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He, Waugh top came into our office and paid in one thousand and thirty two dollars I think and took up the sixty day note. The Complainant I believe I saw three or four times and required the payment of the notes, he said they should be attended to right off - one time that I saw him the Complainant was just before the payment of thirty first december.

(Adjourned by Consent to 21 instant at 1 P.M.)

1861 Nov 31. Parties met pursuant to adjournment and examination resumed -

On the thirty first of December spoken of the interest was reckoned on both notes to that time the interest was calculated on both notes up to that date and the whole amount made up and the balance of one thousand and thirty two dollars was paid to take up the one note and the interest on the other note up to that time - leaving the one note of one thousand dollars due and the interest paid up to that date - he could not then pay the thousand dollar note that remained - there was no extension asked for or granted at that time - the next time that there was any money paid I think was the fourth of April 1859. Thirty dollar was paid at that time by W. Waugh top. That payment was to be applied in payment of part interest - again the

last part of May I think the thirty first of May  
 \* Thirty dollars in payment of interest then  
 accrued - the second of July was the next time  
 W Waughop paid interest - he paid fifteen  
 dollars to apply on interest accrued. - Up to the  
 the thirty first of December 1858 we made the  
 interest at the rate of two per cent a month -  
 subsequently to that I think it was designed  
 to be reckoned at the rate of one and a half  
 or one and a quarter per cent per month at  
 any rate it was a lower rate - intermediate  
 the times I have mentioned I saw W Waughop  
 in relation to the payment of this note, but  
 it was casual and no transactions and no  
 money paid that I recollect of - I think  
 the time I saw the Complainant was in Novem-  
 \* ber 1858 after they both became due - I told  
 him I wanted those notes paid - he gave me to  
 understand that he would see that they were  
 paid - I think the next time I saw Complainant  
 was a few days before the last of December, a few  
 days before the sixty day note was paid. I  
 repeated the same request that the notes should  
 be paid, he said that he had not given much  
 attention to the subject, he had left it to Waughop.  
 and did not know but that they had been paid  
 or something to that effect - that he would see to  
 it immediately and have them paid or something  
 to that effect. he promised to have them paid -

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I don't recollect exactly when I <sup>next</sup> saw the Complainant. I went to his office a number of times before I saw him - I met him on the sidewalk, It was I think after Wang hop made his assignment and told him this matter must be closed up - I would not let it lie so any longer. he said he had been absent for some time - he had not any money then - that he would see me next week and arrange it with me if he could not pay it - I told him I wanted it fixed up - that if he had not the money to pay, I wanted it in a new shape with some kind of security - I don't know but I proposed if he could not pay it to make a note and extend the time if he would give security - he said he wanted to wait awhile till he had time to look into examine into, Wang hop's affairs, and see if it could not be paid out of that - He said it was a matter that Wang hop ought to pay - and he wanted to have it paid out of his effects I told him I should not be turned off on to Wang hop that I had relied upon him and that he should pay it. He said he did not want to have me think that he intended to dodge his responsibility in the matter at all, that he wanted an opportunity to make it out of Wang hop's Estate, he wanted to have me to hold on until next week, he would then try to arrange it to my satisfaction - I soon afterwards saw him again - I believe I did not see him the

next week, but shortly after the next week I saw him, the Comptinent - he said he had not any money to pay the note - that it had all got to come out of him, he expected it - he wanted to have me take the pay in land complaining that it was hard times to raise money that his means were pretty much all in land - he would give me land so that it would be an object to take it - he mentioned land at Exeter town and I think some outside city property here - I told him I did not want land, I wanted the money. I told him I would give him time to raise the money - if he would give me a new note and something to assure me that it would be paid when it was due, he said that he would try to make arrangements to close it up in some shape by the then next Monday - the next Monday I did not see him I think he was away from home - I went on the day and did not see him the next time I saw him he said he had to be out of town - he wanted a few days more - I told him there had been too much delay already, he had promised several times already, and told him I felt disposed to close the matter up, that there was no need of putting the matter off from week to week in that way - he said he would certainly attend to it. I did not go near him again I waited quite

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a considerable time and finally had judgment entered on the note - Mr Evans then came to me (after the judgment was entered) he said he was very much offended - that it was the first judgment that he ever had against him and no need to have been entered - that I ought to have told him that I was going to enter up judgment and that he never had any thing happen that hurt his feelings as much as that did - I told him I supposed I had done every thing that was necessary to enable him to pay the note if he expected to without a judgment, that I never threatened a man but that I had indicated as strong as language could that I intended to do so and that he hadn't any right to expect otherwise - he said it was a very ungentlemanly act upon my part to do it while he was making every effort to bring about the payment of the matter or arrangement of the matter - something to that effect I had forgotten to state in its order that previous to these last interviews he came to my office and inquired about the note and requested to see it - I showed it to him, he inquired about the payments that had been made on it - how much was due.

Dejournaled by Consent to Dec. 12. 1861

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1861, December 12.

Parties not pursuant to adjournment;  
(Examination resumed)

He took the note and examined it - I told  
+ him what had been paid on it - W Waydop  
came to my office subsequent to the entry of the  
judgment and subsequent to the commencement  
of this suit. and we had some conversation  
in reference to the statements in the Bill in  
relation to the extension of the payments on the  
note - I told W Waydop in the conversation  
that he could not be mistaken in regard to  
that matter very well for the reason that I had  
been perfectly decided in my refusal to extend  
it - He said that he did not consider or had not  
conceived (or to that effect) that there was  
any actual agreement to extend, that it  
had been or was a matter of inference from  
the transactions between us. -

22. State whether or not you ever agreed with  
the said Waydop or any one else to extend  
the time of payment of the note in question  
if so when and where -

Ans. I never did -

23. State whether or not you ever received  
any money from the said Waydop or any  
other person on the note in question except at

127 the Banking house of Aiken & Norton as before testified by you, if so when where and the amount.

Ans. I don't recollect of receiving money any where else - and don't think I did for the reason that it was out of the regular course of business system and about which I was very particular. I was very particular about receiving or paying out any money without it went through the Teller's hands.

24 Was there ever twenty two dollars or any other sum paid to you by the said Waughrop on the note in question at his Waughrop's Office - if so state when and all the particulars of such payment and who was present if any one -

Ans. I have no recollection of such sum or any other being paid out at Mr Waughrop's Office I am very sure that there was no sum of Twenty two dollars paid

25 State whether or not said Waughrop applied to you about the first of September 1858 for a loan of money.

Ans. I don't recollect it.

26 Did you or not at that time (first September 1858) have a conversation with the said Waughrop about loaning him money and if so was there any thing said by you about

his getting Complainant for surety.

Ans.

I have no recollection of any such conversation.

27. State whether or not at the maturity of the note in question or about that time you saw said Wauytop and if so did you or not extend the payment of the note for one month or for any time and did you or not at that time or at any other time receive from said Wauytop or any other person a consideration for extending said note - if so when where and what consideration did you receive -

Ans.

I did not see Mr Wauytop at that time in relation to any thing concerning that note - I don't recollect that I saw him - I did not extend the payment of the note for one month or for any other time on any consideration whatever - I never extended the payment of the note -

28. Did you know the pecuniary circumstances of said Wauytop at the time of discounting the note in question if so what were they -

Ans.

I hadn't any special knowledge but from my acquaintance with the general management of his pecuniary affairs I considered him pretty hard up - credit bad -

29.

From your knowledge of Wauytop's pecu-

129 many affairs at the time of giving the note in question, could or not a judgment for one thousand dollars be collected out of the said Waughop at any time after the giving of said note.

Ans. I should consider it doubtful I don't know any property that it could have been made out of -

30 State whether or not you are positive as to the number of payments - the times and amounts paid on said note by said Waughop as before testified to by you. If so the reason you are positive, if any?

Ans. I believe I recollect each of those payments at the time they were made - and I have examined the books of the Teller where every cash transaction is recorded at the time it is made and I find no record of any other payment - and the fact which I know that the interest that accrued on the note in question was not paid monthly but was almost constantly in arrear - It was our custom on all our due paper if it could not be paid if the principal could not be paid to insist upon the payment of interest at the end of each month.

(adjourned to 19<sup>th</sup> instant)

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1864 December 19<sup>th</sup>  
(Parties met pursuant to adjournment)  
(Cross examination)

1 Cross Ex. What do you understand by having an interest in the result of this suit?

Ans. To be entitled to receive any of the moneys collected of Waugh & Evans in case this suit should go against the Complainant, or to be liable for costs without indemnification in case it should be decided in his favor (the Complainant's favor)

✓ 2. Are you not more anxious that the Complainant should be defeated in this case than that he should win?

Ans. I have no anxiety any further than that the truth should be known in relation to the matter - further than that I have no anxiety whether he is defeated or wins.

3. Refusing to answer the previous question in any other terms than those already given

✓ Will you or will you not answer the same directly - Will you or will you not answer the same directly by yes or no -

Ans. I will

✓ 4 Will you please then answer said question directly

Answer: I think I am not.  
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5 Why do you say, I think I am not.

Ans. Because I know no reason why I should be.

✓ 6. Do you swear positively that as between these parties in this suit Complainant and you Co-defendants, you are absolutely indifferent as to the result of such suit - not merely in a pecuniary ~~way~~ point of view but in all respects whatever

Ans. Yes - with the qualification stated in my answer to the second cross interrogatory that the truth should be known in relation to the matter -

✓ 7 Who first suggested the idea of assigning your interest in this suit, and what was your purpose in so doing or if you had several objects in so doing state them all.

Ans - I don't know who first suggested the idea of assigning my interest, whether Mr. Norton or myself - This claim against Grayson & Evans and another of equal amount was in litigation at the time - Mr. Norton and myself thought proper to divide them - and, that Mr. Norton as the owner of the demand involved in this suit might avail himself of my testimony if necessary in establishing the facts of the case - We thought best that

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he should take that demand and this was the reason why he took this instead of the other -

8. What was the nature of the claim of equal amount assigned to you, against whom, and upon what grounds contested?

Ans. It was a claim against W W King and Jason Gurley in a note which W Gurley was surety for King. I cannot state exactly the state of the case at that time. I think that there had been a demurrer in the case and a judgment had been obtained and carried to the Supreme Court on a writ of Error and afterwards reversed. I think at that time it was in the Supreme Court on a writ of Error.

9. Do you know of any reasons and if so, state it, alleged by the Defendants in said case or either of them why they or he ought not to pay said note.

Ans: I dont now remember that they stated any reason to me - when they did not pay said note I ordered it sued -

10. Was the transfer of this claim to W Norton actually made by you at the time said Exhibit A is dated May 1' 1850 - if not when was it made?

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 Ans. That was the time - I think it was made on the same day of its date. The understanding of the arrangement might have been made a little previous to that, I don't now recollect. These instruments were the consummation and took effect on that date -

11. Are you sure the assignment was not dated at an earlier day than the actual occurrence, anti dated

Ans. I am very sure not.

12. State whether said instrument of assignment was actually executed before or after the decision of the Court upon the Demurrer in this Case -

Ans. I think it was before - at any rate it was before I knew of any decision on the demurrer.

✓ 13. At the time you assigned your interest in said Judgment was it not your expectation and intention to appear as a witness in this suit for your Co defendant Norton?

Ans. It was the expectation of Mr Norton that I should appear as a witness in this suit if my testimony became necessary -

14. Before assigning to him had you not told him that you would be a Witness in the case or words to that effect?

Ans. I don't think I had told him that I

would be a Witness for him, but it was supposed by him and me that if necessary I would be called as a Witness if necessary to establish the facts of the Case -

15. Had you detailed to him before that time the facts as they appear in your direct examination?

Ans. I had made him acquainted with the general facts of the Case -

16. Had you not told him that you had never granted an extension to Mr Waughkop as stated in Complainant's bill?

Ans. Well, I don't now recollect - my impression is that I had stated to him the leading features in the Case -

17. Was it not a leading feature of Complainant's Case known to you at that time that you had granted to Mr Waughkop several extensions of time upon payments of usurious interest in advance from month to month - and did you not among the leading features of the Case, communicate that also to Mr Norton -

Ans. I knew that the Complainant alleged that in his bill and I don't know but that Mr Norton saw the bill - I don't recollect in

135 what forms the facts were communicated to him but I think he knows the claims set up by the Complainant.

18 Do you mean to swear that Mr Norton did not know of before said assignment from representations made by you that you denied the facts set up in said bill -

Ans No -

19 Explain then what you mean to say in reference to the extent of his knowledge of those facts, and in reference to your communications with him relative thereto -

Ans. I think Mr Norton knows what the Complainant alleged in his bill and what I claimed the facts to be either from Communications from me or Employees in the office and from reading the bill or from some or all these sources combined - yet I cannot now state to what extent the communication was made by me personally or that he was acquainted with all the details of the case -

20 Do you not believe you had communicated to him before he executed his bond to you and took an assignment of your interest in said judgment - the fact that you denied the allegations of said bill relative to the extraneous?

Ans. I believ. I sed tell him that those allega-  
tions were not true -

21. Had you not also told him or in some  
form or other given him to understand  
that you would swear that the said  
allegations relative to said excursions were  
false?

Ans. I dont think I have -

22. Do you not believe it was his understanding  
at the time he took said assignment that  
you would so swear.

Ans. I think he understood that I would  
testify if called upon to the facts as he  
understood them.

23. Do you believe that he would have taken  
said assignment from you at all if he had  
supposed said allegations were true or that  
you would not swear if called upon to their  
falsity?

Ans. I dont believe that he would have  
taken the claims on the same conditions  
if he hadnt considered it good for any  
thing -

(Adjourned by consent to January 17. 1862)

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1862 Jan'y 27. Parties met pursuant to adjournment -  
(Cross examination resumed)

24 Please give a direct answer to question 23-

Ans. I do not believe that Mr Norton would have taken the assignment on the terms he did, if he had believed said allegations were true, as to the last part of the interrogatory I do not undertake to express my belief as I have no foundation for an opinion -

25 In your answer to the seventh Cross Interrogatory you said "Mr Norton and myself thought proper to divide them, and that Mr Norton as the owner of the demand involved, in this Suit might avail himself of my testimony if it was necessary in establishing the facts in the case - we thought best he should take that demand, and this was the reason why he took this instead of the other" - Please state what facts you alluded to in said answer -

Ans: The leading facts stated in my direct examination including the facts stated by me relative to the alleged extensions -

26 Mr Norton having taken said assignment for the purpose of using your testimony to sustain his claim and with the understanding that you would sustain it

as a Witness if necessary. would you or not feel yourself under the obligation to reimburse him in case it should turn out in this suit that you were mistaken as to the fact of extensions being given.

Ans. If it should turn out that I had made a false statement of facts to W. Norton, on which he had taken this claim and by which he had been deceived in the matter. I should consider myself under obligation legally and morally to do what would be just on my part towards making it good to his Estate, that is to pay him what would be just on my part.

27. Suppose it should turn out that you who transacted the business alone were mistaken and that he had been damaged by your representations in regard to this matter to him would you not deem yourself bound in honor to see him harmed in the matter -

Ans. I should consider myself bound in honor to do what would be just towards him or his Estate, if I felt a conviction that he had been damaged through any misrepresentation of mine) -

28. Would the fact that W Norton had given

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you a Bond of indemnity or a release, cutting off all claim upon you, make any difference in your notions of justice in this matter?

