possession several months, and upon request of Mr Hard gave it up to him, he saying that he would use it against Sanford and not against Colburn or myself. he made some remark that he was going to make him do the right thing. He then entered up a judgment against all three of us, the old firm, on my speaking to him concerning it. he said

he could not do any other way than to go according to law in accounting for entering up the judgment against all. This conversation was in reference to the entry of the judgments on both notes last above related.

4 What was the amount of Mr Hurd's interest in your firm at the time of the sale to Sanford
(Ent objected to by deft Hurd)
Ans four ninths.

5 When Hurd sold out to Sanford, as you have above related, did or did not the new firm assume the liabilities of the old, and or was not anything said or agreed between said new firm and Hurd with relation to his share of the liabilities of the old firm, if you what, did or did not you become a party to any agreement with said Hurd regarding his liabilities on account of said old firm, if you what.

(Ent objected to deft Hurd)

And Sanford took Hards place precisely in the firm. No new Books were opened, there was nothing said or agreed between the new firm and Hard relative to Hards share of the debts of the old firm. whatever agreement there was, ^{as to} the debts was between Sanford and Hard, I did not become a party to any agreement with Hard regarding his liability on the debts of the old firm, & except as to the only item I have spoken of in answer to another interrogatory in the matter of the \$300 note and the unsettled account

6. If you say in reply to the last interrogatory that neither you nor said new firm assumed Hards share of the liabilities of the old, why did said new firm, execute the two notes upon which Hard enters judgment as above stated, and was not it the intention of said new firm thereby to free said Hard from his share of the debts which constituted the consideration of said notes.

(Not objected to by deft Hurd)

And the new firm executed the two notes referred to in the question because we Colburn & myself had Hurd's guaranteed verbal that he would make Sauford all right and we Colburn and myself owed Miller our share of the \$500. note and the other note we executed at Hurd's request for him to try Sauford on, to test his sincerity, he having stated as I told Hurd that he Sauford said he would not pay Hurd's share of the liabilities, and Sauford gave his reasons - It was not the intention of Colburn and myself in giving said two notes to free Hurd from his share of the liabilities for which they were given

Why did you form said new partnership with Sauford, if you say upon the request and representations of said Hurd, state fully such representations, and all that was said upon the occasion of their being made by yourself Colburn or Hurd,

81

(Not objected to by deft Hurd)

82
Ans

reformed the new partnership by the request of Sturd and Sanford. Mr Sturd stated to me that he could trade his interest in the business to Mr Sanford to a good advantage for property on Canal Street, and that Sanford was just the man we wanted. That I wanted to add Sash Machinery, that Sanford understood that kind of business, and that he was worth more to us as a partner than the Sturd was from his understanding that kind of business, and that he would be with us in the business. On those grounds the partnership was formed.

P. What was the condition of your said firm when Sturd sold out, financially, if you say it was insolvent, was Sturd aware of this fact, and do you know from said Sturd's statements or otherwise what if any thing was the value of the property received by said Sturd in exchange for his interest in said firm.

Ans We did not know at the time of Sturd's sale what our condition was. I am well satis-

find now that our firm was
then insolvent - not taking into
consideration the mill property
and machinery. I do not know
whether Mr Hurd was aware
of the fact. - Sanford & Hurd
in making their trade valued
the respective interests at \$4000
that is to say, Sanford valued
what he let Hurd have at \$4000
and Hurd valued his interest
in the firm at \$4000. I don't
recollect hearing Hurd set any
value on what he got from
Sanford at the time. he said
sometimes afterwards he did
not think he should do as
well as he expected out of
the property, that he had had
some trouble about an incum-
brance on the property. I don't
know whether he paid incumbran-
ces or not.

9 Pending the negotiation for the
sale of Bk 47 in Erastus to Dr
Blauy, and previous to the sale
did you converse with said Hurd
about it, and if yea, what did
you say to him on that occasion,
and what did he say.

and I don't recollect conversing with Mr
83 Hurd, pending that negotiation -

Conf Ex.

1 x I, whom did Sauford give the notes or orders that you speak of in your direct Ex that raised your suspicions that Sauford was not all right, give names and dates of notes and orders.

Ans He gave two notes to Corley & Harrell & Co for \$300 each. Cant tell the dates think they were 30 day notes. for the benefit of his Cousin C M Reed & Co who were owing Corley & Harrell & Co - A note of \$120 to a Mr Schuck or some such name. cant give the date, it was about the time Sauford came into the firm. - An order of \$40. to Downs & Myer for an old debt of his Sauford - An order of \$50. to one Griffith a Painter. A check of \$100. in favor a man a hardware Merchant on Lake Street. I cant recollect his name. He gave two checks to him each for \$100 one of them was paid - There were more of them but I dont recollect them now.

2 x Which one of these orders

or notes was first brought
to your knowledge.

(Int objected to by Compts)

Ans I could not say, but think
it was the \$120 note to Scheuch

Q X Was it sued and where,

(Int objected to)

Ans, It was sued which was the first
I knew of it. I dont recollect
in what Court.

Q X Was this the first you knew
of his conduct in that regard

(Int objected to)

Ans I think it was. am not
positive,

Q X How many days after he bought
in. was it before he came to
the place of business and
engaged in it

(Int objected to)

Ans He moved part of his things
over the next day, then he went
away across the Lake on his

own business and was gone nearly a week when he came back, he went into the business.

Q. Were you not during the first part of the time he was there, especially the first week, he operated there nearly if not all the time away attending to collections of the firm, and building your own house.

Ans. I objected to /

Q. I was away attending to collections a good share of the time and buying lumber I was not occupied with my own house.

Q. When did Sanford go out of the firm as a partner.

Ans. I think on the 12th or 15th July 1856.

Q. Did not Sanford sign the notes to Greenbann, which Horatio W. Lee got judgment on, with you as surety.

Ans. No Sir.

9x Do you recollect the time that Benson, Ward Davenport, Otis made an arrangement in which these judgments figured. Sometime about October 1854 or soon after.

Ans I do,

10x Did you not then talk of getting these judgments set aside, and insist you could, both to Benson, Davenport and Otis.

Ans. I did so talk then with Benson and Davenport and I presume with Ward or in his presence

11x Did you have any conversation at that time with H. H. Benson in regard to the validity of the judgments and did he at any time give Ward reason of the story in regard to them in your presence

Ans. I do not recollect whether I did or not converse with Benson at that time on the subject inquiring of Benson first told me that Ward held those judgments but cant say whether

It was at that time or when
 the subject of the Bk of 47 came
 up - I don't think Benson
 told me Hurd's reasons further
 than that Hurd would not
 set the judgments aside. I
 told him that Hurd would set
 the judgments aside whenever
 it was necessary - Benson
 wanted I should go and see
 Hurd about it - I think this
 was at the time of the negotiations
 with Otis.

12x Did Benson ever say that Hurd
 had agreed to release the Blaney
 Block.

Ans Yes, I believe he did -

13x When.

Ans I could not tell exactly.
 it was last fall I guess, it
 was some time last fall, is
 as near as I can come to
 it.

14x Was that the first.

Ans. I could not say as to that,
 probably it was, as the question
 was not agitated.

15x Has not Benson employed by you to make sale of B&K 47 for you.

Ans. I could not say dead he was, dont know but he was, rather think not enough.

16x Did or not you give to D. Blaney a deed with full Covenants of Warranty at the time of such sale

Ans I think I did, that was the intention

17x Who was the defendants in the suit of Strong & Wiley.

Ans. Thomas & Soufres. Culbourn and myself.

18x Did Benson or not charge to you the amount he paid for the judgment of Strong & Brooks

Ans. I dont know, I have not settled with him, I think it was so charged.

19x At whose request did he take them up, purchase them.

Ans. The Brooks judgment I suppose he bought at Brooks request. - I did not request the Strong & Wiley judgment, I think Benson proposed to me that he would buy it

20x Do you recollect the time that

Brooks, Lee, Mitchcock & others
were going to make sale on judgments
they held against yourself & others -

Ans I do

21 X Did Benson then interfere
and at whose request -

Ans. Benson did interfere. Cant say at whose
request, I went and saw Benson. told
him Hard was away and that that was
the day for the sale, he said he thought
it might be settled, and he would go over
and see if he could not get the sale put
off till Hard got back.

22 X Did not Mitchcock then hold the two
Wilcox Lyon & Co Judgments and was he not
then your partner.

Ans I suppose Mitchcock
did hold those two judgments, he said
he did, and he was then a partner of mine.

23 X Were not the Executions then levied
upon the property of the Mill of your &
Mitchcocks possession, and on your
real estate at Crauston, and on the
North Side.

Ans. I think they were they were on the real
estate any way, and I think on
our interest in the mill.

24 X Did Benson then hold any

incumbrance on the mill.
Ans yes.

25x What was what you call the mill, personal or real.

Ans I suppose personal, it was Buildings and Machinery.

26x Were you owing Benson any considerable sum at that time, if so how much, I mean you individually or the firm of Doulap Kitchcock & Co

Ans. I dont think that firm were owing them any thing, nor was I indebted to him. Colburn and myself were indebted to him I should think about \$3000.

27x Do you recollect the sale that was made on those judgments at which Benson was the purchaser at the sale, if so, state how said sale came to be made.

Ans I recollect the sale, the sale was by virtue of the Executions that were out. I dont know any other reason
91 I think they had been put off,

Several times.

28x Was there not an agreement between you and Benson that the sale should take place so that he could get the title to the mill property discharged of other liens, so as to be able to sell the same for your benefit.

(Don't objected to by Compt^{rs})

Ans I don't know of any such agreement —

29x Did he not by virtue of such sale get the title

Ans No we gave him a title to the property sold it to Benson before the sale on the Executions don't recollect the dates.

Don't resumed.

1 How did Ward sign the Lee or Greenbaum Notes referred to in your Crisp 4, if you say as principal how were the proceeds applied —

Ans I think the notes were signed by Oaulap Colby & Co and the

Warrant of attorney signed by
Hurd and myself. The pro-
ceeds were applied to —
pay indebtedness of Doulap
Colby & Co

2. When the Lee note was given was
the firm of Doulap Colburn & Co
in existence, if not why was
the note signed Doulap Colburn
& Co.

Ans I could not say, though I
believe by reference to memoranda
that the note was ~~given~~
signed on the 21st July 1854
if that is the date the firm
was then dissolved. The note
was signed Doulap Colburn & Co
because it was a pay indebt-
edness of that firm —

3. Was there not an arrangement
made between yourself Hurd
and Benson or between Hurd
and Benson by which the sale
of BK 47 under the six Execu-
tions mentioned in the Bill of
Compt^y was made for the
purpose of relieving said
BK 47 from the lien of
said judgments, if you decline,
(Ent objected to)

94
Ans. I don't recollect of any
such arrangement. if they
had such an one, I did
not know any thing about
it

Re + Ex

X State whether if after Sanford
went out, the firm name was
not changed back to Daulap
Colburn & Co and whether you
did not give a note or notes
in that name and transact
business under the same.

(Ent objected to as being a new matter)

Ans. I don't know but what we
did at first after Sanford went
out use the name "Daulap
Colburn & Co" though I am
not positive that we used
this style, there was only two
of us engaged then. I
recollect we used the name
of Daulap & Colburn after he
went out.

2 X Did you not at the time
you made this loan of the
Greenbanns first apply to
Hard for a loan and did

not Hurd reply that he would see whether he could make you such a loan, and afterwards meet you in front of Greenbaum's and say he would loan you the money, and did you not reply, that Greenbaum would let you have it if I would sign the note with you, and was not the money consequently there borrowed.

(But objected to by comp. N.)

Ans I did not at that time first apply to Hurd for a loan nor did he make any reply to the effect stated in the question, for I did not apply to him, nor did he meet me in front of Greenbaum's and say he would loan me the money nor did I say to Hurd that Greenbaum would let me have the money if Hurd would sign a note with me, nor was the money consequently there borrowed.

Q To whom did you pay the money you got of Greenbaum's state each person or firm.

85
Ans I paid a note held by a man

by the name of Blackburn
or Blackman of \$500, the
rest was paid on lumber
bills, indebtedness of that from
Dunlap Gabburn & Co. I can't
give the names of these bills
so paid.

4x How soon after you got
the money did you dispose
of it.

Ans Within a few days.

5x Did you not pay some of it
for borrowed money you had
shortly previous borrowed.

(Don't object to)

Ans No, not unless we had our
drawn at Benson's. I can't
say as to that.

6x Was it not deposited at
Benson's to the Credit of your
new firm.

Ans No, part of it was deposited
at Benson's to my Credit.
I think.

Re direct.

1 Is not your impression that you used the name of Doulap Colburn & Co after the dissolution of Doulap Sanford & Co induced solely by what the defendant ^{Hard} has told you since the commencement of this Examination and if not do you not remember that the use of said name at the time indicated was always in order to pay the debts of the old firm of Doulap Colburn & Co. Has not Hard told you since the commencement of this Examination that you did use the name of Doulap Colburn & Co at the time indicated above.

(Int objected to)

Ans My impression as to the use of the name of Doulap Colburn & Co after the dissolution of Doulap Sanford & Co is not induced solely by what Hard has told me since the commencement of this examina

tion. I know that it was understood to be in order—
 Mr Ward being Counsel and
 saying it was right to use
 the name of Doulap Colburn
 & Co as required in the question.
 Mr Ward did remark here
 that we used the name of
 Doulap Colburn & Co.
 Junrs and R L Doulap,
 subscribed before
 me this 29th day
 of July A D 1859.

L C R Freese.

Master in Chancery
 Cook Co.

Isiah E Colburn,

1. What is your name age occupation and residence, and do you know the parties to this suit.

(Deft Mard objects to the examination of the witness for the reason that he is a party and interested)

Ans. My name is Isiah E Colburn I am 33 years of age. I am in charge of a planing mill in this city and reside here. I do not know the Complainants, I know the Defendants to this suit.

2. What was your occupation in the early Spring of 1854. Were you in partnership with any one, if yes, with whom, if you say with said Mard & Dowlap, how long did such partnership continue, and when and how did it terminate if you say by Mard, selling out to Thomas L Sanford state Mards share in the partnership, and what said Sanford paid him for the same.

(Deft objected to by deft Mard)

Ans. I was working in the same mill

where I am now engaged, I was in partnership with Robert L Dunlap & H B Hurd and so continued until about the middle of the June 1856. Cant say positively as to the time now, the partnership terminated by Mr Hurd selling his interest to Thomas L Sanford - Hurd's share was $\frac{4}{9}$ th in the partnership. I cant say what Sanford paid for his interest in the partnership.

Q. On or about the date of the sale by Hurd to Sanford were you informed by said Hurd what Sanford paid him, if you declare,

Ans. I dont recollect now what Hurd ever told me how much Sanford paid him, still he might.

4 After the dissolution of the firm above mentioned, did you or not form a new firm, if yea when and with whom, and if you say said Sanford was the member of said new firm how were you induced to accept said Sanford as a partner, and what was said about him at the time and by whom.

But objected to by ^{self} Hard

Ans. We did form a new firm I think it was about the first of May or June and was formed with Thomas L Sanford, Robert L Daulap and myself - I was induced to go into the partnership with Sanford from the fact that he was recommended to be a good and honest man, I talked to Mr Harde's Brother in regard to Sanford, Harry B Hard did not converse with me that I recollect of in regard to Sanford at that time. Mr Daulap told me that Harry B Hard told him that Mr Sanford was an honest man, that he would be a good man in the place there and thereupon I gave my consent to his coming in to the concern in place of Mr Hard

(Left Hard objects to that part of the answer of witness which relates what Daulap said)

5. At the time of the dissolution of the old, and organization of the new firm, was anything said or agreed by and between yourself and said Hard as to his share of the liabilities

of the old firm, if you state,

Ans I had no conversation with Mr Hurd on the subject inquired of. I trusted to Mr Daulap to make the arrangements with Mr Hurd. Mr Daulap stated to me that Mr Hurd represented Sanford to be perfectly good - Mr Daulap said to me that Hurd said that he would guarantee Sanford to be good for Hurd's share of the liabilities -

/Went Hurd objects to that part of answer relating what Daulap told him /

Q. Did you or not ever make any agreement with said Hurd about his share of the debts of the old firm.

/Ent objected by Went Hurd /

Ans I never did.

Q Are you acquainted with a certain note for \$384. upon which judgment was entered by said Hurd against said Daulap said Sanford and yourself Oct. 15. 1856 if you state whether you

executed the same, what induced you to execute the same, if you say the representations, state the same, likewise what you know of the Consideration of that note.

/ Don't object to as leading /

Ans. I am acquainted with the note for \$354, procured of, I did execute the note as one of the makers. Mr Hard came to the Mill where I was working with said note for me to sign. I refused to sign for the reason that the firm had an acct. against Mr Hard. Mr Hard said he wanted the note signed so that he could bring it against Saaford, and that any time we would make out the acct. and bring it up he would take up the note, that is the reason I signed. The note was given to take up an old note executed by Daulap Wright & Co I think payable to Harry B Hard I think I am not certain I ever saw the old note, I was told by Daulap the old note was given for money.

8 State whether or not Harvey B. Ward was a Member of the firm of Dunlap Knight & Co.

Ans He was.

9 At the time you executed said \$354 note, did Mr. Ward say any thing as to the use which he intended to make of said note against you and said Dunlap, if you, state.

Ans I don't recollect that he specified the use which he intended to make of said note, he had told Dunlap something of the use he intended to put the note to, and Dunlap had told me, - I understood he was to take up our note when our account came, that is the way Harvey B. Ward stated to me - He stated that the Company's acct against him was to pay the note.

10 State whether or not said Ward told you at the time indicated what use he intended to make of said note against said Sanford, declare.

Ans I can't recollect now what

he told me what use he intended to make of said note-

11 at the time you signed said note, did said Hurd say anything about said Sanford, if, yes, what.

Ans He stated to me that he was having trouble with him, and that he wanted to hold this note against him.

12 Did you at the time indicated make any agreement with said Hurd to release him from his share of liabilities upon the note of Dunlap Wright & Co and if not why did you execute the new note in the name of your new firm

(But objected to by deft Hurd)

Ans, I did not at the time make any agreement with said Hurd to release him from the share of liability upon the note.

We executed the new note in the name of the new firm because Hurd wanted to use it against Sanford. He gave me to understand that the new note could be taken up at any

time on presentation of the account of Dunlap Wright & Co of which I have spoken.

- 13 Were you acquainted with the other note mentioned in said Bill of Court upon which said Ward entered judgment against yourself Dunlap and Sanford Oct 15, 1856, if you state the amount, and what induced you to sign the same and the consideration thereof.

Ans. I was acquainted with that note, the note was given me, I think I signed this note at or about the same time the \$304. note was signed to enable said Ward to have it to use against Sanford - It was given to take up another note I think. The other note was signed by Dunlap Wright & Co, I think payable to the order of Ward, or Miller from whom the money came, who it was payable to I can't recollect. - This note engained of was given to take up the other one of which I have spoken last above.

- 14 Did you ever make an agreement with said Ward as to

his share of the liabilities upon
the Miller Note above named,
if yea. state the agreement, if
there was no agreement. why
did you permit said new note
to be executed in the name of
said new firm

(Ent objected to by deft Hard)

Ans I never did make an agreement
with Mr Hard. in respect of his
said liability. I permitted
the new note to be executed in
the name of the new firm from
Hards statement that he wanted
to make Sanford to pay his share
of the liabilities, and wanted
to hold the note for that purpose
in the name of the new firm.

105. Did or did not said Hard
retain said Note for \$500, last
mentioned, executed by the new
firm, to take up the Miller Note
in his own possession, and if
not what disposition did he
make of the same. Was or
was not the same paid at
maturity, or at any time there
after, if yea. when, and who
paid the same.