Ans. It would not so far as relates to my feelings expressed in my answers to the twenty sixth and twenty seventh Cross interrogatories.

29 Was the firm of Cullen & Horton in the habit of loaning money in their said Bank on personal security?

Ans. I think they did loan money to their Customers to some extent on personal security.

30 Please state the rates per Cent highest and lowest taken upon such loans.

Ans. As a general thing such loans were made to our Customers and the rate was ordinarily ten per Cent.

31 Did said firm ever loan money to persons not customers

Ans. I think they did.

32 Did they ever loan money at a rate above ten per Cent if so what was the highest.

Ans. In their money transactions when the rate of discount made upon paper or Securities was above ten per Cent they were intended to be made in a form or upon paper which would legally

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avoid the question of usury and in such cases  
# we did not consider them in the light of a loan  
and the rates were the same as brokers rates  
In these transactions the rates was some-  
times as high as two and two and a half  
per cent a month and not often less than  
one per cent a month. depending greatly  
upon the value of the security and the time for  
which it was made - I think we sometimes  
however made short straight loans with  
parties in whom we had confidence at a  
rate higher than ten per cent but at what  
rates such loans may have been made  
I cannot state definitely, but usually from  
one to one and a quarter and one and one  
half per cent a month. I think one and  
one half would be the ordinary rate.

33 When a man called upon you for money  
did not your rate per cent vary accord-  
ing to the time he wanted money and  
the value of the security offered by him  
and if so how -

Ans It did - on Real Estate or property security  
first class - the rate was least as a usual  
thing though paper done on short time  
without such security was frequently at  
lowest rates -

141 34. In every case in which you let a man have money was not the rate determined by the time and the security -

Ans. In outside transactions mentioned, the rate was generally determined by the character of the paper offered but not always by the time of the maturity -

35. How was it in other transactions -

Ans. In other transactions it was generally ten per cent.

36. When a man applied to you for a loan of money and you made up your mind to let him have it but at a rate of interest above ten per cent how did you manage to avoid the charge of usury?

Ans. If such a case occurred I did not manage to avoid it. I don't think such a case as that often occurred.

37. Did it ever occur

Ans. I have no cases now on my mind, my recollection -

38. Do you believe that in the course of your business in this City such a case never did occur?

Ans. I presume it has occurred -

39. Was it occurred frequently and if so how frequently -

Ans. Very seldom if it has occurred in that form

40 State how you managed to avoid the appearance of usury in such cases as have occurred.

Ans. I have not managed to avoid the appearance of usury if such cases have occurred -

41 Was it not true that when the rate per cent per money taken by you was above ten per cent, that you managed to call it a discount and not a loan - or to give the transaction such a form as that it might seem to be a buying of paper instead of a loan of money? explain fully -

Ans. Transactions which would net us more than ten per cent in the use of our money we intended to confine to the actual purchase of paper and make them such with exceptional cases, which were seldom - We occasionally took a note of a party payable with interest at ten per cent for the amount of the money taken by him with the understanding that at the maturity of the note he would pay something

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additional - this understanding was not expressed in the note, but was optional with the party giving it, this was seldom however.

42. What do you call such a transaction as you last spoke of, a loan or a discount?  
 Ans. I should call it a loan -

43. Were all the cases of loans in which you took above ten per cent interest managed as in the case just spoken of? if not state how otherwise?

Ans. Most of the cases in which I took ten per cent interest was simply a discount at the rate of ten per cent - others were notes drawing interest at ten per cent without any other understanding.

I misunderstood the question.

I should think it was unless in cases where we might have taken a due bill for the amount of money taken - the interest not being reckoned in. I recollect no other cases at present.

44. Did you manage thus in the "short straight loans made with parties in whom you had confidence at a rate higher than ten per cent" spoken of in your answer to the 32 Cross interrogatory -

Ans Yes -

Q5 Explain what you mean by the words  
 "when the rate of discount made upon paper  
 or securities was above ten per cent they were  
 intended to be made in a form or upon paper  
 which would legally avoid the question  
 of usury and in such cases we did not  
 consider them in the light of a loan"  
 contained in your answer to the same Cross  
 interrogatory -

Ans. If a person applied for money or to know  
 the rate that we would do paper, we required  
 him to bring in his paper and when he  
 produced it we would tell him what we  
 would do it for, whatever the rate was that  
 was agreed upon, we took the paper and  
 gave him the money - the usual way people  
 applied was to know what we would  
 do such and such paper, which they  
 produced and the rate was made and  
 if agreed upon the transaction was  
 closed -

(Rejournaled by Consent to January 27 at 9 A.M.)

1862 Jan 27 (Partis met pursuant to adjournment)

We intended to make such transactions

1415 simply the purchase of paper

46. Did the form of the paper itself in such cases or the place where it was drawn, make any difference with you in characterizing the transaction -

Ans. No I think not.

47. If a man presented you a note signed by himself to the order of your firm for one hundred dollars, for thirty days and asked you for money, proposing to leave with you said note and on reflection you took the note and gave him ninety eight dollars in cash what did your firm call such a transaction?

Ans. He should call it discounting his paper or loaning him money on his paper - if there was no other consideration for his paper.

48. If having first asked you for money he had then drawn a note at your counter in the same form would that make any difference in the nature of the transaction -

Ans. I do not think it would -)

49. If he procured another party person to sign with him in the case last supposed would it make any difference -

Ans. No difference.)

50) Was your transaction with W<sup>m</sup> Wang hop in this case a purchase of Wang hop's & Evans' paper or was it a loan of money to W<sup>m</sup> Wang hop? explain fully -

Ans. We intended it I think as a purchase of the paper so far as I recollect the facts of the case - )

51) Do you mean to swear that said transaction was not a loan of money to W<sup>m</sup> Wang hop.

Ans. I do not. though I did not so understand it at the time. )

52) How did you understand it at the time?

Ans. I understood it as a purchase of the paper.

53) Do you understand it so now?

Ans. I should unless it was made with express reference to being discounted by Aiken & Horton with their knowledge of the fact and without any other consideration -

54) Was there any consideration for said note except the money advanced by Aiken & Horton.

Ans. I do not know whether there was originally or not. )

147 (55) Don't you believe there was not

Ans. Taking the declarations of the parties made since I should <sup>think</sup> there was not - I believe there was not )

56. Were not the notes in question drawn with direct reference to this transaction with you and with your knowledge

Ans. I don't recollect that it was. )

57. Do you remember whether or not a set of common notes had been made out by Waughop and Evans and refused by you before the judgment notes spoken of in said Bill were made out by said Waughop and accepted by you as stated in said Waughop's deposition

Ans. I do not.

58. If the fact was as stated by said Waughop in his answer to the second direct interrogatory and if there was no consideration for the money you gave said Waughop except said judgment notes, was not the transaction with said Waughop in your opinion a loaning of money?

Ans. I should consider it so provided I know such facts to be true and know that the same was not commercial paper and know that there was no other consideration )

59. If the paper was drawn as stated by you said Wanghop was it or not commercial paper?

Ans. If it was drawn with reference to being discounted by us in the manner spoken of by said Wanghop I shouldn't consider it commercial paper.

60. Do you remember that prior to the giving the judgment notes Dr Wanghop called at the Office of Allen & Norton on Clark Street, for a loan of money and in conversation with you, suggested the name of the Complainant as security for such loan and that you consented to take his name?

Ans. I do not.

61. Do you swear that either of those facts indicated in the last interrogatory did not occur?

Ans. I do not.

62. You merely say that you have no recollection of them or either of them?

Ans. I have now no recollection of them.

63. Do you swear that either of the facts stated by Wanghop in his answer

149 to the second direct interrogatory is untrue and if so which of them?

Ans. I do not - but am confident that if the conversation there stated as taking place between me and Mr Wang had taken place I should retain some recollection of it.

64 All you mean to say then is that you do not recollect the facts stated by him in his said answer?

Ans. I mean to state that I don't recollect that conversation - I think I should if it had occurred.

65 Will you swear positively that when said judgment notes were delivered to you, you did not know they were accommodation notes on the part of the Comptendant.

Ans. I think I had no knowledge of it except what appeared on the face of the notes -)

66 Will you swear positively that you had no other knowledge than what appeared upon the face of the notes.

Ans. No more positive than I have stated. )

67. May you not be mistaken in your opinion in regard to the matter.

Ans. Mistakes are possible in all cases. )

68. When the thirty day note matured do you swear positively that you did not see W. Waughop and converse with him about it or merely that you do not remember any such conversation.

Ans. My recollection is quite positive on that point.

69. Are you any more positive in regard to it than you were when you answered the nineteenth direct interrogatory

Ans. I don't know that I am -

70. Is not your belief that there was no such conversation based entirely on the two facts first, that you do not remember it, second, that the thirty day note was found in the same envelope with the sixty day note about the time the latter matured -

Ans. Not entirely - In addition to that the conversation with W. Waughop at the time the second note matured - the conversation was merely in relation to that fact that it was overlooked.

71. State what that conversation was in full

Ans. I cannot state the particulars of the conversation - but I recollect that subject

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being talked about and the circumstances under which it occurred - Mr Wang had wanted to pay up the interest and pay the interest on the two notes in advance for one month and have them returned - I declined to give an extension on the notes, he said that he had (I don't know that it's the precise words of the conversation the substance was) that he had no money to pay the notes now, he had enough to pay the interest and expected to be able to meet them within a month - I gave him positively to understand that I would not extend them - that if he had any money that he wanted to pay in he could pay it in and pay the balance as soon as he could, the money he paid in might apply on the interest so far as it had accrued, the balance to apply on interest and principal as circumstances might indicate or something to that effect when the balance was paid, but he must consider the notes as due - that I should not extend them and that he must pay them as soon as possible -

72. At the time of that conversation did he pay you any money if so how much

Ans. I think he paid me sixty dollars

That's my present recollection of it - at any rate the amount he proposed to pay in he said he had got to pay in -

73 Had you any other business transactions with Mr. Haysdorff besides the one in question during the sixty days after the date of the said

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Notes?

ans

I do not now recollect of any. I will say this in that connection. Mr Maughop occasionally came in and borrowed a small sum of money for a day or two and give his check, dated the number of days ahead that he wanted the money and transactions of that kind might have occurred during the time spoken of - I recollect none as applying to that particular time.

74

Had notices been given Maughop and Evans of the nonpayment of the thirty days note by letter and whether the interest or principal were paid at that time, would it not have been protested at maturity.

ans

It would not

75 why not?

ans

There would be no reason for doing it. We were not in the habit of doing it with notes

of that kind made and payable here.

76. In the case supposed in the last interrogatory, would not judgment have been entered on said note at once according to your manner of doing business?

ans It would not.

77. Do you know how or when the thirty day note came to be put in the same envelope with the sixty day note?

ans I do not, except carelessness.

78. Will you swear positively that a notice of the maturity of said thirty day note and to pay the same was not sent to Mr. Naugbop by your firm on or about the date of its maturity?

answ I will not.

79. Will you swear positively that Mr. Naugbop did not on or

155

about the same date that you  
or to your firm interest on said  
note, at the rate of two per  
cent per month for thirty days:

aw I will not. But I am very  
confident he did not.

80 Are you as confident no  
notice was sent to Mr Naughop  
so that he did not pay you any  
money about that time?

aw I am not

81 Please examine the envelope now

From Aiken & Norton,  
Chicago

Chicago  
Stamp  
Oct 4  
Ill.

Exhibit C mentioned  
in Cross Examination  
of Edmund Aiken  
had copy  
made by  
Martin J. De  
Chauv.

J W Naughop Esq  
Chicago

to the Com-  
Exhibit "C"  
had writing  
of a clerk  
to what  
your office.  
as in your

aw I should think it was in the  
hand writing of Mr Story, who  
was Book keeper, at the time  
that the thirty day note was  
made. It was his business to send

out notices of the maturity of notes and for the payments of notes when required by me, past due - I think he was in my employ from the summer of 1857 to about January 1859.

Q2) Was that one of your office Envelopes?

Ans I think it was.

Q3. What did it cover or probably cover?

Ans I should infer that it covered a notice or communication of some kind to Mr Waughop from our firm, and from the date of this Envelope if it was the same year. I should infer it was a notice of the maturity of that note.

Q4) Were all the payments made by Mr Waughop on the notes in question made to you personally, if not, state which were so made

ans.  
157

I don't recollect now that all were, the one in November, sixty dollars payment, and the one on the thirty first of December, and the one in April and May were made to me or in my presence I think. The July payment I do not recollect the circumstances of. But the payment made in April we supposed paid the interest up to the first of April. Mr Maughup and I supposed it such I recollect we reckoned up to that time. In that case there had been or we supposed there had been a payment between December and April. I know that on the thirty first of December it had all been settled up to that date. It's my impression that on or about the first of February he made a payment of interest, but then I have not a distinct recollection of the facts.

85 Between the maturity of the thirty day note and the thirty first of December 1858 was

There any money paid on said notes besides the sixty dollars paid November sixth?

ans I think not.

86 Was any money on or before December 31<sup>st</sup> 1858 after paying interest applied to the reduction of the principal?

ans There was not.

87 The amount due thro' from Naughop and Evans Germany first 1859 for principal and interest was one thousand dollars, was it not, as you understand it?

ans The amount due was the principal of the thirty day note as we made the application of the money previously paid.

(Adjourned by Consent to 29 inst at 9am)

1862

Jan 24 Parties met pursuant to adjournment  
88 Exp'd. What period of time was covered by the two thirty dollar payments spoken of by you?

159

Ans Sixty days each I think.

89 When was the change in the rate of interest made?

Ans I cannot now tell, But it was after the 31<sup>st</sup> of December.

90 Was not the change in the rate made on or before April fourth 1839?

Ans I think it was made on that day. and it referred back on interest that had accrued unpaid up to that time. That is my impression. though I am not certain.

91 Might not the two thirty dollar payments have been partly retrospective and partly prospective?

Ans I think not.

92 Will you swear positively that Mr Naugbop in neither of the payments admitted by you to have been made by him, paid the interest on the thirty day note

160 for thirty days in advance?

Ans My recollection is very positive that it was not and that there was no money paid in advance of interest except the money paid on the seventh of November which was paid on the understanding before stated.

93 Are you so positive of that fact that you cannot be mistaken about it?

Ans I am not. But I am so positive that I don't believe I can be mistaken.

94 Have you any recollection of the amount which you think was paid by Mr Naugbop between December 13<sup>th</sup> 1838 and April 4<sup>th</sup> 1839, if so what was it?

Ans I think there was one month's interest paid.

95 When the sixty dollar payment was made, did not Mr Naugbop say to you that he wanted to

161

extend the two notes, one thirty and the other sixty days, and that at the end of the sixty days, he would try & pay one of the notes or words to that effect, and was not that agreed to on your part?

Ans No.

96 Did he not say to you at that time that he wanted to fix it so as not to have the two notes to pay at the same time, or words to that effect?

Ans He did not.