(But objected to by Left Hand)

Ans. I think he did not retain said note, but that he sold it to one Speer, it was paid at or soon after maturity, I cant state how long after maturity it was paid, I think it was paid by Duulap Sanford & Co or Duulap & Colburn, My Duulap said to me that he had paid this note.

16 Do you know who had the custody of the note after the same was paid, if you say Duulap & Colburn had said note, how long did they retain it, has it gone out of their possession, if so, when and to whom did it go.

Ans Mr Duulap had the custody - He retained the custody not long, and then told me he had let Mr Hurd have it - to get his pay of said Sanford or words to that effect.

17 How long before said Hurd entered judgment upon said Note, did Duulap hand the same to said Hurd

Ans. Not more than a month
I should think.

18 Was said note handed to said
Hurd after payment for other
purposes than those above sta-
ted, and if yes, what purposes.

Ans. There was no other object than
to hold against Sanford to settle
some account with him that I
know of.

19 Are you acquainted with a
note for a \$1000. dated on or
about July 1, 1856, executed
by Daulap Colburn and ^{14/16} Hurd
and payable to ~~James~~
Bro. or order, if you state the
manner in which said Hurd
executed the same, whether as
principal or surety and how
were the proceeds applied, if you
say to the payment of debts, of
whose debts.

Ans I know the note referred to.
I did not see said Hurd
execute the note, nor have I
ever seen the note, I knew
such a note was in existence
from Mr Daulap's statement. I
don't know how the proceeds
were applied except from what

Mr Daulap told me, he said that it was to apply or pay the debts of Daulap Wright & Co of which Mr Ward was a partner.

20 How long did the firm of Daulap Sanford & Co continue, when did it dissolve, did you not afterwards form a new firm, and if yea under what name.

Ans. I think from somewhere about the first of May 1860, and I think it dissolved in August of the same year, we did afterwards form a new firm under the name of "Daulap Colburn & Co"

21 Who composed the firm of Daulap Colburn & Co.

Ans. Daulap and myself.

22 Why was the word "Company" added to the firm style.

Ans. I don't know any other reason than that we were intending to take a partner.

23 Did your firm ever use any other style than Daulap Colburn & Co

if yea what,

But objected to by self Hard /

Ans No other name than Dunlap
Colburn & Co.

Comp Ex.

1 X At the time Sanford came into
the firm was any acct. of
stock taken,

Ans No,

2 X Has there ever been a full
settlement or understanding
of the accounts in favor of
and against the firm of Dunlap
Colburn & Co and Dunlap Wright
& Co and previous firms

Ans There has not to my knowledge,

3 X Do you have any knowledge how
these firms stood at the time
Sanford went in -

Ans I have not that knowledge
and I dont know that any
body else had

4 X Did not Hard when he

applied to you to sign that note for \$304 when you objected, use the words, he should settle the account at any time on its being presented to him or made out,

Ans He said when I objected he would settle the account and take up the note, at any time we would bring up the account, those are the words that he used

Qx Was the account then made out,

Ans It was not,

Qx Did you or Sanford sign the note first,

Ans I cant recollect,

Qx Who were present when you signed it,

Ans I cant recollect any one but Mr Ward,

Qx Might there not have been others,

Ans I dont recollect that there
was any other person in the
room.

Qx Do you recollect of Hurdys
saying anything about San
ford having taken his place
in the firm, or having agreed
to assume Hurdys part of the
indebtedness at the time the
notes were given

Ans I dont recollect I heard
him say any thing at that
time or at any other.

Josiah E Colburn,
Sumner and
Subscribed before
me this 30th day
of July A.D. 1854.
L. G. Freer,
Master in Chancery

Thomas Speer,

1 What is your name age occupation and residence and do you know the parties to this suit.

Ans My name is Thomas Speer, I am 43 years of age am a Merchant Tailor and reside in Chicago - I do not know the Complainants - I know all the defendants -

2 Are you acquainted with a note dated June 27 1856 made by Donald Kaufman for the sum of \$500. payable one month after date, to the order of Nancy B. Hard and by him indorsed, upon which judgment was entered in Cook Co Ct of Common Pleas Oct 15 1854, if you state all you know about such note,

(Not objected to by Deft Hard)

Ans I had a note of that kind in my possession once, which note is now here before me, I dont know any thing about judgment having been entered on said note, I took this

note from Mr Hard, in pay
ment of a ballance of \$500 due
from Mr Hard to Isaac Speer.
Isaac Speer had assigned ~~the~~
over to me so that the indebted-
ness was really due to me, -
I allowed to Mr Hard the sum
of \$500, for said note, I then
lodged the note at Southwicks
Bank where it ~~remained~~ remained
till after maturity and was
not paid - I took it out
and went to Mr Hard and
told him I should like to have
him pay it, he said he would
like to have me get it out of
Dunlap, I gave it to my
brother with directions to col-
lect it, and as it was not being
collected I went myself
to see Mr Dunlap at Sanford.
I found Dunlap, he got in his
buggy and I got in with
him and went on Van Buren
Street to some building they
were building, and Mr Dunlap
got a check from some man
at the building for a portion
of the note, and then we came
down town, and Dunlap gave
me a check on Deason for
the balance - When we came
down town I went to Mr
Hard's, where I had left the

note and got it took it to Greenbaum and figured up the interest and Daulap gave hi check for the balance. The note was left I think in the hands of Daulap.

3 When or about when was this note paid.

Ans I would think about a half a month after its maturity.

Crop Ex.

1 X Have you not stated to N D Hard that you got one check of him to apply on the note.

Ans I think not. I dont remember of so stating. No Speer.

Saw to and subscribed before me the 1st day of August 1859.
L. C. Speer,
Master in Chancery.

Wilbur F. Hitchcock

1. What is your name age, occupation and residence and do you know the parties to this suit?

Ans My name is Wilbur F. Hitchcock I am 26 years of age, I am a Commission Merchant and reside in Chicago, I do know all the defendants to this suit, do not know the complainants.

2. What was your occupation in the summer of A.D. 1886, if you say you were in the employ of either of the defendants of which, when did you enter their employ, how long did you continue, and in what Capacity?

Ans I was a Bookkeeper in the summer of A.D. 1886, I was in the employ of R. L. Duulap in that Capacity, I entered his employ in the last of July and continued until the November or December following.

3. Who had the management of the finances of the concern, and received and paid out monies

Qnt objected to by Dylt Ward,

Ans I had, and did.

4 State whether during the month of July any sum of money came into your hands for the discount of any note, for the benefit of the Concern, if yea. state the amount and describe the note which was discounted,

Ans I dont know that there was a note discounted during the month of July.

5 Did or did not Mr Duulap or the firm with which he was connected at that time, get a note discounted at Greenbaum Bro's, during the latter part of July, if yea. state the date and amount as near as may be, and what disposition was made of the proceeds.

(Qnt objected to on the ground that there is better evidence)

Ans I cant say positively as to the discounting inquired of. I dont know that I can give the date or amount of any note

discounted, I understood there was a note for \$1000, negotiated by Greenbaum Bros for Quulap Colburn, Co or Quulap Wright Co I cant say which, The note was against Quulap & Hard. and there may have been other parties, I am not certain, whether the note was negotiated in the last of July or first of August, I dont know what time the note was on, nor when it was negotiated, I heard Mr Hard speaking about the note at the time the note was due it was due and unpaid, I dont know what disposition was made of the proceeds of the note, It never went into the business. I was connected with to my knowledge, if it had went in I should have known it.

Answer objected to by Deft Hard,
as hearsay.

Q. Were you ever present when Mr Hard spoke of said Note if you state what he said upon that occasion and the time.

Ans I was present when he spoke of said Note, I cant say verbatim what he said. he came down to the office when I was working to arrange for the paying the note to see Mr Daulap about attending to it - I cant give the date of this Conversation

Q Did you ever see a note made by Daulap Sanford & Co June 2, 1856 for \$500. payable one month after date to Nancy D Hard or order, and endorsed by Hard to Thomas Spear, or order, if yes, state about where you so saw it in whose possession under what Circumstances and all you know about said Note.

Ans I saw what was said to be the note inquired about in the hands of R L Daulap. I did not take hold of the note or read it. I saw it in his hands, and heard him speak about the note before - Daulap brought the note down street with him to Hard's office or in front of Hard's office & delivered it to Hard in my

presence - He gave it to Hard
for the purpose as he said of
entering up Judgment against
Sauford, because he Hard thought
that Sauford was dishonest and
a Skejks or he Hard said
Sauford was a Skejks, and
I inferred that Hard considered
him dishonest. - I cant state
what time this took place,
the dates are out of my mind

Q Did you not know of a judgment
being entered upon said Note,
if yes, state if you can how
soon after it was delivered
to Hard as you have stated,
or about how soon.

Ans I understand that Hard en-
tered a judgment against all
the parties on the note, a very
short time after the note was
delivered, I would say with-
in a month or six weeks, it
may have been sooner.

(Answer objected to by Deft Hard)

Q When Quinlap delivered the note
to Hard, as you have related,
did Hard say any thing, if yes
what.

(Int objected to by Deft Hard)

Ans He said he wanted the note to try Sanford on with, because he was acting dishonestly.

(Answer objected to by Deft Hard)

10 Did you see said Quinlan when he took the note, for the purpose of bringing it to said Hard, if yea, from whom did he take it, and what did he say as to his object in taking it, if any thing.

(Ans objected to by Deft Hard)

Ans I did see Quinlan when he took the note for the purpose inquired of, and I came with him. He took the note from his office. He said that he was going to let Hard have it, so that he could enter up judgment on it against Sanford

11 Do you recollect of swearing to the signatures to said note, if yea, how long after it was delivered to said Hard by said Quinlan did you so swear, and about how long.

Ans I do recollect of swearing to

Said Signatures. I cant say how long this was after the note was delivered to Hard by Daulap it is my impression that it was quite soon after but cant say whether it was one week or two days it was right along quite soon after.

12 Who requested you to swear to said Signatures.

Ans It was either Daulap or Hard.

13 At the time you was requested to swear to said Signatures, did Mr Hard say anything as to the object of entering up judgment on the note, if you. what.

Ans I cant say whether he did or not.

14 In what business was Daulap employed while you were in his service, did he have a partner & if so who, did he have any other business than that in which he employed you if so. what.

Ans He was dealing in lumber, planing and sawing. Manufac-

turing Doors, and sash, he had a partner one Josiah E. Colburn, he had no other business to my knowledge, than that above specified

15 Were you in the employment of Dowlap individually or in the employ of the firm of which he was a member.

Ans In the employ of the firm.

Ques

1 X Did you not state a few minutes ago that you believed Dowlap handed Hard the note some time in August.

Ans I think I did —

2 X What do you say now as to that impression & belief

Ans It is my impression that it might have been a little later I did not mean to be understood as stating the time definitely.

3 X When you met Hard at the time you say the note was

handed to him, where were you going, and were you on foot, or in a Wagon.

Ans. We drove down in the buggy I rode with Quulap, we went to the Post office, it seems to me we had several little errands to do.

4x Did Quulap usually take you along, when he went to do little errands.

Ans. Quite frequently, I always went with him when it was necessary when there was any thing for me to do. - He very often went when I did not go.

5x How long did Hunt and Quulap converse at that time.

Ans. A very short time, from two to five Minutes perhaps.

6x Was any thing said by Quulap before the note was handed out, if so, what did he say.

Ans. I don't think there was, only that Quulap said he had brought down that note he took it out

of his pocket, and handed it over to Hard. Hard said that is right, or something to that effect. I will try Sanford on with this note. I think this is the sum and substance of what was said.

7x What you have stated further that the above in regard to what was to be done, you learn'd did you not from Quilap.

Ans I have not stated any thing further than that, that is intended to comprehend the whole thing

8x What was the style of the firm that you were employed by, in keeping Books.

Ans "Quilap Colburn & Co"

9x What time did you take an interest in that firm or with Quilap & Colburn

Ans I think it was in December 1856.

10x When any money was paid in

on the accounts in favor of
the former firms was any entry
made on the Books of
Daulap Coburn & Co.

Ans there was,

11 x Did you not state that
Daulap said that Hurd wanted
the note to hold Sanford,
or to enter up judgment upon
to hold Sanford,

Ans I did,

12 x Did you assign to F N
Penson the Milers & Lyon judg
ments

But objected to by Compt. Solr

Ans I did, sold and assigned
them to him,

13 x Did Hurd at that time
make any agreement to your
knowledge with F N Penson what
he should do with them.

But objected to by Compt.,

Ans He did not,

14 x Did he at any time to your

Knowledge.

(Ent objected to by Compt^{rs})

Ans He did not.

15x Did you make any agreement what he should do with them. if so state it fully

(Ent objected to by Compt^{rs} solr)

Ans I did not.

16x Was or not the note you show you or the amount realized on the document of the same passed to your Credit on the Books of Benson & Kingsbury, and age not said note given in the purchase of said judgments

(Ent objected to by Compt^{rs} solr)

Ans No, I never realized anything on that note by discount, nothing was placed to my Cred it by my order or acct of that note, at Benson & Kingsbury. I cant tell whether the note referred to in the question was given in the purchase of said judgments. I never saw the note before.

17x State the date, amount, payee, maker and time of payment of the said note shown you and referred to above.

(Ent objected to by Comptrolr Solr)

Ans The date is July 16, 1857 amount \$400. payee J N Benson maker N P Ward and the time of payment is three months from date.

18x Did you keep a Bank Book with Benson & Kingsbury during July 1857.

Ans Yes I think I did, am quite sure I did.

19x Has that been written up and have you got it.

Ans. It has been written up and I have it in my possession.

20x Will you produce it

(Ent objected to by Comptrolr Solr)

Ans I wont produce it unless I am obliged to, I have no objection to producing it at

all, but will not produce it
by Mr Hards request,

21x Have you any feeling against
Hard

Ans. I have nothing against Mr Hard
never had a business transaction
with him, have had no occasion
for any feeling.

22x Have you ever said or thought
you had a difficulty with him
about the Wils. & your judgments

(But objected to by Compt. Solr.)

Ans. I was very sorry that Hard
would not pay me the money
on them as I needed it, but
I had no hardness against
him on that account. I laid
up nothing against him. I
used the judgments in liquidating
indebtedness of mine so it
was not a loss to me.

23x What made you buy these
judgments.

(But objected to by Compt. Solr.)

Ans I bought the judgments because they acted as a lien on damaged property that I had an interest in.

24x What was that property,

(Ent objected to by Compt's Solr.)

Ans It was a Planing & Sawing Mill and a Sash & Door Manufacturing.

25x Was any one else interested with you in said property, if so who.

Ans There were other owners to wit, R L Dunlap & J C Colburn.

26x Whose interest or what interest did you take with them in that property.

(Ent objected to by Compt's)

Ans I bought the interest principally by Sanford and by Sanford bought by Ward - It was four months interest

Direct resumed

1311 What makes you think on

reflection that Daulep delivered the \$500 note to Hard, later than August 1856, have you seen any Memorandum that refreshes your ~~memory~~ ^{recollection} if you state.

Ans Because I noticed the date of my affidavit to the signatures for the notes which is I think Oct 15 1856. This affidavit was made preparatory to the proceeding against Daulep, and I think the affidavit could not have been so long after the note was delivered to Hard as would be the time from July or August to October 15.

2 State whether during the year 1856 Hard stated in your presence any thing about his share of the debts of Daulep Colburn & Co. if you state with time and place as near as may be,

Ans I don't think he did. I don't recollect it.

Re + Ex.
1 X None you present, or had

you any personal knowledge
of the discounting of the Lee
Note.

Ans. I was not present, and
no personal knowledge.
Know only what I was told.

The defendant Ward objects
to all that part of the Deposi-
tion which is hearsay.

M. F. Nitcher
Promt and subscribed
before me this 5th day
of Augt 1859.
L. C. Freer,
Master in Chancery
Cook Co.

I, L. C. Freer, Master in Chancery
of Cook County, State of Illinois
do hereby Certify that the above
and foregoing Depositions on
the part and behalf of the said
Complainant were taken before me
at my office in the City of Chicago,
from time to time as appears foregoing
by consent & stipulation of the Solicitors
of the respective parties.

L. C. Freer,
Master in Chancery
Cook Co.
Masters fees \$50.
paid by Compl. Solrs.

And afterwards to wit on the nineteenth
day of January in the year last aforesaid
there was filed herein certain other depositions
in words and figures as follows to wit.

Whereas the parties
 & their heirs upon a
 Map in Bushnell's add
 bounded as follows & on
 on the North line of Ch
 Kennedy and the feet
 of a foot East of the
 said Block three then
 the South line of said
 then north parallel
 covered & seventeen &
 alley ten foot wide &
 with Chicago avenue &
 South parallel with be
 dred & seventeen & 157,000 ft
 beginning And where a
 and substantially as far
 to the term of 11 dred
 B. Good holds and
 claims as due to
 interest & costs the sum
 of fifteen dollars & is
 paid hereof does hereby
 & further views the said
 premises

And when
 holds a note for one
 dated October 11th 1855
 ten per cent signed &
 secured by a Great
 to Drugg Ch. Parker a
 recorded Nov 26th 1856 a

And when
 holds a note for the sum

"Block A"

dollar dated October 1st
 at ten per cent signed
 & secured by the above
 to said Joseph St. Paul
 said property is subject
 to Franklin Hebert to
 of a note to said El
 for about the sum of 1
 dollar which said St Paul
 in the Recorder office
 107 of Act page 575
 deemed necessary by
 the said Manning of
 bought up on the
 Justice Sale now at
 Hebert's Trust, to be sold
 1838.

~~Caught in~~ for the bene
 fits in case the sa
 on said trust due
 now then

Otis Henry ag
 advance the same were
 the above object and
 note & trust due or it
 in the case of any
 purchased by said
 held for said purpose
 said premises are for
 Otis or any one we
 might a little what left
~~premises sold whenever~~
~~was to that concern~~

Said husband & in
title shall be made
such means as may
to when ^{in either of the above} made and
all the parties herein be
shall be sold and
of such sale the said
to the extent of the
whatever if anything be
to remove the incumbrance

Fleetwood or
^{and all expenses incurred in and}
^{both interest at ten per cent}
the amount ~~of~~ ^{of} \$1

of said Manning or be
and the amount of the
Otis as above mentioned
interest on both of said

Third shall pay
sum of two hundred of
amount of his said
& Costs of ten per cent

Fourth shall pay
Ottow Caranport these
held by him as above
interest at ten per cent

& Lastly if an
Remains that the said
rationally between said
to the amount of

In Case the
be restrained from proce
premises herein mentioned
then this agreement shall
own till such restraint
the parties hereto shall

to proceed in some of
 The said parties agree
 to do without the concurrence
 said premises can be sold for
 the claims of the said several
 & in case the same &
 in six months from
 same may be sold in
 said ^{or say Otis & Davenport} ~~the~~ shall
 if they shall not be sold
 from date then the
 at his option in good
 parties due notice
 the option to purchase
 terms as he shall
 same ~~the same~~ ~~see~~ ~~herein~~
~~day of January A.D.~~
 H

This agreement is upon
 no greater amount of money
 or paid over than is or
 or pay the amount ~~of~~
~~of the premises of which~~
~~the same are~~
 said on said premises
 should be ~~made~~
 above ~~mentioned~~
 it being understood that
 when it controls the in
 & the said Otis & Davenport
 trustees & are entitled
 over & above the own
 parts of sale, ~~and~~

paid for as provided in
said title is not req-
said premises if it be
ment of any more
to pay the remaining
state. This is without
money that it may be
to receive title from
Witness our hand
Heads this nineteenth
A.D. 1838.

W

L. B

I hereby assent to the foregoing agree-
ment and nothing herein contained shall affect or be
guarantee of the two notes.