97 Is not your claim against King & Garley in judgment and paid or secured - Explain fully.

Ans Judgment was obtained against Garley on it, and it was transferred to Edson Keith. He gave me his note and a mortgage to secure it, covering the full amount of the judgment. The mortgage is subject to a prior mortgage, which prior mortgage

incumbered the property of Qualey,  
upon which this judgment was  
a lien.

1862 Feb 19 (Crop Examination resumed)

98 Where was the one months in-  
terest spoken of in your answer  
to the 94<sup>th</sup> Crop interrogatory paid  
to you?

ans I don't recollect.

99 would you not be able to  
swear to the date or amount of  
any payment made by Haughrop  
on the note in question or to the  
Exact length of time during  
which his <sup>secondly</sup> payments of interest  
were deferred or to the number  
of payments made by him in  
the whole from mere recollection  
and without recourse to the  
Books of Aiken & Norton?

ans The two first payment I recollect-  
ted before referring to the books.  
The amounts and the dates, with  
this qualification that the first  
payment was made at the  
maturity of the sixty day note,  
that I could not have told within

a day or two perhaps without referring. The other payments I recollect, about the first of April June and July. I could not have said without referring the exact day - as to the time for which the several payments were deferred, I could not recollect the exact time without referring to the Books. But I do recollect that the interest was behind for more than a month frequently, sometimes two months, and I had supposed even longer than that. I could recollect without reference to the books that there were payments about the first of April June & July.

100 Was not the interest on the two notes till their maturity reserved in advance from the money given to Waughop and if so at what rate?

Ans I can't say whether it was reserved in advance. It was paid on the notes at the time they were discounted until their maturity. I think at the rate of

two per cent per month discount  
from their face.

(Direct Examination resumed)

31 Were there or not any conditions  
or exceptions made in your assign-  
ment to Norton of the judgment  
against Evans and Naughop  
involved in this suit, if so state  
them.

aw I don't recollect any-

32 Did or not said Norton take  
said assignment at his own risk?

aw He did.

33 Did you or not take said  
assignment from Norton of the  
King & Gurley claim at your own  
risk?

aw I did.

34 State whether or not you and  
the said Norton at the time of  
making said assignment,  
considered those two claims viz.  
the Naughop and Evans claim

105

and the King & Gurley claim  
as equal, and was there or not  
any choice between said claims?

ans I did and, I think he did.  
I think there was no choice  
between said claims

35 If the Envelope spoken of in your  
Cross Examination and made an  
Exhibit contained a notice to  
Vaughop of the maturity of the  
note in question, are you or  
not positive that Vaughop did  
or not at or about that time  
see you about said note and  
make any agreement relative thereto

ans I am positive that he did not.

36. Can you or not positively swear  
that you never agreed with Vaughop  
to extend the note in question  
at any time or occasion?

ans I can.

37 State whether or not at the several  
times payments were made by the  
said Vaughop, did he or not

make them with the full understanding and agreement that such payments were for interest that had then accrued or how otherwise?

ans He did. Except the first which  
\* was made under the understanding stated in my previous testimony. I mean the one in November.

38 Do you recollect an interview between you and the said Naughop on the occasion of his coming to your office with Miss Maynard and Mrs Porter, if so state when and what was the subject of the interview between you and Naughop and the ladies.

ans I do. It was about the thirty first of March 1861 I think. The subject of the interview was in relation to some land that I bid off on a trust deed securing the payment of certain notes which they held and one note which Aikens and Norton held, in which Mr Naughop was Trustee and had

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sold the premises as such on  
the two notes I think.

39 Was there any thing else talked  
of between you and Waughop  
on that occasion while Mrs  
Porter and Miss Maynard were  
present. if so what was it?

ans I dont recollect any thing ex  
cept what related to that matter.

40 Do you or not recollect on that  
day of any conversation had  
between you and Waughop touch  
ing the matter in controversy  
here. if so state what was said  
in that conversation, who were  
present if any one while you  
and Waughop were so conversing  
and state whether or not such  
conversation if any took place  
before or after Miss Maynard  
and Mrs Porter had been in  
your office?

ans I do. The conversation was in  
relation to what Mr Evans had  
stated in the bill in this case,  
in relation to the Extension of the

note in question. I made a remark something of this kind to Mr Naughop in the course of the conversation that he couldn't be mistaken in regard to the fact that there was no Extension, or that he couldn't help but know there was no Extension - something to that effect. He remarked that he didn't consider there was any actual agreement to Extend, but that it was a matter of inference from the transactions between us, something to that effect. The nearest person present was Mr J L Chapman, his desk and my table joined one another. There were other clerks further along in the office. I don't recollect that either of them was out. I don't recollect of any one else being in the office. His conversation took place after Miss Maynard and Mrs Porter had been in the office

41

Do you recollect at the interview between you Naughop Miss Maynard and Mrs Porter whether Naughop or the ladies first left the office

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or whether they left together?

ans I do not. But my impression is that they left together.

42 Do you recollect whether or not you paid Mr Waughop as Trustee two dollars on that occasion.

ans I do.

43 Do you recollect after paying Waughop that money of his going out to get any paper and returning and delivering it to you. If so what was the paper?

ans I do. It was the Trustee's deed of those premises  
+ crop Crop Examination resumed

101 Have you in any manner learned what testimony J L Chapman has given in this case, if so of whom and how?

ans I have learned as much as this of Mr Hosmer. That he stated that Mr Waughop did not leave the office after the interview.

with Mrs Porter and Miss Maynard before his conversation with me in relation to this subject of the suit - I think that is all that I know in relation to his testimony;

102 How do you know that that interview occurred on the 31<sup>st</sup> of March 1860

Ans on reference to my books I discover that I paid Mrs Porter and Miss Maynard the money they received for that land and paid Mr Waughop ten dollars for his fees. His receipt shows the same date. The date of the Clerk's Certificate of record of the deed shows the same date and I recollect the fact of Mr Waughop agreeing to bring in the deed when he went out. I paid him the ten dollars and he agreed to bring the deed right in and that I sent it immediately to the Clerk's office for Record. The deed had been made out to me before as the purchaser of the premises, but I had

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requested Mr Waughop not to deliver it for the reason that if Mrs Porter and Miss Maynard should choose to take the premises, I wanted the deed made directly to them, and Mr Waughop had withheld the delivery of the deed until the settlement took place

103

Are you positive Mr Waughop did not bring the deed with him when he came with the ladies to make said settlement and delivered the deed to you at that time before he left the office?

Ans

I am positive.

104

Do you swear positively that Mr Waughop on that day made two visits to your office, one of them with the ladies, and one of them afterwards to bring you the deed?

Ans

My recollection is very positive that such was the fact.

105

Did you remember the facts

that occurred that day at the time you testified in chief before Cross Examination?

Ans I think I did.

106 Why did you not then testify in regard to said interview at that time?

Ans I think I testified in regard to the interview between me and Mr Naugbop.

107 On the course of the interview with Mr Naugbop after the ladies had left, were you excited or did you talk excitedly to Mr Naugbop?

Ans I do not recollect. I presume I was quite in earnest in what I said.

108 In what part of your office did your second interview with Naugbop occur?

Ans In the back room or division by railing.

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109

Was the two dollars paid to Mr Naugbop at the first or second interview?

Ans I think at the first

110 How long did Mr Naugbop remain in the office that day at the second interview?

Ans I should think not long perhaps ten fifteen or twenty minutes.

111 How long was it after the said first interview before the second?

Ans I couldnt state. My impression was before long. It might have been an hour, perhaps a few minutes. I havnt any distinct recollection of the time that transpired between.

112 Did Mr Naugbop open the conversation at the second interview

Ans I do not recollect we had some conversation first in reference to the previous business

The Conversation in relation to the matter I think I introduced.

18th Mch 5 Direct Examination resume

44 Did Vaughop at two times of discounting the note in question or any other time suggest to you the Complainant as surety, and did you know at the time of discounting the note or afterwards that the Complainant was surety on said note?

ans I do not recollect anything of the kind so far as the first part of the question relates, at the time of discounting the note I had no knowledge of the parties except what appears on the face of the note, I supposed and considered the Complainant as a principal.

45 Did you in this transaction tell Vaughop that you preferred judgment Notes and did you or not request Vaughop to get the Complainant to sign

175

Such notes if he could?

Ans I have no recollection of any thing of the kind.

46 Did you know for whose use and benefit the notes were discounted?

Ans I have not any recollection of any facts now that would lead me to know.

47 Did Waughop meet you at your office or any where else as stated by him in his answer to the thirteenth direct interrogatory about the first part of October 1888 the maturity of the notes in question, and was there or not any such conversation as detailed by Waughop in his said answer between you & him?

Ans I have no recollection of meeting him anywhere at that time. I know there was no such conversation as stated by him took place at that time.

48.  
176

did you or not at the time of the maturity of the note in question extend it or agree to extend it and did you ever extend said note?

Ans I did not. I always when asked directly refused to extend it all.

49 Did Waughop or not pay you in October 1858 on the note in question twenty dollars or any other sum?

Ans He did not.

50 Did you not on the seventh of October 1858 or about that time agree with Waughop to extend the two notes as stated by him in his said answer or was there not any understanding between you and the said Waughop that said note should be extended.

Ans I did not and there was no understanding between us that there should be.

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51

Did you or not see Naugbop about the first of December 1858 relative to the note in question and if so was there not any money paid by said Naugbop at that time, and did you or not agree to extend the note as stated by him in his said answer.

Ans There was no money paid at that time and no agreement to extend the note.

52 Did you ever tell Naugbop that it would not answer to give him receipts for money paid or give him any thing in writing or any words to that effect as stated in his said answer.?

Ans No.

53 Did Naugbop pay you in the last of December 1858 twenty dollars or any other sum as interest to extend the note in question for thirty days or any other time.?

173  
ans

He did not. He paid thirty two dollars on the thirty first of December for interest due on the two notes up to the first of January. That was the exact amount reckoned up to that time. That accrued up to the first of January, and at that time paid one of the notes.

54 Did Naughop pay you twenty dollars on the first of February 1859 on the note in question and did you or not then extend or agree to extend the note for twenty days or any other time at that time in consideration thereof?

ans I think he paid twenty dollars about the first of February for interest accrued to the first of February. I did not agree to extend the note.

55 Did you ever say to Naughop that if he wanted to extend the notes in question further, that you could make the rate at one and a half per cent or under to that effect, and

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if not what did you say about changing the rate and when?

Ans I did not. About the first of April, the fourth of April there was two months interest then one up to the first of April. I told him I would make that interest that had accrued at the rate of one and a half per cent and did so make it. and he paid at the rate of one and a half percent up to the first of April which was thirty dollars.

56 Are you or not positive that you told Waughop at one time in your office before your Clerk or Teller that you wanted him Waughop to understand that the notes were not Extended?

Ans I am positive. That was on the occasion of his paying the sixty dollars on or about the second of November 1858.

57 Are you or not positive that you did not use the words at that time or any other that the notes were not Extended in writing?

aw  
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I am positive that I did not, for there never was a word said about extending the notes in writing at that time by either party.

58 \* Can you or not swear that the note in question was not Extended on or about the first of October 1858 and that it was not Extended on or about the seventh of November 1858 or at any other time, and if so the reason why

aw I can swear that it was not extended at those times or at any other, my strong why is, that I know I did not extend them, and another is that the principle I have acted on is not to extend a note signed by two or more parties upon the application of one.

59 Have you had conversation with Naugbop touching this suit and if so have you ever told him in any of those conversations that Naugbop had paid interest in advance or how otherwise, and did you or not tell him that the Extensions were not put in writing as it

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would effect said Evans or Complainant's liability on the note,

Ans I have had Conversations with Waughop touching this suit, and I have never told him that he had paid the interest in advance. I never told him that the Extensions were not put in writing as it would effect Complainant's liability on the note. Then never was a word passed from him or me in relation to an Extension in writing.

Qo Have you or not read our the evidence of said Waughop in this case, if so, state whether or not you are positive that the Conversations therein stated by him as having taken place relative to the Extensions of said Notes, and to the fact that the Complainant was a surety on said Note, are or not true.

Ans Yes I have read it. I am positive that the Conversations stated by him to have taken place relative to the Extensions of the note are not true, and I have no recollection of any Conversation in relation to

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Evans signing the note as surety, and am quite certain that I had no knowledge of the fact at the time of taking said note.

61 State what has formerly been your profession?

Ans The practice of law.

62 Where and how long have you practiced law?

Ans In the County of Onondaga in the State of New York about fifteen years.

1842 Mch 11 (Exp Examination resumed)

113 State whether or not in your answers to direct interrogatories 47 to 55 inclusive and 57 and 60 you mean to swear absolutely, or do you mean that you have no recollection as to the matters enquired about in said interrogatories?

Ans I mean to swear that I am very positive of the facts stated in those answers from my recollection.  
E Aiken

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Subscribed and sworn to before  
me this 17<sup>th</sup> day of March  
A.D. 1862.

W. S. Scott, Master in  
Chancery of the Superior Court  
of Chicago

1862 Feb'y 10<sup>th</sup> James L Chapman a witness produced  
sworn and Examined on the part of  
the defendants the Executors of the  
Estate of John D Norton deposes and  
says

1<sup>st</sup> Q. State your name, age, residence and  
occupation, and do you know the  
parties to this suit.

Ans<sup>r</sup> James L Chapman, am aged thirty  
three, am a dealer in hides. I  
know the parties.

2<sup>nd</sup> Q. State whether or not you have ever  
been in the Employ of Aiken & Norton  
if so, when and how long.

Ans<sup>r</sup> I have, from February Seventh 1839.

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to some time in January 1861.

3<sup>d</sup>

In what Capacity were you engaged.

Ans Cook Keeper.

4 Do you know any thing about the Note in Controversy. if so state.

Ans. Yes Sir. Aiken & Norton held such a Note while I was in their Employ

5 Do you know of any payments having been made by said Naughsp on said Note. if so when and for what were such payments made. if you know.

Ans There were payments made yes. interest I think in March & April and the last in July in the year 1859.

6 Do you know since the Commencement of this suit of a conversation being held between the said Aiken & Norton Naughsp touching the note in question if so. when and what was said by the parties?

Ans

Yes Sir, about the first of April 1860 I think it was on the 31<sup>st</sup> day of March, about that time. Mr Aiken spoke to Mr Naugbop about the matter of the Extension of the note, and was speaking quite energetic about it, which caused my attention to be attracted to it. (Mr Naugbop made in reply to what Mr Aiken said that he never supposed Mr Aiken actually extended the note, but he Mr Naugbop thought that Mr Aiken, allowing him to pay the interest that he Mr Aiken would be easy with him until he could pay the note.) There was some more remarks about it, they talked about ten minutes about it. Previous to the remark I have mentioned made by Mr Naugbop I recollect Mr Aiken said that if Mr Naugbop supposed that he Mr Aiken had extended it, he was entirely mistaken. That was the remark of Mr Aiken some of the conversation I did not hear. I do not recollect any distinct remark any further of the conversation. Except those two in the first part of the conversation they were talking

186 on another subject -

7 State whether or not while you were in the employ of Aiken & Norton you knew all the payments that were made by the said Maughop upon the note in question, if so how do you know it?

Ans Yes Sir, I do. I know it from Mr Maughop or Mr Aiken's bringing in the money in there and it's being entered on the books and from my situation as bookkeeper

8<sup>th</sup> State whether or not any of the payments made by the said Maughop upon the note in question were made for interest in advance.

Ans They were not. Not that I know of. The payment in July was for interest that had accrued, prior to that time, and the same was the case as to the other payments while I was in the employ of Mr Aiken.

9 Are you or not positive that there was no interest paid by

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He said Waughop upon said  
note in advance while you were  
in the employ of Aiken & Norton;

Ans I am positive for this reason that  
it was always talked of that it  
was never paid punctual on the day,  
and sometimes it would run ten  
fifteen or twenty days and even  
two months, and at one time  
he had let it run over. It was  
sometime in May or June I think  
in 1859 Mr Aiken came to me &  
wished me to get the Waughop  
note and said it must be paid  
and wanted me to compute the  
interest that had accrued on it,  
make out the amount of it, and  
he would see Mr Waughop, and  
Mr Waughop came in either that  
day or the next and had a  
conversation in regard to the pay-  
ment of the note, the principal of  
of the note. I heard some part  
of that conversation, but not all  
of it. Mr Waughop wanted to use  
some more money and stated  
that he wanted to use it for  
ten or fifteen days, I think, and  
then he could pay that the money

he wanted to see and the note in question. Mr Aiken did let him have either fifteen or twenty five hundred dollars, and he came and paid the money soon after.

+ (Crop Examination)

1<sup>st</sup> Crop Ex. Describe the note in question.

Ans<sup>r</sup> It was a note for one thousand dollars, a judgment note, dated either in November, I think in November or first of December 1858. I am not positive, payable in thirty or sixty days. I am not positive. It was Mr Maughop & Dr John Evans note, their names were written on it. I don't recollect whether Dr John Evans name was on it as surety.

2<sup>nd</sup> Did you ever hear from Aiken & Norton whether or not Evans was security on the note.

Ans<sup>r</sup> No sir. I never heard anything said about it.

3<sup>d</sup> Is your testimony already given based entirely on <sup>your</sup> recollection

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independently of books or Con-  
versations with other persons.

Ans Yes Sir. I have not seen the book  
for about a year, and a month  
ago with reference to this matter.

4 At the time you last Examined  
the books a year ago was it  
with reference to testifying in  
this case.

Ans No Sir. I was to work upon the  
books. I was keeping the books.

5 Have you <sup>look them over to</sup> never refreshed your  
memory recollection in regard  
to the facts in this case?

Ans I dont remember that I have.

6 Have you read the minutes of  
the testimony of the other witnesses?

Ans No Sir.

7 Have you not conversed with  
defendants or some of them or with  
some one acting for them about  
the facts of this case?

Ans  
140

Yes. They have asked me if I knew anything about it. I have stated to them that I did know something about it, and partially stated what I have stated here to day but not as full. Mr Noesner asked me something about it.

8 Didnt he tell you what facts it was desired by Aiken to prove in the case, and ask you if you could testify to them or words to that effect?

Ans No Sir. he simply asked me what I knew of the case.

9 You swear then that what you have testified to in <sup>the</sup> direct ~~examination~~ is your unassisted recollection of the facts as they occurred?

Ans Entirely.

10 Has Mr Aiken never talked to you about this case, if so state all that he said to you.

Ans He asked me one time if I ever

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heard any conversations in regard to it between him and Mr Naughop, and also in regard to the note, if I knew anything about the note, the payments of interest, I stated that I did, and told him some part of the conversation nearly as I have stated to day.

11 In that conversation did not Mr Aiken state to you what he understood to be the facts about the note, the Extension and payments and also what the conversation was when the women were present, Mrs Porter and Miss Maynard?

Ans No Sir.

12 Where did this conversation when the women were present take place?

Ans In Aiken & Nortons Banking office

13 Name all the persons in whose presence and hearing it occurred?

Ans Mr Naughop, Mr Aiken Mrs Porter

142 Miss Maynard and myself;

14 What was the subject of Mr Aiken's interview with those ladies and Mr Naugbop?

Ans It was in relation to a loan. Mr Aiken had made for Miss Maynard, and the loan had not proved a good one, and they were settling it and compromising it.

15 Was not the said loan secured by a note?

Ans I think it was a trust deed, and a note. Mr Naugbop was the Trustee.

16 Was the note in this suit mentioned in that interview, if so, give the language made use of by the parties.

Ans There was nothing said about it before the ladies that I heard. The ladies went out, and Mr Naugbop remained some ten minutes after the ladies went out.

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and Mr Naughop and Mr Aiken were talking about the settlement of this matter relating to the ladies. I took no further notice of the matter until they went to talking about this note in question. After the ladies went out Mr Aiken directed the teller to pay Mr Naughop ten dollars as his trustee fee.

17 You inferred from the tenor of the conversation and from the evasive manner of Mr Aiken that he was speaking of the note in question?

Ans Yes Sir. I knew them to be talking of it.

18 How did you know them to be talking of it?

Ans From what was expressed in their conversation.

19 Did you infer it from the conversation which you have detailed in your direct Examination or from something which you have not stated, if the latter

144 state it fully.

Ans I cannot state any other direct remark that he made. But from all their remarks, all that I heard, I understood it to be that matter.

20 Will you swear that the note in question was so characterized that you could not be mistaken as to its being the one referred to in the conversation, if so, state in what terms it was characterized.

Ans I know it to be the note from what I understood them to say at that time.

21 Did you hear all the conversation that took place?

Ans I did not notice the first of it.

22 Was the word Extension used in that conversation?

Ans Yes Sir, it was used.

23 State now the connection in which  
it was used.

195  
Ans From something Mr Waughop  
said Mr Aiken spoke up excitedly  
if he Mr Waughop supposed  
that if he Mr Aiken ever extended  
the note, he Mr Waughop was  
entirely mistaken.

24 Were there not originally two  
one thousand dollar notes given  
at the same time to Aiken &  
Norton one of which is the one  
in question.

Ans I don't know. I was not there  
when the notes were given.

25 Was there any thing said about  
there being a suit on the note  
in question?

Ans Not that I remember of.

26 Was the complainant's name  
mentioned in that conversation?

Ans I cannot recollect now.

26  
196

Was the amount of the note mentioned or the date?

aw No sir. Not that I recollect.

27 Was the note spoken of in that conversation as a judgment note?

aw Not that I recollect. I now recollect that Mr Evans name was mentioned prior to the cited remark of Mr Aiken. I cannot recollect what the remark was, or in what connection it was used.

28 Do you know that Evans name was used at all in connection with this note.

aw Evans name was used, and they were talking about this note, but I cant tell in what connection they used it.

29 How long had they talked together before the cited remark was made by Aiken?

aw I should judge perhaps five minutes

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Q<sup>o</sup> How far were you from them?

Ans Six or eight feet.

Q<sup>1</sup> Were you listening to their conversation

Ans I was not. I was attracted to it by that remark.

Q<sup>2</sup> Did you know what they were talking about or give your attention to it at all. until the Excise remark was made?

Ans I think I did. I think I overheard what was said, they are talking about that matter. I paid no attention to it.

Q<sup>3</sup> During that five minutes are you positive that they talked of nothing else but the note in question?

Ans I could not say that there was nothing else said except that note.

Q<sup>4</sup> Were you in the same room with them.

Ans Yes Sir.

35. Give the dates and amounts of the payments made by Naughop while you were in the office.

Ans I could not give the dates. Nor the amounts at any particular time. There was thirty dollars paid at one time. That's all I remember about the amounts.

36. May not the payments have been made outside the office, which you nothing of?

Ans There might have been. But I never knew an instance of a payment being made but what it was handed to me the same day.

37. Were not payments sometimes made to members of the firm outside of the office and handed to you when they come in?

Ans I now recollect of one such instance. Mr Aiken came in and handed in a payment which he had collected of Mr Naughop.

144  
Q 38 When was it, and how much was the amount?

aw I could not state the time or the amount, he collected other amounts of other persons in the same day.

Q 39 When the thirty dollar payment was made, do you recollect positively for how much time interest was then in arrears on said note?

aw It was something over two months.

Q 40 How much over two months was it in arrears?

aw But a few days I think, it was designed for a payment of two months.

Q 41 Did he ever make any thirty dollar payment after that one?

aw My recollection is that he made the thirty dollar and one fifteen dollar payment. But I am not positive as to only one thirty dollar payment.

200  
42

How did you know that these payments were never in any case advance payments?

aw Because soon after I commenced with Mr Aiken. he gave to me as a special duty to look after notes becoming due and past due. to call his attention to it. to see that they were settled or the interest paid that had accrued. that the interest on this note was always behind. when he paid any interest it was interest that had accrued.

43 What rate per cent was taken during your stay in the office upon this note?

aw I think it was one and a half a month. Waughop agreed to pay after the interest account accrued.

44 Did you not figure out interest in each case for one month or for two months and state the amount to Mr Waughop without specifying the particular month for which it was due or how

201

otherwise did you proceed in collecting the interest.

ans

I always stated that it was the interest due. I drew a Memorandum with Mr Naughop's interest, and another was interest and different parties on the same paper, and handed it to Mr Aiken. It was interest due on the first of the month past

45 Please with your own hand draw hereunder a memorandum similar to those spoken of in your last answer which you were accustomed to make out and hand to Mr Aiken.

S W Naughop 30

A B 10

C D 8

E F 25

July 1 1862 \$ 73

The above Memorandum was here made by the witness in compliance with above request.

46 Was there no headings to your Memorandums.

ans  
202

Mr Sir. I may have sometimes headed or prefixed "Interest Collections."

47 Did you ever hear the question whether these payments were for back or advance interest talked over by Aiken & Maughop together. if so, what was said?

Ans No Sir. I don't recollect of any such Conversation.

48 Will you state the words used by Mr Maughop in reply to the energetic remark of Mr Aiken of which you have spoken?

Ans I never supposed you actually extended. But thought that you would be easy with me if I paid you the interest. That is all I remember.

49 Are you positive that the two women spoken of were not present during the whole of the Conversation between Maughop and Aiken.

Ans Yes Sir.

50

If present in the room during the conversation. Could they not have heard all that you heard?

Ans Yes Sir.

51

You say it was always talked of that the interest was never paid punctual on the day, are you positive said interest was always characterized as back interest or words to that effect, and not merely as interest payable on such a day?

Ans Yes Sir. I so understood it. I understood it to be back interest.

52

Do you know positively that it was back interest that was due and not advance interest in each case. if so how do you know it?

Ans

Yes Sir. Because it was difficult that we could get the interest as it accrued, and that my statements for interest collections were made for interest that had accrued. The statements I refer

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to are the Memorandums I have spoken of and illustrated. In those statements there may have been interest collections on notes which Mr Aiken had agreed to extend.

53 Did you ever hear Waughop or any one in his presence and hearing say that the payments on this note were not for advance interest?

Ans No Sir.

54 Were you in the employ of Aiken & Norton when this note was sued?

Ans Yes Sir.

55 Do you recollect accurately how much the interest was in arrears at the time it was sued?

Ans It strikes me it was some three or four months. I cannot state accurately. The July interest was not paid when Mr Waughop

205

failed, and I think there was several months interest in arrears at the time judgment was entered on the note in question.

Direct Examination resumed

10 Do you recollect distinctly who was present at that part of the conversation detailed by you between Aiken & Horton Naugbop touching the note in question, if so give the names of all the persons that were present.

ans I recollect distinctly who was present Mr Aiken & Mr Naugbop in Mr Aiken's office and myself. There was other ones present in the room, his Teller was in the front part of the office but I think he was not within hearing distance. There was some one doing business with the Teller.

11 How was the money usually paid into your Bank?

ans Through the Teller.

12 How did Mr Naugbop generally make his payments and to whom?

Ans. To Mr Aiken, one instance outside of Bank, and another instance inside of Bank.

13 State whether or not these Memoranda of yours for interest were not given to Mr Aiken and advise him of the amount to be collected from the different parties, or how otherwise?

Ans. It was given to <sup>him</sup> expressly for him to collect them.

14 State whether or not you are positive that those statements handed to Mr Aiken for interest against Mr Naugbop were or not for interest already accrued at the time of giving those statements.

Ans. I am positive they were for interest accrued -

J. L. Chapman  
Subscribed & sworn to before me this 11<sup>th</sup> day of February  
A.D. 1862  
Drascott Master in Chancery of the Superior  
Court of Chicago

207  
1862

July 19<sup>th</sup> Parties appeared by their respective solicitors  
The above witness James L  
Chapman being recalled by defen  
dants deposes and says

<sup>15</sup>  
re direct Ex. Do you wish to explain your  
testimony relative to Mr Naughop  
remaining during the entire in  
terview held at Aikens & Mortons  
office when Miss Maynard and  
Mrs Porter were present.

ans Yes, I have no recollection of  
Mr Naughop going out or com  
ing in again. But I recollect  
the circumstances of their leaving  
and of their either meeting Mr  
Naughop or Mr Naughop passing  
with them in front of Mr Aikens office  
on Clark street in front of  
the office. I now don't think  
of any thing further - any other  
circumstance that I now recol  
lect.

16 Are you or not positive that  
the testimony you have given  
relative to the note in question  
between Aikens & Naughop occurred  
on the same day that Miss  
Maynard & Mrs Porter called at

Ans Yes I am positive.

17 Are you or not positive that Miss Maynard and Mrs Porter were or not present when the subject relation to the note in question was talked over by Aikew and Naughop<sup>s</sup>?

Ans I am sure that they were not there.

Ex Or Examination resumed<sup>3</sup>

Now how far from Aikew's office did you see Mr Naughop and Miss Maynard and Mrs Porter talking or walking together?

Ans It was on the Clark Street walk right in front of the rear window of his office.

56 How long was it after the ladies left the office?

Ans I was immediately on leaving. I think it was immediately on leaving the office.

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57

From what direction did Mr Naugbop approach the ladies, and in what direction did the party move after meeting?

aw My impressions are that they were passing north on Clark Street, and Mr Naugbop met them there coming towards our office, or that he went out with them, and was then stopped for a moment, talking. I have no recollection which way Mr Naugbop passed. The ladies went south.

58 Was Mr Naugbop and the ladies above named ever then together at any time before the day in question?

aw I do not recollect of their being then together.

59 Supposing they had been there together on a prior occasion might it not have been ~~then~~ then that they were seen by you in front of Aiken's office?

210  
Ans It might have been. From  
this note and the settlement  
with Miss Maynard I am  
positive that it was at this  
time.

Qo How you talked with Mr  
Hosmer or Mr Aiken about  
this matter since giving your  
deposition before?

Ans I have not seen Mr Hosmer  
until this morning and he  
asked me in relation to this.  
What my recollections were  
as to whether they left or not.  
I simply stated the circumstances  
to him of recollecting seeing them  
in front of the window as I have  
stated. I have seen Mr Aiken  
twice I think since I was sworn  
before and I think a day or  
two after I was sworn Miss  
Maynard was at my house and  
stated to my wife that Mr Maynard  
did go out with them, on reflecting  
the matter over I saw Mr Aiken  
a few days after and stated to  
him the fact of my seeing them  
in front of the office. I saw

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Mr Aiken yesterday again in his office. Nothing was said about this.