Superior Court of Chicago
In Chancery
Joseph H. Eaton et al
vs
Harvey B. Ward et al
The stipulate
to take the depositions of Thomas C. Gray
Oliver Davenport, L. J. Otis, W. M. Blodgett
& J. Myers, &c on the part of the defendant
before Edward W. Davenport, a Notary Public
of the City of Chicago receiving the question of
notice, but reserving all other legal objections.

William Woodbridge Grant
 Solr for Compl.
 H. B. Hard
 Pro per.

Depositions of Summary witnesses taken by
 and before me Gideon W. Lawton, Notary
 Public in & for the city of Chicago, commencing
 on the fifth day of October 1837, and closing
 on the 6th day of January A. D. 1860, pursuant
 to the annexed stipulation, John Woodbridge
 Jr appeared as complainant and
 and Harvey B. Hard appeared as counsel
 in person.

Thomas C. Hoag of lawful age, was produced
 sworn, examined and testified as follows.

1st Int. Do you know the parties to this suit

Ans. I do.

2^d Int. Do you recollect a conversation between
 H. B. Hard, J. C. Benson and yourself
 about the 7th of Oct 1838, when J. C. Benson
 yourself and Hard, were going to make
 sale of some property or an execution in
 favor of Mrs Hoag against a man
 by the name of Stone.
 Objected to by counsel for Complts.

Ans. I recollect a conversation that occurred between the above named parties, while they were on their way to attend the above mentioned sale. I do not recollect the day, it was the same day the sale took place.

3^d Int. What was the character of the conversation and what was the purpose of it?

Objected to by Counsel for Complt.

Ans. The conversation related to some transactions between the parties to this suit and the purpose of it was to show me whether Hunt had acted right in relation to it.
Answer objected to by Complt Counsel.

4th Int Will you state what was said by Hunt by Benson upon the occasion, and if any statement of fact was made or agreed upon that the same. State all that was said by the parties in the order the same was said as near as you can recollect—

Objected to by Complainant's Counsel.

Ans. Benson stated to Hunt that he, Hunt had acted wrongly in the matter. Hunt answered that he had not, and proposed to leave it to me to decide, after hearing a statement of the facts, to which Benson consented. The substance of the conversation was as follows. Hunt then proceeded to state that he called upon Benson at his office and asked him.

to make an assignment of a certain certificate of sale which Benson held of certain property owned by one Robert L. Dunlop, and that Benson refused to make such assignment. Whereupon Kind stated to Benson that he should adopt such measures as would enable him to obtain his rights in this matter. Kind stated to Benson that he had looked upon him as Blaney's agent and that consequently he Kind, had not notified Blaney when the term of redemption would expire under the certificate of sale of certain property held by Kind Dunlop, at the time of the redemption made in favor of said Kind against said Dunlop. Kind testified that he stated that previous to Dunlop (making) sale of certain property in Evanston, he Kind had obtained a judgment against R. L. Dunlop and others, and at the time of the rendition of said judgment the title to the land in question was in Dunlop, that afterwards the said Dunlop sold the property to Dr. Blaney, a sale was made of this property under the execution in favor of Kind, and Blaney failed to redeem in the time provided by law in such cases. And that Kind at the proper time took the Sheriff's aid therefor. While this conversation was taking place Benson objected to a statement made by Kind, the substance of which I cannot state, upon being asked my opinion of the case I stated that it seemed to me that Kind clearly had a right

to make a sale of the property in question under his execution, but I considered he had done wrong in not notifying Blaney of his intention of taking the Sheriff's deed of the property. I was answered by saying that if he done so, it would have prejudiced his interest in another matter, which he wished to secure. I cannot now recollect anything further of the conversation.

Q Int Did Hazard state that he had said to Benson at the time he said he should adopt such measures as would secure his interest, that he gave him notice so that he should not say that Hazard had acted unauthorisedly.
Objected to by Complete Council.

Ans I don't recollect the statement.

Q Did Hazard say anything about the rule in which Benson had the question having been made in Hazard's knowledge if so what?

Object to by Complete Council

Ans I have no recollection of the statement.

Q With reference to that rule was the talk about the notice to Blaney.
Objected to by Complete Council.

Ans The one made under Hazard's execution
Are you clear whether the notice spoken
143

of was in regard to the redemption under
Harris' sales or whether it was in regard to the
sale itself.

Objected to by Compt's Counsel.

My recollection of it is that it had reference
to the redemption of the property.

9th What was said about the notice to Blaney.

Ans. That I thought Blaney should have had
such notice as would have enabled him
to come in and protect his rights.

10th His rights as against the proceeding.

Objected to by Compt's Counsel.

Ans. My idea was the general proceeding of Harris
with reference to this property, or the sale thereof.

11th What sale do you mean

Objected to by Compt's Counsel

Ans. The sale which took place under Harris'
execution

12th Do you recollect when this conversation
about assigning the certificate was represented
to have taken place with reference to the
sale on Harris' execution, whether it was before
or after, or about the time.

Ans. I do not recollect. Objected to by Compt's Counsel

13. During the conversation alluded to did Mr Benson urge any objection to the validity of Lord's judgments or of the judgments on which the sale was made.
Objected to by Complainant's Counsel.

Ans I do not recollect any objections that he made.

14th. Would you be likely to recollect if Benson had said that Lord had admitted that the judgment or judgments were not good or were not to be enforced against Dunlop's property or that Lord had agreed that he would release the Plaintiff's block from the judgments.
Objected to by Complainant's Counsel.

Ans I think I should recollect it.

15th. Has any such thing been said by Benson or Lord at that time?
Objected to by Complainant's Counsel.

Ans I do not recollect.

16th. Did Benson claim at that time that Lord had agreed, that he Benson might make sale of that block in question on which sale the certificate referred to was given.
Objected to by Complainant's Counsel.

Ans I have no knowledge of any such statement.

17th. Has not the only objection urged by Benson
1458

that Lewis ought not to make what Dunlop
owed him out of Blaney's property, or
something to that effect. Except question of
notice

Objected to by Compt's Council.

Ans My recollection of the objection made by
Blaney is not clear enough to answer
the above question.

18th Has any thing said either in Lewis reply
to your decision or during the conversation
about judgments that that Lewis & Dunlop
were left having been assigned to you?
Objected to by Compt's Council.

Ans I have no recollection of any thing of the
kind having been said.

19th Do you recollect what other matter appeared
it was stated would be prejudiced by the
notice, if so - state -

Ans I do not. Thomas Hoag.

Oliver Dawnpport, was produced, sworn
examined and testified as follows.

1st Q^t What's your name, age, residence and occupation, and do you know the parties?

Ans My name is Oliver Davenport, I am fifty seven years old, I reside in Chicago, my occupation Commission business, I know Geo. Dunlop & Benson.

2^d Q^t Do you recollect a transaction between yourself, S. H. Benson, L. P. Otis & Mr. Hunt in regard to securing two or three notes of R. L. Dunlop, suggested by S. H. Benson, upon a lot on Chicago Avenue, and in regard to securing two judgments to Hunt?

Objected to by Compt's Council.

Ans No.

3^d Q^t Do you recollect, whether there was any controversy in regard to the validity of the judgments at that time, or whether you or anyone else made any statement or declaration there, if so, state what the controversy was and what Benson said.

Objected to by Compt's Council.

Ans There was no controversy in regard to the validity of Hunt's judgments that time that I recollect. I recollect that Mr. Benson talked against Mr. Hunt's judgments during the negotiations, and said that he did not think that Mr. Hunt was entitled to anything on them. In another conversation in regard to this matter, he seemed to turn a short corner.

he said he believed those judgments were
honestly due Mr Hurd from Dunlop.

4th

Did he give any reason at any time
why he thought the judgments were correct
and due Hurd, was anything said about
Dunlop's lying, if so, state.

Objected to by Compts Council.

Ans

He gave as a reason for the change in his
mind in regard to the validity of of Hurd's
judgt. that he had been told, with Mr
Hurd last evening, something to the effect before
on the Car^g to Compts Council that
Dunlop was wrongfully satisfied
that Dunlop had got the law
about it, but that after his conversation
with Mr Hurd he was satisfied that Dunlop
honestly owed Mr Hurd.

5th

Do you recollect any conversation when
Hurd was present when anything was said
by Benson against Hurd's Judgt.

Objected to by Compts Council.

Ans

I do not.

6th

Did or did not Benson always urge Hurd
the arrangement made with Hurd for the
purpose of securing Hurd's judgt. whenever Hurd
was present.

Objected to by Compts Council.

Ans

He appeared anxious at that time, but

recollect that they were together at any other.

Qth When Benson claimed that Hurd's profits were not good, from whom did he pretend to have this information?

Objected to by Complete Council.

Ans I think he seemed to refer to Robert L. Dunlap.

Qth Did he at any time claim that Hurd had agreed that Dunlap's story about the profits was correct?

Objected to by Complete Council.

Ans Not to my recollection.

The further examination of witnesses was adjourned until Friday, Oct 7th 1881.

Oct 7th Part of the present arrangements.

Qth Why was the arrangement regarding the lot on Chicago Avenue made, and what was the object of it, state all the circumstances leading to it.

Objected to by Complete Council.

Ans This arrangement appeared to grow out of Mr. Hurd's claim for the profits. The object appeared to be to have some one raise the money to purchase the lot on a prior Trust Deed. The Trust Deed was prior to any of the claims secured in the arrangement, then the

object was to have this property purchased and kept a certain length of time before being offered again for sale, hoping when offered, ^{that} it would fetch enough to pay all three claims against it. There was a provision in that arrangement, setting forth when & how it should be sold, also how the proceeds of sale should be applied according to a certain instrument in writing.

10th Q. Were the claims that were sold by you ^{and} Otis, and that Benson was affected by them. Objected to by Complete Council.

Ans. There was two mortgages taken ^{up} on the Lot on Cherry Street of about ^{the} ~~one~~ hundred dollars. One by ^{the} ~~name~~ of Benson, and guaranteed by ^{me}.