61 How many times to your knowledge was Mr Waughop in the office of Aiken & Norton on the day when the settlement was made with Miss Weyward?

Ans I have no recollection of his being there except at this interview. I have no recollection of his passing out except from this circumstance of seeing him in front of the window.

62 You do not swear then that he was on two separate occasions in that office that day

Ans I recollect of his being there with the woman and being there after they were out

63 Will you swear positively that Mr Waughop twice entered said that office that day.

Ans I haven't any recollection any

212 further than I have stated.

64 Will you answer the last question put to you directly or do you refuse so to do?

ans I dont refuse to answer it. I couldnt answer it without qualification

65 Do you mean by your last answer that you cannot answer said question by yes or no?

ans I mean that I cant answer by yes or no without qualification.

66 Now you cannot swear positively that said Waughop twice entered said office on that day. Can you?

ans I will state positively that I saw him enter the office only once -

18 Direct Examination resumed  
Have you any doubt from the circumstances that said Waughop

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was in that office twice or  
more on the day in question?

and I have no doubt, I am  
positive he was there twice,  
that is at two separate talking  
occasions. In my answer  
to the 2<sup>nd</sup> Corp interrogatory I  
said it "might have been". I  
desire to erase that from my  
answer. I answered it thought-  
lessly.

Subscribed and J. H. Chapman.

sworn to before me

this 19<sup>th</sup> day of February

A. D. 1862

J. A. Scott

Master in Chancery

of the Superior Court  
of Chicago

1862  
March 15 Samuel C Smith a witness  
2H. produced and sworn and  
Examined on the part of the  
defendants the Executor of the  
Estate of John D Norton deposes  
and says.

1<sup>st</sup> Q<sup>ty</sup> State your name, age residence  
and occupation and do you  
know the parties to this suit

an<sup>d</sup> Samuel C Smith resides in Chicago  
and thirty eight years of age.  
I know Mr Aiken & know Mr  
Norton. I do not know Mr  
Adams. I know Mr Naughop.

2<sup>o</sup> State in what business you were  
engaged in the months of September  
and October 1858.

an<sup>d</sup> In the month of September and  
until the nineteenth of October 1858  
I was book keeper for Aiken &  
Norton

Q<sup>ty</sup> Did Aiken have at that time  
a private table or desk in said  
Bank and if so how was it  
situated with reference to your  
desk as Book keeper.

215  
ans

He did have one. It was about ten or twelve feet from where I ordinarily stood at my desk. his desk was in a little room back and my desk was right at the door.

4 Do you know any thing about the firm of Aiken & Morton discounting any notes for the said Naugbop in the month of September 1858. if so describe the notes.

ans. On the 9<sup>th</sup> of September 1858. two notes signed by J. W. Naugbop and John Evans were purchased by that firm, for a thousand dollars each, dated the fourth of September and payable in thirty and six days.

5 Do you know whether or not the said Naugbop or any one else paid any money on either of said notes prior to the nineteenth of October 1858. if so, when and how much was paid, if any thing?

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ans

There was no money paid by any one up to that time on those notes to my knowledge.

6 If there had been any money paid on either of said notes during the time you was book keeper there, would you or not have known it from your situation in the bank?

ans I should have known it.

7 Who had charge of the notes in the bank at that time?

ans I did.

8 Did you or not in the first part of October or at any other time get those two notes and deliver them to Mr Aiken for any purpose whatever?

ans Not that I know of. Not that I recollect of now.

9 State whether or not the said Naugbop came to the said Bank in the first part of October.

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1858 and have a conversation with the said Aiken relative to those notes.

ans I cant state any thing about that.

10 Were you or not within hearing distance of any conversation that might take place between Mr Aiken and any other person at his desk?

ans I was a greater proportion of the time.

+ Crop Examination  
1<sup>st</sup> Crop Ent. Have you described said notes from recollection merely or how otherwise?

ans From having examined a record which I made at that time.

2<sup>d</sup> Has not Mr Aikens private table or desk in a different room from your desk, and was there not a door between them and state whether or not such door was not at times closed when you and Aiken

were both at your desks

Ans I was in another room there was a door & I think the door could be closed, but very seldom was. I can't say positively that it could be closed or ever was.

3 Were you present at what you call the purchase of those notes by Aiken & Norton?

Ans I was when the money was paid for them. I know nothing as to any prior negotiation.

4 Did you ever hear Mr Naugbop or Mr Evans say that the notes were purchased by Aiken & Norton?

Ans I never had any talk with Mr Naugbop or Mr Evans in regard to it.

5 Did you ever hear Aiken or Norton in the presence of Naugbop or Evans say that they purchased these notes?

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ans I have no recollection of any of the kind.

6 When you say that no money was ever paid on said notes, do you not mean that no money was ever paid to you personally to apply upon these or to any body else in your presence, or that came into your Custody to apply on said notes.

ans I do.

7 Please Examine Exhibits C & D and state in whose hands writing they are?

ans I cant say positively. I think they are Ellsworth Storeys an assistant in the bank and became book keeper after I left.

8 Do you know whether those Envelopes were sent from the office and if so what they contained.

ans I cant say

11 State whether or not persons passing into Aikens Room did or did not pass in front of your desk?

ans They passed directly in front of my desk.

12 Do you recollect in the month of October of said Naughap going into said Aikens room on any day and if so when.

ans I have no recollection of any thing touching it.

13 State whether or not Aiken and Norton during the time that you was their Book Keeper were or not engaged in the purchase of notes?

ans They were in connection with other business

14 How were these notes in question purchased.

221  
ans

I only know that they went through the books in the ordinary way.

15 State whether or not if any money had been paid to Aiken or any other person in the bank would you or not have known it at that time?

ans I ought to have known it and would have been very likely to.

+ Exp Examination resumed 3

9 Had you any different way of entering notes which had been purchased, from those on which loans of money had been made by Aiken & Norton.

ans The only difference that would be shown would be the difference in the cost of the notes.

10 What must have been the cost of the notes to make it a loan and what to make it a purchase. Explain the limit between

222  
the two.

ans I can only say he oftentimes loaned to his depositors at ten per cent interest, and that in dealing with outsiders he in every case that I ever heard him have any talk with them would say that he would buy the note at a certain price.

11 Did the firm of Aikew & Norton never loan money to others than depositors or at a greater rate than ten per cent.

ans I cant say.

12 When the entry of these notes was made on your books were you directed by Aikew & Norton in the presence and hearing of Mr Naughsp to enter them on your books in any particular way, if so, state how.

ans I think not, but cant say any thing about it positively.

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13

Was not all you knew about  
the transaction merely that the  
notes for two thousand dollars  
had been given signed by Evans  
and Naugbop and that so  
much money had been paid  
for them or upon them?

and that is all, to the best of my  
recollection now.

Subscribed and sworn to before me  
this 15<sup>th</sup> day of  
March A.D. 1862

Ira Scott

Master in Chancery of  
the Superior Court of Chicago

Superior Court of Chicago  
In Chancery

John Evans

of  
Edmund Aiken & George N.  
Kennedy, Alfred R. Howlett  
& William H. Downer Executors of  
John D. Norton Deceased

State of Illinois  
County of Cook

S. Ira Scott  
Master in Chancery of the Superior  
Court of Chicago, do hereby Certify  
that before the Commencement of the  
examination of the witnesses whose  
names are subscribed to the fore-  
going depositions, they were each  
by me duly sworn according to  
Law, and their said depositions  
were subscribed and sworn to  
before me at the times hereinbefore  
mentioned, by said Witnesses  
respectively. That the same were  
taken before me with the Consent  
of the Solicitors of the respective  
parties. Subject to the reservation  
mentioned in the Caption thereto.  
And that the foregoing are all the  
proofs taken before me on the part  
of the Defendants or either of them  
in the above entitled Cause

Dated Chicago

March 25<sup>th</sup> 1862

Masters J. & S.

Ira Scott

Master in Chancery  
of the Superior Court  
of Chicago

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

John Evans

Edmund Aiken & George W.  
Kennedy, Alfred H. Howlett &  
Willard H. Jones Executors of  
John D. Norton deceased, John  
W. Haughop and George W. Lay &  
John Gray.

The depositions of witnesses produced, sworn and examined, on the part of the Complainants in the above entitled Cause and taken before me Ira Scott, one of the Masters in Chancery of the Superior Court of Chicago at my office in the city of Chicago pursuant to the agreement of the Solicitors of the respective parties that the proofs in said Cause be taken before me, reserving all and every objection to the witnesses and testimony, to be made upon the hearing of the Cause which might be made if the same were introduced and orally examined upon the hearing.

The said parties by their respective Solicitors appearing before me this twenty eighth day of October A.D. 1861 at which time and place the following proceedings are had.

John W. Waughop a witness produced, sworn and examined on the Complainant's depositions and says

(The deposition of the witness taken subject to the objection of Defendant's Solicitor as to the competency of the witness and admissibility of the evidence.)

1<sup>st</sup> Ind.

State your age residence and occupation and do you know the parties to this suit.

Answer.

Am thirty Eight years of age - reside in Chicago, am an attorney at law. I know both parties, the Complainant and Mr. Tinker and George W. Lay and John Gray.

2<sup>d</sup>

State whether you and the said Complainant made the notes described in the bill in this cause and if so detail fully the circumstances under which said note was made.

Answer

Yes Sir, the note in question in this suit was made by complainant and myself, along about the first of September 1858. I applied to the Defendant Tinker for a loan of money and he wanted to know what security I could give - I spoke of some collaterals with which he was dissatisfied, he said he wanted some good names, - commercial paper - This conversation was at the office of Tinker and Storvick on Clark Street - with Mr. Tinker. I suggested

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the name of Doctor John Evans the Complainant - which he consented to take with my name as security. I made out a couple of notes, I had two thousand dollars at the time. The ~~two~~ notes that I made and procured the signature of Doctor Evans upon were common notes. Mr. Stiken objected and said that he preferred Judgment notes and wanted to know if Doctor Evans would sign Judgment notes with me. Two Judgment notes were prepared and I procured the signature of Doctor Evans upon them, one of which was the note described in the bill of Complaint in this suit. The other I subsequently paid; I think at maturity.)

3<sup>d</sup>.

For whom was this loan made and to whom was the money for which said notes was given given or appropriated?

Answer.

This loan was made for my own private accommodation - I received the amount of the money, less the interest, myself and used it myself for my own purposes -

4<sup>th</sup>.

State if you know whether or not said Stiken knew or was informed at the time of making said loan

for whose use and benefits the same was made,

Answer.

I applied to Mr. Aiken for a loan for myself - he was not satisfied with such security I offered him. I told him I could procure the name of Doctor Evans for my accommodation. I may have mentioned that there was some obligations of the kind between us, I having done the like for him - He said that if I procured the name of Doctor Evans he would let me have the money or would do it or something of that kind. It was in pursuance of that arrangement that I procured the Doctors name and got the money on this note.

5<sup>c</sup>

Please state how much money was paid to you upon the delivery of said note and how much was retained by said Aiken & Norton if any - and for what purpose?

Answer.

The arrangement was that I should pay two per cent a month - for the money - and the interest at that rate was deducted from the principal for one month - and I received the balance - The note was for one thousand Dollars.

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6

Was said Note paid at Maturity?  
and if Note state what if any thing  
occurred with reference to the payments  
thereof - at or before the time it matured  
Please give a history of your dealings  
with said stock and brokers in reference  
to said Note.

Answer.

The said Note was not paid at  
Maturity, nor at any time since, to  
my knowledge - about the time - a little  
before the said Note matured I received  
notice of the time of its maturing - an ordinary  
Bank notice - I was not able to pay it at  
that time and went on to see Mr. Stiken in  
reference to it - I saw him I think the  
evening before the day of its Maturity and  
also on the day of its Maturity. I arranged  
with Mr. Stiken to pay the interest for  
another thirty days, and postpone the  
payment of the Note. I paid the interest  
at the same rate at which the Note was  
negotiated at two per cent a Month - the  
time of payment of the Note was postponed  
for thirty days on the payments of that  
interest and at the end of the extension  
I paid the interest and obtained a further  
extension of one month, at the same  
rate at two per cent a Month and so on,  
at the end of each month I made

arrangements with Mr. Aikens and procured the extension of said note for one month at a time at the rate of two per cent per month interest until April 1859 or about that time when Mr. Aikens said he would let me have that money for a less rate and after that I paid him interest on the said note at the rate of one and one half per cent a month. But not regularly after that time. It sometimes ran more than one month for two months and three months. I cannot remember when I paid the last interest.

7. State whether or not these several extensions were procured of your own motion or by the knowledge consent or advice of said Complainant or whether he knew of the same or any or either of them?

Answer.

I am not aware that the Complainant had any knowledge of the extensions - I never asked his consent to extend the said note - They were done altogether on my own request - and for my benefit -

8. State whether or not at any time after the making of said note and when you made an assignment to anybody if

233

So to whom

Answer.

Yes. I made an assignment to George W. Lay on the thirteenth of October 1859 a general assignment for the benefit of my creditors

9.

State whether or not - had a Judgment been entered ~~upon~~ up on said Note prior to your assignment, the same could have been collected out of your property.

Answer.

A Judgment ~~is~~ entered up on any day previous to the day upon which my assignment was filed for record would have made the money to the extent of one thousand dollars and interest -

(Adjourned by consent to 29<sup>th</sup> instant at 9 o'clock A.M.)

Oct 29. '86

Partis met pursuant to adjournment (Direct examination resumed.)

10.

When was your assignment filed for Record?

Answer.

On the day of the date thereof - the thirteenth day of October 1859

11.

State whether or not at the time said several advance payments of interest deposited to in your answer to the sixth interrogatory were made there was

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any agreements entered into between you and said Aiken & Norton if so what was it?

Ans.

There was no agreement in writing and no agreement other than what I have stated. I proposed to extend the loan and he agreed that if I would pay the interest at two per cent for a month in advance, that it should be extended for that time.

12.

Explain what you mean by the words "I suggested the name of Doctor John Evans the complainant which he consented to take with my name as security" contained in your answer to the second interrogatory?

Ans.

I mean that Defendant Aiken consented to take Doctor John Evans the complainant as security, on the said note for me or with me.

(Cross-Examination)

1<sup>st</sup> Cross-Ex.

State in what business Aiken and Norton were engaged in 1858 & 1859?

Ans.

They were engaged in private Banking and Brokerage business.

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2<sup>o</sup>

Was not their principal business the discounting or purchasing of notes and other commercial paper during those years?

Answer.

I should think so, though I had no definite knowledge of the extent of the different branches of their business. I know that they kept deposits as well as discounting paper

3<sup>o</sup>

State the time you negotiated the two notes spoken of by you in your direct examination, the exact amount of money you received at that time.

Answer.

I can't tell positively the day that I received the money - it may have been a day or two after the date of the notes. The notes I think were dated the fourth of September 1858. It's my impression that one of the notes was drawn for sixty days after date. This note was for thirty days after date. I have no recollection of the definite amount in dollars and cents that I received, the interest on the days of grace was taken out, and the money given to me I should think one or two days after the date of the note, and as I have no memorandum I cannot now tell the

exact amount.

4 Will you swear that you received any money on said Note (negotiated as above)?

Answer. I am not now aware of any other arrangements for the consideration of the notes than that he paid me the amount in a check on his bank, which I drew there or he directed his man to pay me the currency, I cannot tell which, at any rate I had the value of the consideration of the notes at that time.

5. Do you recollect that you received the money at that time for these notes?

Answer. I think I did. I cannot recollect distinctly in what manner I received the money. But I know I had the money.

6. What did you do with that money?

Answer. I put it to my private account, where I then did business, with Willard Alexander & Co. and paid it out on my checks - used it in my own private purposes, or else I paid

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it on obligations maturing against me individually, about that time, without depositing it - I can't now distinctly remember.

7

Have you any recollection, to what particular purpose you used that money, or have you any recollection of having that money in your possession at all?

Answer.

I have no recollection as to what particular use I made of that money; except that I used it for my own private purposes and as I had very active demands for money about that time and handled a good deal of money I cannot remember very distinctly the circumstance of having that particular sum. I suppose by reference to my papers I could give some idea of its use.

8.

State the day you made the first payment on the note in question - the exact amount you paid, to whom you paid it and where.

Answer.

My best recollection is that it was the sixth of October - fifth or sixth of October I can't tell certainly which - and the amount was twenty two Dollars. I paid it to

Mr. Stikens or some person in the Banking office of Stikens and Norton by Stikens direction.)

9.

Have you a distinct recollection that the first payment you made on the note in question was twenty two Dollars and that it was paid either on the fifth or sixth day of October 1858?

Answer.

I have no distinct recollection of the transaction, I know that it was paid and paid promptly at the maturity of the note.

10.

You state in your direct examination that there were two notes of the same amount and date, might you not have made a payment on both notes at the same time, Have you any distinct recollection thereon?

Answer.

I know that I did not make any payments on one of the notes at the first maturing of the note in question in this suit. I recollect distinctly that the other note was not due until thirty days after the first maturing of the note in question in this suit.

11.

Did you receive more than one Bank notice spoken of by you in the direct,

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examination ?

Answ.

I did, - according to my best recollection

12.

Have you got these Bank Notices ?

Answ.

I have not.

13.

State the time you made the second payment on the note in question. The exact amount you paid, to whom you paid it and where

Answ.

At the time or about the time of the second payment on the note in question the other note spoken of by me as given at the same time, also matured; my best recollection is that I paid the said other note in full being one thousand dollars, and at the same time paid a sum equal to two per cent a month on the note in question - this was on or about the fifth day of November 1858. I think a day or two after the other note had matured. The amount was paid into the banking office of Tichen & Marton in this city. I cannot tell whether the note in question was extended from that time for an even month or with grace - my best impression that it was for thirty days and the payment twenty dollars.

(Advised by Consent to 30<sup>th</sup> inst. at 11 A.M.)

7110  
Oct. 30<sup>5</sup>  
Nov. 9<sup>u</sup>

adjourned to Nov. 9<sup>th</sup> 1861)

(Cross Examination resumed.)

14

State all the subsequent payments you made on the note in question, the particulars day-month and year each payment was made - the exact amount of each payment, to whom made and where

Answer.

I have no very distinct recollection of the particular amounts, other than that it was at the rate of two per cent a month on the note in question and was paid at intervals of about a month. It may have been sometimes a few days over until the month of April 1859, when according to my recollection the rate of interest was reduced to one and one half per cent a month. After that time it was not paid as regularly as previous to that time. Sometimes it would be between two and three months between payments. I think it was all paid up to about the first of September. I can't state positively.

(above answer objected to for not being responsive to the question)

15.

Have you any distinct recollection of the number of payments you made on the note in question?

Answer.

I have not, and cannot state the

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16.

exact number of payments.

Have you any distinct recollection of any one payments made on the note in question - the amount paid - the time - to whom and where?

Answer.

I cannot swear positively to any particular day on which any payments was made. I distinctly remember making several payments on the account of the said note, sometimes to Mr. Stikens in person. Sometimes into the Bank by his directions. I cannot now state the exact amount in dollars and cents

17.

Did you ever make any payments on said note excepting in Bank?

Answer.

I have. I paid on one occasion I distinctly remember a payment to Mr. Stikens in my office on account of said note. I cannot state the precise amount. My impression is that it was one months interest on said note at two per cent a month and prior to the first of April 1859. And in consideration that the payments of the note be postponed for another month

18.

Will you swear that the note for sixty days was paid at maturity or thereabouts?

242  
Answer.

I cannot swear positively, that it was

19.

Was not that note for sixty days paid and taken up on the thirty first of December 1858. and the interest paid on the other note up to that time?

Answer.

I cannot state positively. My impression on reflection is that the sixty day note was extended, and when it was finally paid, the interest on the note in question was paid for one month in advance and the payments thereon extended for one month.

20.

Have you any distinct recollection that the notes in question was extended by the agreement of Mr. Aiken or is it merely an impression you have from the character of the transaction between you and Aiken and Norton?

Answer.

I cannot remember the precise words that were used, but I know the fact, that by an arrangement with Mr. Aiken I was allowed to pay the interest for several times on the said note in advance, and by so doing I procured the postponement or extension of the payments of the said note.

21.

Do you not recollect that at the time

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you applied to Mr. Aiken to pay him a months interest in advance and have the note extended Mr. Aiken told you, that he would not extend the note and when you said that you could not pay it then, but could pay the months interest, he told you that you might pay what you choose and the amount so paid should apply on the interest accrued and the balance should apply on the principal or words to that effect

Answer. I cannot remember.

22. Have you not stated to Mr. Aiken in the presence of Mr. Chapman since the commencement of this suit that there was no actual agreement to extend the note in question, but a matter of inference from the transaction between you and Aiken.

Answer. I have no recollection of any such conversation.

23. Did all the negotiations for the extension of said note and payments made thereon take place at the Banking House of Aiken & Norton?

Answer. I think they did. I usually talked with Mr. Aiken at his private desk in the back room and after arrangements were concluded he would give directions to the

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men in his employ, and I usually paid the money in to them

24

State what property you had previous to your assignments subject to execution

Answer.

I had, Lot Six in Block Nine Fifth Dearborn addition to Chicago with an iron front store situated on the same - which was incumbered for seventeen thousand dollars. I had, an undivided third of the west quarter of Lot three in Block fifty seven original town of Chicago and the east half of the west half of the same lot which was incumbered, I believe for seven thousand dollars - I had, household furniture, law library and office furniture safe & c worth one thousand dollars - no incumbrance. I had, other Real Estate all incumbered more or less. My real estate within a year subsequent to my assignments sold for Eight thousand Dollars above incumbrances -

25

Did it sell for cash or was it taken by your creditors subject to the incumbrances?

Answer.

The largest piece of property was sold for cash subject to the incumbrance. The cash above the incumbrance was some four thousand dollars. on that piece of property I made an incumbrance to secure

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a confidential debt, a day or two before I made my assignments, which is not included in the seventeen thousand dollar incumbrance

26.

Has your assignee closed out your assignment, and if so, how much money did he receive or come to his hands under said assignment?

Answ.

My assignee has closed out my estate under the assignment and has received nothing to distribute to my creditors as I made securities to preferred creditors on my real estate which covered the margin - before I made my assignment - a short time before

My personal property was mortgaged a day or two before I made my assignment or on the same day. I can't remember which, to secure a confidential debt to a lady - a widow woman, for nine hundred and eighty five dollars.

27.

How much were you indebted at the close of your assignment?

Answ.

I think the indebtedness footed up in the neighborhood of one hundred and twenty five thousand dollars, a portion of which was claims on which I was only security, were put in to protect my other creditors from the claims of such indebtedness when

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I was only security from any advantage that such creditors might have from the fact of their not being mentioned in my assignments. I cannot now state definitely the amounts of my actual indebtedness.

28.

Have you since the fall of 1858 owned any real estate that was not incumbered?

Ans.

I have not that I remember. The margin that I speak of that was realized on my real Estate was not above incumbrances existing at the time I filed my assignment for record. - But above transactions growing out of the closing up of my business preparatory to making my assignment and in preferring of creditors - I may have stated the amount realized a little too high - It was some several thousand dollars. I cannot now state the exact amount that was realized, - the incumbrances that I speak of that were made to prefer creditors previous to my assignment were but a few days previous thereto -

1862

Febr? 28.

Parties appeared, by their respective Solicitors  
(Direct examination resumed)

13<sup>th</sup> Feb.

If you desire to make any explanations of your previous testimony please do so.

Answer.  
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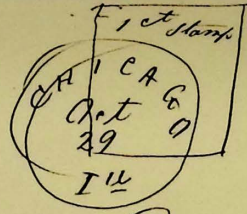
I have been reflecting constantly on the facts in this case, since I gave my testimony before at such times as I could give it my attention and I think I have a little more definite and distinct recollection than when I testified before - and will state the circumstances as I now understand them. As I stated before I applied to Mr. Aiken for a loan of money for my own accommodation about the first of September 1858 some little negotiating talk was had between us, when I suggested the name of Doctor John Evans as a surety for a loan of two thousand dollars. Mr. Aiken expressed himself satisfied with Doctor Evans as surety. I made two notes and procured the name of Doctor Evans as surety on them both. one of which was for thirty days and one for sixty days from date to the order of Aiken & Norton. I submitted these notes to Mr. Aiken on perhaps the third or fourth of September, about that time. Mr. Aiken stated to me that he would prefer Judgment Notes and I think he had prepared at the Bank the notes, such as he desired, to take the place of those that I submitted to him. I expressed to him my doubts as to whether I could get the Doctor to sign a Judgment

notes and also my own delicacy in asking any one to sign a judgment note as surety - and tried to persuade Mr. Stikem to let me have the money on the notes I first presented - he said I need not destroy the first notes until I had ascertained whether the Doctor would sign the Judgment notes. - on requesting Doctor Evans to sign the Judgment notes he consented to do so and did, and I passed those notes to Mr. Stikem & Norton - obtained the money on them. I used it for my own private purposes - no part of which or any benefit whatever went to Doctor Evans from the money obtained on the notes. one of the said notes that drawn thirty days after date is the note in question in this suit - when I obtained the money the interest for the sixty days on one note and for thirty days on the other note at the rate of two per cent a month was deducted from the sum of two thousand dollars. The said notes being for a thousand dollars each. At the time the thirty day note matured or about the time I received a notice of the maturing of the note from the Bank of Stikem & Norton. the envelope closing which notice is referred to in the cross examination of Mr. Stikem marked Exhibit C.

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I went to the Bank on receiving the said notice and met Mr. Aiken at his desk or table in the back room - his Banking office was then on the corner of the alley next north where the Sherman House now stands and proposed to him to extend the payments of the note in question for thirty days - he went and got the notes - brought them to the desk where we were sitting. I gave him it's my impression now - twenty dollars and I requested him to mark on the note extended thirty days - he declined to do that - he said if it was done at all it would have to be done without making any mark - that I would have to trust to his own accounts or their own accounts at the maturity of the sixty days note - this also matured again - and about the

(marked)  
 (copy)  
 from Aiken's report  
 Chicago.  
 Exhibited & mentioned  
 in deposition of John  
 W. Waugh  
 for Sept  
 Master in Chancery



J. Waugh Esq.  
 Chicago

...ly after.  
 maturing of  
 also a notice  
 said note.  
 which I now  
 - where the  
 the Bank. I  
 member and  
 took in sixty dollars with me and proposed  
 to Mr. Aiken to extend both the notes  
 for the same period for which they were

originally made. He was reluctant to do it. He said they wanted money very much - but finally consented to do so. I paid him the sixty dollars with the understanding that one of the notes should not again be extended - but be paid when due. I think he made the remark that about the first of January he should want some money. I have no distinct recollection of any further conversation. The sixty dollars was paid I think to the Teller or Book Keeper by his direction; on the first of December or about that time when the thirty day note again matured. I saw Mr. Licken again at his desk in the Back room - and requested him to extend the thirty day note again. He said he would do it if I would be sure to pay the other note by the first of January - I promised to do so - he said I could settle the interest when I made the payments which was left and settled on 31<sup>st</sup> December. I think I asked him to give me a receipt for the sums I had paid him - he said it would not answer to give a receipt or give anything in writing. He reminded me that I knew as well as he the effect of its being put in writing - we then had some other conversation in relation to make

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and surties and their relative liabilities - which I cannot state distinctly. In the latter part of December I procured a thousand dollars and went into the Bank and saw Mr. Aiken. I remarked to him that I had the money a few days before the note was due. I proposed to him to pay it then as I would have to keep the money for that purpose to take the note up - At the same time I paid the interest on the note in question for thirty days. I applied to have it extended thirty days Mr. Aiken remarked that he would have to have the grace added, but did not insist upon it - the conversation had on this occasion was at his desk in his back room - the figures made there - the money passed in to the Teller or Book keeper and they gave me the sixty day note. In February not far from the first a few days after the first I paid twenty dollars to Mr. Aiken at my office. I won't be sure but what it was twenty two dollars - he gave me no receipts - my impression is that the note was extended at that time for thirty days with days of grace added - In March also I paid a months interest on the note - about the first of the month or about its maturity from the last extension. In April I think the latter part of the month I met Mr. Aiken in the Street - he remarked to me that there was

252 Some more interest due if I desired to extend that note any further - he said he could make the interest left to me - he would call it one and a half per cent, I went in and paid two months interest thirty dollars on the said note which extended the note to June. In July, I paid I think thirty dollars again - and I think another payment, after that of fifteen dollars. I can't be so definite about those payments - The three last payments I think were allowed to run past their regular time for paying interest I can't tell you how many days. -

Mr. Aiken has spoken to me since Doctor Evans filed the Bill in this cause in reference to the fact of the extension of the said note and labored with me to make me think that the note had never been extended. I differed with him and we have not agreed as to the facts - I cannot now tell where the conversation took place. He has told me that I was very much mistaken and I have told him that I could not be mistaken - that it was true there was no agreement in writing expressly made for that purpose - but that it was just as well understood as though there had been - or words to that effect.

14

State whether or not you recollect Mr. Aiken saying to you in the presence of the witness

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Fredrick J. Clapp as you were going out of his Bank on any occasion that he Mr. Aiken wished you to understand that the notes would not be extended, or words to that effect. Explain fully.

Answer.

I think when I paid the sixty Dollars I requested the Book keeper to mark on note: Extended - if it was only in pencil (Mark - something to indicate the fact of the extension - Mr. Clapp was not the Book keeper Mr. Aiken was in the bank - I had just parted with him from his desk, and he spoke up and said to me that the understanding was that it was not to be extended in writing or any writing made on the occasion with reference to the extension or words to that effect - that was the meaning of what was said, he could not have said that the notes would remain due, because that was not the understanding between Mr. Aiken and myself, - and I did not understand him to say so at that time - if he had said so - I should certainly have taken notice of it.

15.

Please explain what you mean to say about the payments having always been made in Bank upon this Note as stated in your answer to the 23<sup>d</sup> Cross Interrogatory

Answer.