11th Q. Do you know any other reason than his liability on the notes why he desired the arrangement made. Had he made any representations in regard to the securities when he sold the notes, if so what? Objected to by Complete Council.

Ans. He said that this deed (deed embracing security for those two notes, was the only encumbrance on the property. This was said at the time I purchased the notes, he said that he bought the land & sold it and knew that there was no other encumbrance on it.

12th Q. What was the ~~reason~~ ^{reason} ~~standing~~ ^{standing} in regard to the satisfying of any or all the claims included in the

arrangement.

Objected to by Compt's Council.

Ans

I did not understand that any of these claims were paid by this arrangement, but it was understood that they were to be paid out of the property, provided the property sold for enough.

Objected to by Compt's Council.

13

Was there any feeling exhibited by the parties during this arrangement, and did F. W. Benson take a great interest in it.

Objected to by Compt's Council.

Ans

I do not know that I am competent to answer that question, but I thought there was some feeling manifested during the consummation of the arrangement, but I think that Benson appeared pleased.

Crossed by Compt's Council.

14

Why was the payment of our House prof'ts deferred to the payment of the notes held by you & Otis -

Ans

In consideration of the raising the money to buy it on this Fish Trust Deal.

15

Did not you and Otis hold the Fish Trust Deal & if not, who held it? and what was the amt raised by you & Otis to take it up.

Ans
152

I understood that a man by the name of Manning held the first Trust Deed, the amount raised by myself & Otis to take it up was between eleven & twelve hundred dollars I think.

3rd Q^{ry} Was this money advanced to Manning anterior or subsequent to your perfecting the arrangement with Otis or the receiving the declaration of Trust from Otis.

Ans This money was paid over to the trustee on the date of the purchase of the property after an understanding was made of the agreement made between the parties. The understanding was carried out after the date the understanding was made before the sale, but was committed to writing after the sale.

4th Q^{ry} At the time this arrangement was reduced to writing, was it not left uncertain who should advance the money on the Manning Trust Deed.

Ans. My recollection is that the money had been already advanced by David Frost.

5th Q^{ry} What other expenditures if any was made to perfect the title to the Chicago Avenue property by whom.

Ans I don't recollect now, that any other money was paid.

6th Cross. Was a further expenditure of money considered necessary to perfect the title.

Ans. Judging from the abstract of the title it appeared that there might be necessary.

7th Cross. Why was a clause inserted in said arrangement providing for the expenditure of further money to perfect the title.
Objected to by Hunt.

Ans. It was to have that money drawn out the proceeds of the sale of the Lot, before those judgments as I understood it.

8th Cross. Was there not an arrangement made anterior to the one spoken of, which failed to provide for the Hunt debts, or did it extend them to the last.
Objected to by Hunt.

Ans. Not to my knowledge.

9th Cross. Was there not another arrangement made prior to the one consummated & afterwards destroyed, if you state the contents, why it was destroyed.

Ans. There was one paper drawn up that was torn in two, during a little excitement between Mr Hunt & Mr Otis growing out of a matter relating to those judgments on account of those judgments being described in said instrument that writing set forth that a certain amount from the sale of the Lot on Chicago Avenue should be

paid to Otis & Davenport, or to Davenport, together with what might be advanced to perfecting title if any should be necessary, that was to be paid in the first place from the sale of the property, in the 2^d place two certain judgments in favor of Mr Hunt were to be paid from the sale. 3^d there was a note to be paid to Davenport or to Davenport & Otis, in the same manner provided the property brought enough, that is, as I understand it.

Objected to by Hunt.

1st Cross. What objection if any was made at the time the contract was made, this judgment being described in the contract as described the manner in which it was to be paid, it was to be paid by whom - I will not say it is of Hunt as near as you can.

Objected to by Hunt.

Ans. I have no recollection of the language they used at that time. I do not now recollect what objection Mr Hunt urged at the time. One of the parties held the contract in his hand. The other caught hold of the end of it & straitened it in two.

1st Cross. Did not Mr Hunt say in substance that there was a dispute about the validity of those particular judgments and that he did not wish his recovery of the amt. to depend on their validity?

Objected to by Hunt.

Ans. I understood this difficulty to occur on

that ground, and he did not want the profits described in the paper.

11th Ques Did not Mr Benson say after conversing with Hunt as you have above related that he believed Dunlop was indebted to Hunt, to the amt of the profits and was not this the expression used, rather than that he Benson believed the profits to be good. Objected to by Hunt.

Ans It was those were the words, that he believed he owed him, honestly owed him.

Direct Examination resumed.

14th Ques May not Dunlop the person who was insisting that Hunt's profits should not be so, in this transaction arranged himself and making some efforts to get the profits set aside. Objected to by Hunt.

Ans I understood that he was trying to get these profits set aside - that this was done after his contract was made.

15th Ques During the pendency of the final negotiation was it not represented to you that Dunlop was trying or would try to get the profits set aside.

Ans I think it was.

16th Ques Has it not been considered by you and it is desirable

to get Hazard's profits out of the way, & was such efforts made for that purpose before entering into the writing above alluded to.

Objected to by Comptrol's Council.

Ans It was considered desirable by me to get Hazard's profits out of the way. I tried to have Mr Benson remove them.

17th Was not the agreement that was torn, made before the purchase under the Manning Trust deed and in contemplation of it?

Ans My impression is that the arrangement was made before the sale, in that Mr Hazard made out the writing which was presented to Otis nor myself either after the sale. I think was the writing that was torn up, on reflection.

18th Was not Hazard insisting upon the carrying out of the agreement as was contained in that writing?

Ans He was.

19th Was it not on that account that Mrs Otis undertook to take it from Hazard's hand and Hazard held on to it, so that it was torn.

Ans As I recollect Otis claimed that the paper belonged to him, not Mr Hazard, on account of my not agreeing to it and signing it, it was not carried out according to the understanding.

of it. That is it was not a finished Article. It was not signed by me. There was something in it that I would not sign on account of those judgments, - the judgments were not set forth in the agreement, there was a sum mentioned instead

20th Did you understand Head as insisting upon the carrying out of that agreement, as it had been written.

Ans I so understood it.

21. How much of your & Otis' claim was provided to be paid before Head in consideration of not allowing the money to purchase other land at the forthcoming sale. Was one or more notes preferred.

Ans One note of nearly \$1000. I think.

22. Does your mean to be understood that the claim of Head or any other claim provided for in the declaration of trust was to be paid, except so far as the amt realized from the Chicago Avenue Lots, should enable the trustee in the order mentioned in the declaration of trust.

Objected to by complete Counsel.

Ans I understood that if the Lot would not bring enough, the claim was to be paid some other way. I did not understand that these claims were to be cancelled by the sale of the property

unless the property brought enough to cover it.
them.

Olin Davenport.

The further examination of witnesses was adjourned without day.

Oct 31st 1839. Parties met by agreement and proceeded with the examination of witnesses.

J. Myers Hill was sworn in and examined & testified as follows.

1st Quest What is your name, age, residence and occupation? and are you acquainted with the parties?

Ans My name is J. W. Hill. I am 29 years old I reside in Cranston, Cook County, by occupation builder - I am acquainted with the parties.

2nd Quest Do you know, & if you do state what time H. B. Gay went East & returned in 1837?
Objected to by Compls atty.

Ans He went East between the 5th and 10th of August and returned from the 5th to the 10th of September of that year.

3rd Quest Were you in 1837, a member of Hunt's family, or residing with him, & if so when did you enter his family - how constantly were you there & how long.

7
Ans I was not a member of his family in 1837,
nor did I reside with him in that year, it
was not until 1838.

4th Quest How you frequently at his house during 1837,
if so how frequently, and did you know who there.

Ans I was frequently at his house during 1837,
as often as once, twice or three times a week,
we had a musical union weekly, and I attended
it at Mr Hurd's house. I also went there to see
Mr Hurd's sister sometimes once or some times
twice a week.

5th When was the Musical Union formed or
organized.

Ans It was organized about the first of August 1837.

6th Was Mr Benson a member of that Union,
and did he attend it during his absence,
often, and did he attend it in Hurd's absence

Ans Mr Benson was a member of that Union, he
attended weekly at Mr Hurd's, he also attended
it during Hurd's absence.

7th Was Hurd at home in Exauston during the
Spring & Summer of 1837, up to the time he
went East how frequently did you see him
during that time.

Objected to by Comptrol Council.

Ans Hurd was at home in Exauston during
1837

the Spring & Summer of 1837. up to the time he went East, during that time I saw him at least once a week.

J. W. Hill.

J. W. Hill was produced sworn, examined and testified as follows.

1st Quest What is your name, age, residence and occupation & do you know the parties.

Ans My name is James W. Hill, I am 37 years old, reside in Chicago, my occupation being money on real estate, I know Hill, and Doolop, don't know the others.

2nd Quest Do you recollect some time about the 1st of January 1838 of making an arrangement to secure some claims of Ward & myself & Doolop Cavenport, upon a lot belonging to Doolop situated on Chicago Avenue, viz. State what the claims were, and whether they were liens upon said lot?

Ans I recollect the transaction referred to the claim that I was interested in securing were two notes of about a thousand dollars each owned & held by Oliver Cavenport, which he purchased of Benson. There was a Trust Deed upon record which purported to secure them upon the lot upon Chicago Avenue referred to. There was a Trust Deed to secure a

debt of about a thousand dollars, to a man by the name of Manning, Harvey B. Wood had or claimed to have two judgments which appeared to be liens prior to Ravenscroft's.

3^d Quest What was the reason or inducement for the arrangement, who first proposed it, was it reduced to writing, is this paper now shown you the contract.

Objected to by Compt. Council.

Ans I don't know that I can state the reason or inducement for the arrangement, or who first proposed it, it was reduced to writing, the piece of paper now shown me is a part of the contract as first reduced to writing, but not the one that was subsequently executed and delivered.

4th Was this contract a lien upon the title of the sale and what was the result finally obtained.

Objected to by Compt. Council.