I should have excepted the instance of Mr. Aiken receiving the payments of Twenty or Twenty two Dollars

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I think in February at my office.

16.

State whether or not you ever made a payment on this note, which was not wholly or in part a payment of advance interest?

Answer.

The payments made by me were all payments in advance Except perhaps the last - wholly or in part.

17

Are there any circumstances which enable you to remember and to state with confidence that when you made the sixty dollar payment in November you desired an extension of thirty days on one note and sixty days on the other - if so state them

Answer.

In making my calculations before applying for an extension in November I could not see how I could pay more than one of these notes within thirty days or at any one time - not being prepared to pay either of them then and thirty and sixty days being the legitimate time or days of the notes I prepared myself for paying the interest for thirty and sixty days longer on the notes - and the circumstances which I have already stated - and the conversation which occurred between myself and Mr. Aiken at the time of the extension - the circumstances of his remarking that he should expect one of the notes to be paid without being again extended - as he wanted some money by the

255 first of January - these are the circumstances that impress that fact on my mind.

18. Have you the notices which were enclosed in Exhibits C and D and if not where are they<sup>2</sup>?

Answer. I have not - they have been lost or destroyed - at any rate I cannot find them after thorough search - I was not in the habit of keeping any Bank notices

19. Can you swear that on one or more occasions on payment of interest in advance the note in question was extended by Mr. Stiken of So state with what degree of positiveness you can so swear and the occasions to which you refer

Answer. The note in question was definitely extended by Mr. Stiken at my request on or about the first of October 1858 + to my certain knowledge - There can be no mistake about it - I know it as well as I know anything. I simply asked him to extend the note in question on payment of interest for a month - and he consented to do so and it was done. Likewise on the seventh of November, and when the note matured again in December - and when I paid the sixty day note - and

at the other times - I have mentioned in the preceding part of my testimony, - and I cannot be mistaken about the fact of the several extensions.)

Q.

Do you recollect having an interview with Mr. Aiken in the Spring of 1860 with Miss Maynard and Mrs. Foster - if so what was the subject of the interview and state whether or not you remained on that occasion after the Ladies left - or whether you left before they did.

A.

I remember having had an interview with Mr. Aiken and the two Ladies mentioned in the last question. I cannot tell the time very definitely - I think it was early in the Spring of 1860. Mr. Aiken had invested some money for one of the Ladies and the securities taken at the loan had been sold and Mr. Aiken had put in a portion of his own money in making the loan and they were trying to agree about the division of the proceeds of the sale of the securities there were one or two notes given secured by a Trust Deed on a couple of lots and the Lease of the lot and a boarding house - I was the Trustee in the Trust Deed. Mr. Aiken had bid off the property, I had prepared the deed

257 but did not deliver it until the parties had settled - There was considerable conversation - the Ladies thought Mr. Aiken was not using them right. He was making various propositions to them to try and settle the matter - It was settled - they received their pay according to the settlements - Aiken gave me my Trustees fees. It was agreed that he should pay the expenses - and after having been there I should think an hour - I left in company with the Ladies.

21. During that interview was anything said about this suit or the extension of the note in question?

Answer. There was nothing whatever said about the extension of the note or the suit during that interview.

22. State whether or not you were at any other time during that same day in the office of Aiken & Norton?

Answer. My best recollection is that I was not.

23. Did you ever deliver a Trustees Deed for the property sold by you to Mr. Aiken - if so state when you delivered it?

Answer.  
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I had the Trustees Deed in my pocket when I went there with the Ladies and on the settlement being perfected and my fee paid to me - I delivered the Deed to Mr. Aiken.

24

State whether or not you are positive you did not have two separate interviews and two separate conversations with Mr. Aiken on the day in question - one about the Maynard loan and one about your own loan.

Answer.

I am quite confident I had but one interview with Mr. Aiken on that day - I would not like to swear positively that I did not see Mr. Aiken more than once that day.

25.

State whether or not you ever stated to Mr. Aiken in the presence of Mr. F. L. Chapman or otherwise that you never supposed that he (Mr. Aiken) actually extended the note in question. But that you thought that Mr. Aikens allowing you to pay the interest he would be easy with you - until you could pay the note or words to that effect.?

Answer.

I have no recollection of ever having used any such words - or words to that

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effect - I am quite confident I never used any such words - one time Mr. Aiken manifested a good deal of feeling on my asserting that the note in question had been extended - he stating to me that I was very much mistaken and I reaffirming the fact of the extension - I told him that I knew that he would never make any writing to commit himself to the fact of the extension - But that it was as plain as day understood as though it had been in writing between him and myself - He never pretended to me that the interest was not paid in advance. I reminded him in those conversations as he spoke to me two or three times in reference to it of his having been so very careful not to have it appear any where in writing at the time he was making the extensions for fear as he then stated that if the question should arise hereafter by any possibility it might affect Doctor Evans liability - he persisted in saying they were not extended and I persisted in saying that they were - in the conversations we have had since the filing the Bill in this suit - I do not remember conversing in the presence of Mr. Chapman in reference to the note in question at any time.

#

16

Did you ever to your knowledge have

260

two excited Conversations in which loud talk was used by Mr. Aiken at different interviews on the same day?

Answer.

I have not.

27

State whether or not you ever remarked to Mr. Aiken in presence of P. H. Chapman or otherwise that you didn't consider there was any actual agreement to extend - but that it was a matter of inference from the transactions between you or any thing to that effect?

Answer.

I am quite confident, I never have used those words or words to the same effect to Mr. Aiken - either alone or in the presence of any one. My assertions to Mr. Aiken have been uniform that the said note had been extended - the nearest I have said like the words embodied in the question are that I knew there never was any Extension by written contract, but that the fact existed just as certain as if in writing -

28.

State whether or not at the several times payments were made by you on said note - did you or not make them with the full understanding and

261 agreement that such payments were for interest that had then accrued - or how otherwise?

Answer. ( The payments of interest made by me on the note in question were all in whole or in part, advance payments - unless it might be the last - perhaps the two last - the last and perhaps the next to the last payments of interest made by me were for interest that was then due and not in advance. I cannot be certain. I had become careless about the interest towards the last - or they had suffered it to go by. )

29 State whether or not you feel positive that at the time you took up the sixty day note you paid the interest on the note in question thirty days in advance and state what amount of money you paid at that time in all.

Answer. Yes Sir, I am positive. I remember distinctly what occurred at the time. The interest was not due until the sixth or the seventh of January on the note in question - I went in to pay the sixty day note I spoke to Mr. Aiken and said that I wanted to arrange at the same time for the extension of the thirty day note - he consented to it and added that he would include the days of grace and would like to have me pay it then as he wanted all the money he could get before the first of

262 January - I paid the thousand Dollars and took up the sixty day note before it was due several days - and paid Twenty Dollars at the same time for the extension of the thirty day note for thirty days. I think he did not continue to insist on days of grace in advance - this arrangement was made with Mr. Aiken at his desk and the money was paid in to his book keeper - the settlement at this time was for all interest then due and on note in question for thirty days without grace in advance

62 March 5. (Crop-Examination resumed.)

29

Who was the Book keeper of Aiken and Norton on or about the first of October 1858 at the time you state you made the first payment on the note in question. ?

Answer.

I know the face of the person very well, though I cannot call his name. I don't know that I know his name.

30.

Was his name Smith ?

Answer.

I couldn't say.

31

Describe the man.

Answer.

He was a short person, pleasant expression. I should think thirty three or thirty four years of age - I don't know

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that I can give a very marked feature of him

32.

Were you or not in the months of September and October of that year and before and after that time in the habit of borrowing money of Aiken & Norton in small sums for a few days?

Answer.

I don't remember to have ever borrowed but one small sum of money or had any other transaction except this and the one of which Mr. Chapman spoke when I had twenty five hundred Dollars for a few days.

33.

Are you in the habit of destroying your letters and retaining the envelopes?

Answer.

I am not in the habit of destroying letters as a general thing - Bank notices I usually took from the Envelopes and carried them in my vest pocket as a memorandum. I have preserved nearly all the Envelopes that I have received since I have been in business and have a great many vacant envelopes now at my office - a great ~~no~~ many which contained Bank notices of various Banks and parties loaning money.

34

Why do you keep your envelopes and can you swear to the contents of what each of those envelopes you hold contained?

Answer.

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Well I took a notion when I commenced business to preserve the Envelopes as a means of estimating the extent of my correspondence as a matter of Curiosity - I don't think I could tell minutely the substance of what every envelope I have contained or had enclosed in it, by reference to the envelope - In some instances I could - where I have had but few letters or notices from a particular party.

35.

Can you tell from whom each of the envelopes which you have got was received, and whether it was for money borrowed, or notes maturing?

Answer.

In some instances I can - where they bear some particular mark or stamp others I cannot with certainty.

36.

Do you recollect at the meeting about the seventh of November 1858 of Mr. Litch telling you at the Counter after calling for the notes - that there had been a mistake in the first note maturing by its being put in the wrong envelope?

Answer.

I do not.

37

Will you swear that you recollect the precise days and the precise amounts that you paid Litch on the note in question -

265 and if so - what causes you to remember it?

Answer I cannot say that I do remember the precise day - But I have more reliable recollection about the amounts - I can't give any particular reason why any more than they are fixed on my memory, and I give them as I remember them

39 Will you swear that you can recollect the times and the amounts of those payments better now - than you could when you was first examined in this case. ?

Answer. I think I can.

40 Do you know whether or not Mr. Aiken is by profession an attorney at law ?

Answer. All that I know on the subject is what I have heard from Mr. Aiken himself. he told me that he was a lawyer and had practised law in the state of New York I think - I think he told me this as early as November 1858

41. What has been and is now your business or profession ?

Answer. My business has been and is now that of an attorney practising law.

42.  
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Have you acted as Counsel for the Complainant in this case?

Answer, I have not.

43.

Have you not consulted with Mr. Jameson the Complainant's Counsel, relative to the taking of testimony, suggesting questions - advising with him about it and in other ways acting as Counsel.

Answer.

I have in no way acted as Counsel in this case. I will state the substance of what has transpired between Mr. Jameson and myself in reference to the case.

I have not suggested to Mr. Jameson any questions to be asked - neither to myself nor any other witness. Mr. Jameson has two or three times inquired of me what my recollection was of certain facts - and after other witnesses have been testifying has asked me what my recollection was about things, which they had testified to and I have told him what my recollection was and he may have said to me that he wished me to look through my papers and memorandums to refresh my recollection, what I have stated in answer to this question is the substance of all that has ever passed between us in reference to the case.

267  
44

Have you not been present with Mr. Jameson at the taking of the most of the testimony in this case and has not Mr. Jameson declined to cross examine witnesses until you and he could look over the evidence together?

Answer.

I have been present at the examination of some of the witnesses. I requested Mr. Jameson to let me know when the testimony was taken. I had a curiosity to know how other witnesses remembered the facts. I don't know what object Mr. Jameson may have had, in deferring any cross examination - he has not stated to me that it was for the purpose of consulting together about it. I have read over the testimony of the other witnesses in the case. I asked Mr. Jameson to let me see it and he gave me the permission - my recollection has been assisted by some things that have been testified by other witnesses - we never have looked over the testimony together or made any comparisons of the statements of different witnesses.

45.

Will you swear that you and Mr. Jameson have never conversed about any of the testimony taken in this case?

Answer.

We have not held any conversation with reference to the testimony taken in the case. Except as I have stated - he asked me how I remembered certain things that had been testified about and

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I would tell him - he came to my office - I think and he asked me where the women lived of whom the witness Chapman spoke and I told him he suggested to me the propriety of my seeing them - I declined to do so and told him he had better see them himself.

46.

Has the Complainant ever advised with you relative to this case.. and have you ever had any conversation with him touching it.?

Answer.

The subject has been casually mentioned between the Complainant and myself. I have not advised with him with reference to it. I think the first person who mentioned the defence to me was Mr. Jamison. The Complainant has I think on one occasion perhaps more asked me if I remembered distinctly the circumstances that occurred in reference to the note and I have told him what I have remembered.

47

When was it you told the Complainant the circumstances of this case - or the defence.?

Answer.

It was after Mr. Jamison had called on me with reference to it which was about the time of the filing of the Bill. He filed the Bill about two weeks after he first questioned me about the facts.

48.

Was not this suit commenced by your investigation and advice.?

269  
Answer.

It was not Doctor Evans the Complainant took some offence at the entering up of the Judgments?

49

Was there a power of attorney attached to the note in question signed and sealed by you and the complainant as principal debtors to Aiken and Norton - and was it delivered to the said firm?

Answer.

There was a power of attorney attached to the said note - signed and sealed by the complainant and myself, my name first. Ostensibly appearing as both Principals for the amount of the note and costs in the usual form

1862 March 15<sup>th</sup>

50

(Cross Examination resumed.)

State whether or not the witness now produced, Samuel C. Smith was or not, the Bookkeeper for Aiken and Norton in October 1858 at the time you state you made your payments on the note in question

Answer.

Mr. Smith the person now present, was then Bookkeeper or employed in their Bank in some other capacity. But I think as Bookkeeper during a portion of the time that I paid interest there on the note in question. My impression is that he was there in October 1858 though

270 I won't be positive about it.

John W. Waughop

Subscribed and sworn to  
before me this 25<sup>th</sup> day of  
March A.D. 1862. Pro Terto  
Master in Chancery of the  
Superior Courts of Chicago.

Martha M. Porter a witness produced  
sworn and examined on the part of the  
Complainant deposes and says.

1<sup>st</sup> Q. State your name age and residence and  
do you know the parties to this suit?

Answer. Martha M. Porter, am forty one years of  
age - I reside in Chicago. I know Mr. Aiken  
and Mr. Waughop.

2<sup>d</sup> Were you ever present together with a Miss  
Maynard and Mr. John W. Waughop at an  
interview with the defendant Aiken if so  
when and where and how many interviews  
did those persons have with him in your presence?

Answer. I was at Mr. Aikens Bank twice with  
them but only once had an interview - this was  
two years ago. I think late in the winter -

271 it might have been February or March. Miss Maynard was present. she is my sister.

3. What was the Subject of your interview with Mr. Aiken?

Answer. It was respecting my sisters money, which Mr. Aiken had loaned for her and had taken securities which proved insufficient.

4 State whether or not, Miss Maynard, on that occasion settled and compromised with Mr. Aiken the matters regarding said loan?

Answer. Yes Sir she did - It was all settled up.

5 State in what part of the Banking office your interview with Mr. Aiken occurred and whether or not one J. L. Chapman was at that time in the room?

Answer. It was in the South west part in an enclosure enclosed by a balustrade - but not in a separate room from the banking office. Mr. J. L. Chapman was writing at the desk about ten or fifteen feet where we were, he was at his desk where he usually stood.

6. Were you yourself present during the entire interview of Miss Maynard and Mr. Waughap with Mr. Aiken - if so state all that occurred

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during said interview in what order the persons named left the banking office and your means of recollecting the facts as they occurred

Answer.