Ans My present recollection is that this contract not being mutually satisfactory to the parties in interest was never delivered or acted upon but one was drawn and agreed upon and delivered which I have not now before me, which I can only recollect the substance of, the piece of the contract shown me appears to be dated the 19th of January 1838, and the sale was advertised to come off on the 20th, but I think no contract was finally executed and delivered until after the sale.

5th Who took an active part in the arrangement.

Ans Benson. Dana, post or myself.

162
6th
During the arrangement was any thing said, about Hay or two Judgments, which Dunlop intrusted himself in regard to them, if so what did he propose to do.

Objected to by Compt Council.

Ans There was considerable said about Hay or judgments. I don't recollect of seeing Dunlop myself during the negotiation, but heard of him through Benson at Newport, as interesting himself in the matter.

7th
Was anything said by Benson about the judgments in Hay's case, or in his absence, if yes, state what was said.

Ans There was both in his presence and absence, when the matter was first discussed Hay & Benson both being present the judgments were spoken of, I can't recollect to say precisely what was said, but I know that they were spoken of and Benson recognized them as claims to be provided for in that arrangement, subsequently in the absence of Hay at different times Benson stated to me, that Dunlop was going to contest those judgments & get them set aside or make an effort to get them set aside, and he repeated the confidence that Dunlop expressed in his ability to get them set aside.

8th
Did Benson claim to you that he knew of

any reason why they should be set aside.
 Objected to by Compts Counsel.

Ans I don't recollect of his stating that he knew
 himself of any reason, but I think I have
 heard him say, that although Compts owed
 him yet the judgments themselves were not
 rendered upon that indebtedness and were
 not evidence of that indebtedness. and that
 the judgments were held on to lay them for the
 purpose of getting his pay.

9th Do you recollect whether he claimed that
 both of the judgments were so held or only
 the first hundred dollar one, and whether
 that was held as collateral on a judgment
 called the Lee judgment.
 Objected to by Compts atty.

Ans I have no recollection that subject, further
 than stated in my former answer.

10th Did he ever state before any of these con-
 versations that Compts had admitted to him any
 thing against his judgments.
 Objected to by Compts atty.

Ans I don't recollect that he did.

11th Did he state before that Compts had ever
 agreed to release or satisfy the judgments.
 Objected to by Compts Counsel

Ans I think not.

12th
144
Did Benson desire to have the judges set aside, if yes, upon what did he rely to have that done, if any thing?

Objected to by Complete Council.

Ans
I could only infer what he desired from what he said, the manner in which he spoke of Dunlop's efforts to get them set aside and the pleasure it seemed to give him to state it to Davenport & myself I led me to infer that he wanted Dunlop to succeed in getting them set aside. I don't think he stated anything further except what I have stated.

13th
Was Benson interested in the arrangement would it have been to his interest to have had the judges set aside, if yes, how was he interested?

Objected to by Complete Council

Ans
He was interested in the arrangement he was guarantor on both of the notes held by Davenport. the balance of the purchase money on the lot which was a prior lien to all others, was unpaid, and he (Benson) claimed that Dunlop owed him or some one for whom he acted and he was anxious to have the property free as much of this indebtedness as possible. the said judgments as shown by the record would be a lien prior to the notes held by Davenport.

14th
Did Benson have any conversation with you about the time the last contract or

declaration of Trust was ~~made~~ executed
in regard to ~~the~~ judge's or their validity, if so,
state what he said as near as you can.

Objected to by Complete Council

Ans I can only say that I read the document
to him, he expressed his approval of it, & sent it
along by the post referring to the ~~the~~ judge's
which had been the matter in controversy, in
renewing the agreement to meeting.

15th Do you recollect of his saying anything in
your presence about his opinion of Dunlop's
sincerity in this matter or in regard to
the defense he had set up to the judge's
Objected to by Complete Council

Ans I don't

Direct close ~~was~~ was ~~made~~ made
witnessed by Complete Council

Ques Why was not the paper fish drawn up
at the contract of the parties

Ans Mr Oliver Davenport objected strongly to some
provisions in it, and I regarded him as the main
party in interest so far as the amount was con-
cerned. The proposed contract as fish drawn
was reduced to writing by Mr Hood, it provided
for the payment of the full amount of both
of ~~the~~ judge's including interest and costs
without reference to the contingency of Dunlop's

166 getting them set aside in whole or in part.

2^d Cross What did Mr Hard say as to Mr Davenport's objection & what did Mr Davenport reply.

Ans They had considerable conversation but I don't think I can now state the particulars of it.

3^d Cross Did not Mr Hard state in substance that he wished to recover the amount of the judgments, whether they were valid or not, & that he had
Objected to by Mr Davenport's Counsel

Ans I think Mr Hard at the time mentioned upon claiming the full amount of his judgments, it was stated to me & to Mr Davenport & myself that there was a possibility or probability of the judgments being set aside but this did not amount to there being any good ground for setting them aside.

4th Cross Did not Mr Hard in the conversation referred to, say in substance, that he did not intend that the recovery of the amount of his judgments should be contingent upon his defeating Mr Dunlap in his application to have them set aside.

Objected to by Mr Hard as leading and insinuating

Ans I think he did.

5th Cross The conversation between Benson & Hard

9
which you have mentioned was it not stated
in substance, by one of them, and if yes, which
that although the said judgments were without
consideration yet Dunlap justly owed Heard
was equal to the amount thereof.

Ans I dont think that was ever said by Benson
when Heard was present

6th Ques Why was the amount of the said judgments
deferred to the payment of the claims of Oliver
Davenport in the arrangement which was
finally consummated.

Ans It was because Davenport advanced the
money to buy the property under the Trust deed
to secure the ~~payment~~ of the remaining notes, which
was a prior lien to both Heard & Davenport claims.
Only a part of Davenport's claim was preferred
to the said Judge. The balance of the same
was preferred to the other party before
Heard Judge or any other party before any
arrangement was made.

7th Ques When was the said contract abandoned, &
what was said & done at the time, and by whom?

Ans It was some time after the morning sale,
I should say a few days. I think within ten
days. Mr Heard had drawn up the proposed
contract, he brought it into my office in the
evening just before closing up. Mr Heard
signed it and I think I signed, but it
was left in my possession over night to get

Mr Davenport's consent as I was not willing
 to act upon it, or deliver it without his consent,
 I submitted it to Davenport & he made several
 objections to it, Mr Hunt came in in the morn-
 ing. My present impression is that Mr Hunt
 came in, in the morning, the document was
 produced I think by myself and the objections
 pointed out, they were discussed for some
 time between Davenport, Hunt & myself,
 principally between Davenport & Hunt.
 Finally Mr Hunt having the document at
 that time in his hands, that he should
 insert upon the document and read but
 it upon record. I stated that I would
 not do that for it had not been agreed
 upon or delivered by the parties. During the
 further conversation Mr Hunt sitting near
 me, I reached and took hold of one end
 of the paper while the other end was in his
 hand, asking him at the same time to let
 me see it or state it & he grasped tighter,
 and I held on, and the document came
 in two in the middle and the part held
 by Mr Hunt is the part heretofore referred to in
 my deposition and is here annexed marked
 "Exhibit A" and made part of this my
 deposition the other part was retained by
 me until the new paper called the declara-
 tion of Hunt, was drawn up and executed
 by me, which I think was on the 5th of
 February 1857. when it was destroyed, the
 new paper being as we all understood per-
 fectly satisfactory to all the parties.

St Cross At the time you two said paper was it
open in Hurd's hands, or was it folded, if the
latter how many times.

Ans It was folded twice.

St Cross What was the specific point in the two
contracts upon which Hurd insisted, & what
did he say about - about -

Ans It provided for the whole amount of
Hurd's debts being paid without reference
to the contingency of Dunlap's success in
getting them set aside.

Cross closed
Direct resumed

1st Was the contract written in the
Gersons back office at the time of the
conversation between yourself & Hurd
Gerson

Ans. I think Hurd commenced writing the
contract there, but whether this is the one
or not I can't say.

Lucius B. Otis.

January 6th 1860. parties met pursuant to agreement, present Council for Comptrolleants and H. B. Hurd in person.

Olias Greenbaum being duly sworn, examined and testified as follows.

Q Now you present or did you take the note of Dunlop Colburn & Co. to which H. B. Hurd's name was signed, in which the L. C. judgment was entered, who was applying for the money for which the note was given, you say R. L. Dunlop, what about said Hurd if any thing about security, and what he replied and how the note was executed.

A I took a note of Dunlop I think it was of Dunlop Colburn & Co. it was the note on which the L. C. judgment was entered. Mr Dunlop applied for the money for which the note was given. He offered Mr Hurd's name as security - and wanted a thousand dollars. I said I would take the note. I don't recollect exactly how the note was executed.

Direct Closed

X by Woodbridge Council for Comptrolleants

1st Cross When Mr Dunlop proposed the loan

You have named did he not say in substance, that Mr Heard would sign the note with him instead of that Mr Heard would go his security, are you sure that the word security was used in the conversation.

Ans I have no positive recollection whether the word signing or security was used.

2^d Cross Are you sure that in the conversation referred to, Mr Denlop did not speak of Mr Heard as a joint borrower of the money with himself

Ans I am sure that he did not mention that he was a joint borrower.

3^d Cross Are you sure that Mr Denlop said any thing which is tantamount to Mr Heard was to be a mere security of the money

Ans I took it that he said security, my recollection is that he said that he would give Mr Heard as a signer which was a indication to me, that he was a surety. This word signer is a term used for any one going as an accommodation on paper, for another.

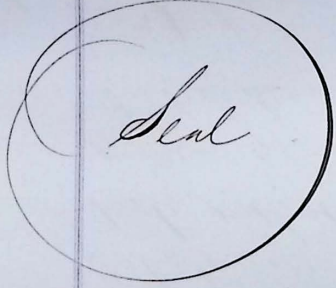
4th Cross Did Mr Denlop say anything further than that Mr Heard would sign with him about Mr Haros relation to the matter at that time.

Ans I dont recollect of anything. Oliver Morebaum

State of Illinois
 Cook County &
 City of Chicago

I Gideon W. Davenport
 a Notary Public in and for the City of Chicago
 in the County of Cook & State of Illinois
 do hereby certify that previous to the exam-
 ination of the said Thomas L. Hoag, Elias
 Davenport, J. Myer Hill, T. H. Otis & E.
 Elias Greenbaum as witnesses in the above
 cause, they were duly sworn according to Law
 to testify the truth in relation to the matters
 in controversy between the parties aforesaid
 they should be interrogated that the said
 depositions were taken by & before me com-
 mencing on the sixteenth day of October, 1857,
 and closing on the 6th day of January A.D.
 1860. That after the interrogatories and an-
 swers were written down, by me they were
 carefully read over to said witnesses and
 they thereupon severally signed the same, and
 swore to them before me, at the place and
 on the days and years last aforesaid.

That H. B. Hoard appeared in person
 and examined the witnesses on his part and
 that John Woodbridge Jr appeared on behalf
 on the part of Compton & Cross examined said
 witnesses.



Witness my hand & Notarial
 seal this 6th day of January
 A.D. 1860.
 Gideon W. Davenport
 Notary Public.

And afterwards to wit, on the twenty first day of February, in the year last aforesaid, said day being one of the days of the February term of said Superior Court of Chicago, the following among other proceedings was had and entered of Record in said Court, to wit,

Joseph H Eaton and
Susan P Eaton

^{vs.}
Harvey B Hurd, Francis
H Benson, Robert L Daulap
Josiah E Colburn &
Thomas L Sanford

} Bill

This day comes said Complainants by Williams, Woodbridge & Grant their Solicitors and file herein due proof of publication of notice of said defendant, to wit, T L Sanford of the pendency of the bill of said Complainants in this cause against him, said notice having been printed and published in conformity with the Statute in such manner as to be read and provided and upon filing affidavits of personal residence of said defendant, and due personal service of process of summons issued in this cause having been had on each of said defendants, to wit, H B Hurd, Francis H Benson, Robert L Daulap, and Josiah E Colburn, and on motion it is ordered all of said defendants plead answer or demurrer to the bill of Complaint filed in this cause instantly, and no plea Answer or demurrer being interposed by said defendants or either of them nor by any one in their behalf, and being three times

generally solemnly called in open Court, Come not, nor does any one for them but generally fail to appear. Wherefore it is ordered that the said Bill and the allegations therein contained be taken as Confessed against said defendants, and each of them, and that their default be and is hereby entered of record herein for want of an answer.

And afterwards on the seventeenth day of March, in the year of our said Lord King being one of the days of our said Court, did hold the following Court, the proceedings had and entered of record in said Court, vizt.

Joseph M. Eaton &
Susan B. Eaton.

Recree.

Nancy B. Ward, Francis N. Benson, Robert L. Doolap, Josiah E. Colburn & Thomas L. Sanford.

This cause having been brought to a hearing upon the Bill of Complaint taken as Confessed as to the defendants Francis N. Benson, Robert L. Doolap, Josiah E. Colburn and Thomas L. Sanford, and upon the answer of the defendant Nancy B. Ward, and the replication of the complainants

hereto, and the depositions filed herein,
The objections of the said defendant
Murd to the taking of said depositions
of Francis H Benson, Robert L Dowlap
and Josiah E Colburn without leave of
Court having been waived and the ob-
jections of said Murd, to the competency
of the testimony of the same witnesses
having been fully heard, and the Court
having sustained the objections to the
testimony of Francis H Benson and
having overruled the objections to the
testimony of said Dowlap & Colburn,
by which Bill answer & testimony is
appears that on the 6th day of December
A.D. 1856, said Dowlap claiming to be
seized in fee of Block No forty seven 47
in the village of Evanston, Cook County
State of Illinois, sold and conveyed the
same by deed of Warranty for a
valuable Consideration therein named
to one James V Blaney, that on the
17th day of October A.D. 1857 said Blaney
for a valuable Consideration sold and
conveyed by deed the south half of
said Block to the Complainant Susan
B Eaton, and that on the 11th day of
October A.D. 1858, the said Blaney by
quit claim deed of that date for a
Consideration therein named sold and
conveyed the remainder of said Block
to the said Susan B Eaton, that
the said Susan B Eaton was at the
time of filing said Bill of Complaint

and is now the wife of said Joseph
 A Eaton and that upon the 6th day
 of July 1857. the Sheriff of Cook County
 sold said Block, to said Benson
 upon six Executions upon six several
 judgments to all of which said Daulap
 was a party defendant, and all of
 which were apparent liens upon said
 Block before and at the time of the
 aforesaid sale of said Block, that
 said six judgments & executions & the
 sale of said Block accord with
 the provisions of the bill of complaint
 in that behalf: that the amount
 bid by said Benson at said sale
 was twenty five dollars which was
 likewise the amount inserted in the
 Sheriff's Certificate to said Benson, that
 upon the 15th day of October 1856.
 said Harry B Hard caused two judg-
 ments to be entered in the Cook
 County Court of Common Pleas in
 his favor and against said Daulap
 Coeburn and Sanford, the first being
 for three hundred & eighty five
 dollars and costs, and the second
 being for three hundred & forty three
 dollars and costs, that said Hard
 caused executions to be issued on
 both of said judgments upon the day
 the same were entered, that there
 was at that time and during the
 life of said Executions personal

property of the said Owlap out of
which the same could have been
made, but that the said Hurd
ordered and directed the said
Sheriff during the life of said executions
not to make the same out of said
Owlap but to return the same
no part satisfied, that owing to said
Direction of the said Hurd, the said
Sheriff did not make the amount
of said executions, but returned
the same into Court no part sat-
isfied; that afterwards upon the 31st
day of August A.D. 1858 said Hurd
caused an alias writ of fieri
facias to issue upon his said
judgment for three hundred and
eighty five dollars by virtue of which
said Hurd attempted to redeem said
Block forty seven acres of land
sale upon said said executions, and
to that end deposited with the
Sheriff of Cook County twenty eight
dollars and five cents the amount
of the redemption money and on
the 23rd day of September A.D. 1858, caused
the Sheriff to go through the form of
a judicial sale of said Block, and to
execute to him the said Hurd a
Sheriff's deed for said Block, that said
last named sale and redemption
were set aside by the said Cook
County Court of Common Pleas upon
the 4th day of November 1858. for

informaticies in conducting the same, and the said Hurd having waived in open Court all objections to the testimony of the said Doulap & Colburn upon the ground of their being parties to this Cause. And it further appearing to said Court that said judgment in favor of said Hurd for three Hundred and eighty five dollars and Costs was entered upon a certain promissory judgment note, and the said Doulap & Colburn for three hundred & fifty four dollars dated June 2^d 1856, which was wholly without consideration and that the said judgment of the said Hurd for Five Hundred & forty three dollars & Costs was entered upon a certain other promissory judgment note of the same date and made by the same parties which had been fully paid by said Doulap Colburn & Sanford, before judgment was entered thereon, and that when said judgments were entered there was nothing due on either of them to the said Hurd, and that the said two notes were both retained by the said Hurd & said judgments entered thereon by an express agreement between the said Hurd, Doulap & Colburn that the said judgment should be entered

by the said Ward and the Ex-
ecutions issued therein should be
enforced against said Sanford
only, and not against any property
of said Daulap or Colburn.

Whereupon it is ordered adjudged
and decreed that the said apparent
lien of said Ward upon said block
forty seven by virtue of his said
two judgments entered as aforesaid
upon the 15th day of October A.D. 1880
against the said Daulap Colburn
and Sanford and the said judgments
so far as the same affect said
Block and the title of the Com-
plainants therein, are wholly
null and void, and the said
Ward and all persons claiming
by through or under him are
hereby ~~perpetually~~ ^{perpetually} enjoined from
levying any writs or writs of fieri
facias now issued or hereafter
to be issued upon said judgments or
either of them upon the said
block or any part thereof, or in
any manner employing either
or both of said judgments or
writ or writs of fieri facias to
interfere with or in any manner
impair the title of said Complainants
or either of them in and to said
Block, and it is further ordered
adjudged and decreed, that the said
Harvey B Ward do pay to the

said Complainants or their Solicitors the Costs of this suit in this behalf to be taxed, and that in default of payment thereof, the Complainants have their execution according to law.

State of Illinois
County of Cook

Thomas P. Carter Clerk
of the Superior Court of Illinois in and for the County & State aforesaid, hereby certifies that the foregoing is a full true and correct transcript of all the Pleadings on file in my office and of all orders entered of Record in said Court, together with all the depositions except one of J. McPenton which is ruled out by our said Court. In a certain suit wherein Joseph McEaton and Susan P. Eaton are Complainants, and Harvey B. Ward et al, defendants.

In testimony whereof I hereunto subscribe my name, and affix the Seal of said Superior Court of Chicago, at the City of Chicago, in said County, this first day of March A.D. 1862

Thomas P. Carter Clerk



Supreme Court of Illinois

Harvey B Hurd

impleaded &

vs

Joseph H. Eaton &

Susan B Eaton

And now comes

the said plaintiff in error and says
there ~~is~~ is manifest error in the foregoing
record & herein in this

1st The Court below overruled the
objection of said Hurd to the testimony of
Dundlap & Colburn

2nd The Court erred in admitting
the testimony of said witnesses to construe
said & explain their written contract

3rd The Court erred in receiving
the testimony of Dundlap & Colburn to show
that they & Hurd undertook to defend &
satisfy & their obligations thereunder from
their contract;

4th The charge is unsupported
by the evidence

5th The charge is against Equity;

Hurd Booth & Potter

Attorneys for Hurd in error

And now come the said defendants in
error and say there are no such errors

Williams, Woodhulpe & Smith

for defendants in error

179 118

Harvey B. Hunt

Susan M. Carter

Filed April 22, 1862
L. Leland
clerk

Fee

\$34.00

Paid by H. B. H.

J. D. Carter