I was, all the conversation related to Miss Maynards Business with reference to the loan. We went there at the hour Mr. Aiken appointed. It seemed difficult to get his attention he would commence talking with us, and if any one came into the Bank he would leave us and then come back again - Mr. Waughop was in a hurry, he was obliged to be in Court, and would say that he must go - I told him we could not do anything if he left us. We talked some time there about my sisters Business - Mr. Waughop for his services as Trustee was paid ten Dollars, it is my impression that he then left, it is my impression it was after Mr. Waughop left that Mr. Aiken paid my sister the amount agreed upon - After we left the Bank we walked up Clark Street and stopped on the sidewalk at Mr. Waughops office and talked with him there a few minutes

Q.

How long was the interview in Mr. Aikens office?

Answer.

I think it must have been over an hour - we were to meet at nine o'clock and at ten Mr. Waughop wished to be in Court

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8. State whether or not during said interview there was any excited or energetic talk on the part of anybody and if so by whom?

Answer. Yes Sir. Mr. Aiken was excited - He said that he thought we had lost confidence in him - he talked loud sometimes.

9. Are you or not positive that Mr. Waughop did not remain in the Banking office after you and Miss Maynard left.

Answer. Yes Sir. I am certain about that - he was so anxious to go - he stated several times that he must go -

10. Did or not Mr. Waughop on any occasion when you and Miss Maynard and he called at said Banking office remain after you and Miss Maynard left?

Answer. No he did not - not to my recollection.)

11. Are you or not positive that no subjects was talked of between Mr. Waughop and Mr. Aiken at said interview - Except the loan for Miss Maynard?

Answer. I have no recollection of any thing else and

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don't think it could - because we found it so difficult to get his attention for our business )

12.

( During said interview was there any excited talk between Maughop and Aiken on any other subjects than said loan for Miss Maynard? )

Answer.

No Sir. Mr. Maughop was not excited about our business. He was very earnest and decided about my sisters claims. )

13.

( Had such talk occurred in any part of said office on that occasion would you or not have heard it? )

Answer.

We should have heard it. Mr. Maughop did not leave us during the interview - until he went out of the office. -

14.

( State whether or not Mr. Maughop on that occasion used to Mr. Aiken these words: "I never supposed you actually extended but thought that you would be easy with me - if I paid you the interest" or any other words to that effect. )

Answer.

I have no recollection of any thing of the kind )

15.

( State whether or not Mr. Aiken said to

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Mr. Waughop on that occasion that if Mr. Waughop supposed he Mr. Aiken had extended it he was entirely mistaken, or any thing to that effect. ?

Ans.

I have no recollection of any thing of the kind.)

16. ( Had Mr. Aiken said to Mr. Waughop on that occasion anything to that effect, in an excited or energetic manner would you not have heard it ?

Ans.

I should have heard it.)

17

Was the name of Doctor John Evans to your knowledge spoken on that occasion or was he in any manner referred to by Mr. Aiken or by Mr. Waughop ?

Ans.

I don't remember that it was.

( Cross - Examination. )

+  
1 cross Ex.

When was your attention first called to this interview at Aiken's office and by whom ?

Ans.

Yesterday Morning. Mr. Jameson called at my house.

Q.

Had your attention ever been called to the subject matter of that interview before Mr. Jameson

called upon you.

Answer. No Sir.

3.<sup>o</sup> Did you ever have any occasion to recall that interview, or have you ever thought of it until Mr. Lamson called upon you yesterday morning?

Answer. Yes Sir, I have often thought of it. Because we were so dissatisfied with the settlements.

4 Have you ever talked the matter over since the settlements with Mr. Waughp?

Answer. Only on the sidewalk in front of Waughp's office on the day of the interview - and to day in Mr. Waughp's office.

5. Did Mr. Waughp to-day try to refresh your recollection about the matter of that interview?

Answer. No Sir.

6. Didn't he ask you or state to you that he left the office before you did at that interview.

Answer. I don't think he did - I told him that I had got the times confused - we went

277 there together twice - once we walked away with him - the other time I thought he left us there

7 Did he attempt to explain it, so as to remove your confusion?

Answer. He mentioned that the first time we were there we did not have an interview with Mr. Aiken - he appointed another time for us to come.

8 Did Mr. Waughop state to you any other thing besides this, relative to that interview and if so what?

Answer. I think he said he didn't see the money paid to my sister. I spoke of the ten Dollars paid to him and I thought he left after that was paid.

9 How long a conversation did you have with Mr. Waughop and is the above all that was said between you and him in that conversation?

Answer. I should think it was about five minutes. I spoke of the difficulty we had in getting Mr. Aiken's attention that day, he was attracted off by others.

Did they show you or read over any of Mr Chapman's deposition here?

Answer. My Sir - I don't think his name was mentioned

11. Did Mr. Waughop on the occasion of the interview at Aiken & Mortons Banking office deliver to Mr. Aiken any paper and if so what?

Answer. I don't remember that I did.

12. You state in your direct examination that Mr. Waughop was a Trustee to secure this loan - state whether or not he sold the property for which he was Trustee and if so who was the purchaser?

Answer. The property has not been sold that I know of

13. Why was Mr. Waughop paid any money then as Trustee if the property was not sold?

Answer. I don't know he was - Except the trouble he had been put to.

14. Are you just as sure that the money was paid by Mr. Aiken to Mr. Waughop as you are that the property was not sold?

279  
Answ.

I am sure he paid it, for I saw him do it. I can't be as sure that the property was not sold.

15

Will you swear that Mr. Aiken paid Mr. Maughon at this time ten dollars.

Answ.

Yes Sir.

16.

Did he pay it himself

Answ.

I think he did. Either Mr. Chapman or he did.

17

Was it not usual for Mr. Aiken at that time when he paid out money to give direction to his Teller to pay the money out of the Bank - and did he not do so in this case?

Answ.

Yes Sir, it was usual. - It's my impression that he did not in this case. That the money was brought to where we were.

18.

Did you see the money handed to Mr. Maughon and if so by whom?

Answ.

I think I did. I remember his signing a receipt for the money - I don't know whether he took the money from Mr. Aiken or Mr. Chapman. I remember hearing

Mr. Aiken telling him: Mr. Waughop I will pay you the ten Dollars.

19. Are you sure that Mr. Waughop signed the receipt?

Answer. That's my impression that he did.

20. Did Mr. Waughop in receiving the money deliver any paper to Mr. Aiken?

Answer. I can't say positively whether he did or did not. I don't remember.

21. How long was it after Mr. Waughop left before you saw him in front of his office?

Answer. I should not think it was over five or ten minutes.

22. Are you positive that Mr. Waughop left the office before you did?

Answer. I am as positive as I can be of any thing that took place as long ago as that, without anything to ~~re~~ make me remember particularly. That's my recollection. The circumstances of our meeting him and talking with him proves it to my mind that he went out first.

23. Pray you not be mistaken as to which left first that office at that time?

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Answer.

I feel positive that he left for I know how I felt after he went away - I don't think I can be mistaken about it.

24

Can you be mistaken as to the time this interview took place at Stikens office

Answer.

I never pretended to tell ~~the~~ the exact time. It was in the latter part of winter.

25

The latter part of what winter.

Answer.

1860.

26.

How long did you converse with Waughops at the time you met him in front of his office. ?

Answer.

I don't think over two minutes.

27

After Mr. Waughops left had he had time to have gone to the Court House and attended to business when you met him in front of his office ?

Answer.

No Sir - not as near as I remember about it

28.

What time in the day was it that you had this interview ?

In the Morning

(Direct Examination resumed.)

17 Is the testimony which you have given or is it not based upon your own recollections of the facts as they occurred?

Answ. It is based upon my own recollections of the facts.

18 Did either Mr. Jameson or Mr. Waughop in their interviews with you yesterday and to day attempt to instruct you as to the facts relative to said interview with Aiken or in any manner to bias your opinion regarding them?

Answ. No Sir.

19 When you met Mr. Waughop on the sidewalk after the interview with Aiken what was the subject of your conversation with him?

Answ. About the settlement of loan, which had just been made with Mr. Aiken.

+ 29 (Cross-Examination resumed.)  
Might not that conversation with Mr. Waughop on the sidewalk have been on the next day? may you not be

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mistaken relative to that conversation on the sidewalk with Mr. Naugbop being on that day and if not what circumstances caused you to remember that it was on that day. ?

Ans. No Sir - I can't be mistaken as to its being on that day, because it was very inconvenient for my sister and I as we were situated to be out in the morning and we were both together when we talked with him. We were never out together except on that business that winter in the morning - and I remember the conversation that took place,

Martha M. Parker

Subscribed and sworn to before me this 13<sup>th</sup> Day of February A.D. 1862,

Geo. Scott

Master in Chancery of the  
Superior Court of Chicago

(adjourned to February 14<sup>th</sup> 1862)

1862  
Feb 14

(Parker's met pursuant to adjournment)

Caroline Maynard, a witness produced sworn and Examined, on the part of the Complainant deposes and Says

1<sup>st</sup> Q<sup>y</sup>.

State your name age and residence and do you know the parties to this suit?

Answer.

Caroline Maynard, am thirty two years of age. I reside in Chicago. I know Mr. Aiken and Mr. Waughop.

2<sup>d</sup> Q<sup>y</sup>.

Were you together Mr. Waughop and Mrs. Porter ever present at an interview with the defendant Aiken. if so how many interviews were there and when and where?

Answer.

I was twice there in his Bank with Mrs. Porter and Mr. Waughop. It was on my business and the interview was with Mr. Aiken and Mr. Waughop both. I don't remember the dates. I am very miserable about remembering dates and don't know that I can state the month. I should think it was about two years ago. Both interviews were near together.

3<sup>d</sup> Q<sup>y</sup>.

Did you on both occasions or not, have a conversation with Mr. Aiken?

Answer.

I did.

4<sup>th</sup> Q<sup>y</sup>.

Please state the subject of these interviews.

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Answer.

On my own business. he had loaned money for me

5.

State whether or not at one of those interviews you settled and compromised with Mr. Aiken the matters regarding said loan and if so at which interview?

Answer.

I did - at the last.

6.

State in what part of the Banking office of Mr. Aiken the last interview occurred. describe the place

Answer.

It was in the South west corner a little place that was railed off

7

Do you know J. L. Chapman and if so state whether or not he was in the room at the time and in what part of it?

Answer.

I am acquainted with him - he was in the room he was back of the counter. he was but a short distance from where the interview took place.

8.

Were you yourself present during the entire interview - the last I mean - if so state all that occurred and in what order the persons named left the banking office - after the interview?

Answer.

I was. We settled the matter according to

Mr. Aikens views of things - he paid me my money - he paid Mr. Waughop ten dollars for his services - in relation to the papers I suppose nothing else occurred - I think Mr. Waughop left before we did

9. Was not Mr. Waughop Trustee to secure your loan and was it or not, for his services as such that the ten dollars was paid him?

Answer. I suppose it was. He was trustee or at least Mr. Aikens received the securities through Mr. Waughop.

10. Are there any facts which lead you to think Mr. Waughop left the office before you did. - if so state them.

Answer. I think he did leave the office first and afterwards met us on the street

11. How long was the last interview in Mr. Aikens office?

Answer. I can't say

12. State whether or not during said interview there was any excited or energetic talk on the part of any body

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and, if so, whom - describe it

Answer. Mr. Aiken was considerably excited. I don't remember what he said

13. During said interview, was there any talk between Mr. Aiken and Mr. Waughop upon any other subject than your case?

Answer. I did not hear any.

14. Had any other subject been talked of in an excited or energetic manner by those persons at that time, would you or not, have heard, it?

Answer. I think I should.

15. State whether or not Mr. Waughop during that interview remained with you in the enclosure of which you have spoken all the time until he left?

Answer. I think he did.

16. Did either Mr. Waughop or Aiken on that occasion speak of Doctor John Evans or refer to him in any manner?

Answer. I did not hear them.

State whether or not Mr. Aiken said to Mr. Waughop on that occasion that if Mr. Waughop supposed he Mr. Aiken had extended it, he was entirely mistaken or anything to that effect?

Answer. I did not hear him.

18. Did Mr. Waughop not use to Mr. Aiken these words on that occasion: I never supposed you actually extended - but thought that you would be easy with me if I paid you the interest on any other words to that effect?

Answer. I did not hear him.

19. Had either of those present spoken on that occasion to the effect above mentioned would you or not have heard it?

Answer. I think I would.

20. Do you remember the subject of conversation with Mr. Waughop if there was any, when you met him on the sidewalk after leaving the Banking office if so what was it?

Answer. I don't remember.

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1<sup>st</sup>

(Prop - Examination.)

Has your attention ever been called to the interview at Hiken & Stantons Banking office - if so when and by whom?

Answer.

(Not until Mrs Jameson called at our house day before yesterday - by my sister Mrs. Foster.

2<sup>o</sup>

Did your sister tell you what they wanted to prove, and try to refresh your recollection thereon?

Answer.

No Sir, and I dont know how what they want to prove

3<sup>o</sup>

State what she did tell you at that time?

Answer.

Well I understood from her that there was a Gentleman in there who wished to know whether Mrs Waughlop left the Bank before or after we did.

4

Have not the facts that occurred at that interview Escaped your recollection and can you now positively swear as to any particular parts of that conversation - if so what part.

Answer.

I think not. Yes my sister asked me if I knew when Mr. Waughop left the bank and I said no - not just the time he left the bank, but I thought he left ~~first~~ first. I do not remember any of the language used at the interview with Mr. Stiken some two years ago.

5. Is there any circumstance to cause you to believe that Mr. Waughop on that occasion just left the bank or is it a mere impression?

Answer. I think he left first. Because as we walked along at his office or near his office he stepped off the step and walked with us.

6. How far did he walk with you?

Answer. I think it was just to the end of the block as we turned to go.

7. Did Mr. Waughop sell the property for which he was Trustee and if so who was the purchaser?

Answer. I don't know who sold it. Mr. Stiken bought it.

8. Who paid Mr. Waughop the ten Dollars

you spoke of in your direct examination?

Answer. Mr. Aiken

9. Did not Mr. Aiken tell you pay Waughrop the money by direction of Mr. Aiken?

Answer. I thought Mr. Aiken paid it. he turned to me and said I will pay that.

10. Did you see Mr. Aiken pay that money to Waughrop?

Answer. I think he did count it out and pay it to him.

11. Did you notice the amount paid, the denomination of the Bills and how many there were of them?

Answer. No Sir.

12. Did Mr. Waughrop give Mr. Aiken any papers at that time, if so what?

Answer. I don't remember about his giving him any papers.

13. Did you see Mr. Waughrop sign any paper or papers at that time?

Answer.

I don't remember his signing.

14

Did you see Mr. Waughop give Skiken a receipt at that time for the money?

Answer.

I don't remember about those little circumstances.

15

How long after Mr. Waughop left before you met him on the sidewalk?

Answer.

A few minutes.

Direct Exam.

At either of the two interviews of which you have spoken at Mr. Skiken's office did Mr. Waughop remain in the office after you left?

Answer.

I think not.

Caroline Maynard

Subscribed and sworn to  
before me this 14<sup>th</sup> day of  
February A.D. 1862

Wm. Scott

Master in chancery of  
the Superior Court of Chicago.

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Superior Court of Chicago  
In Chancery  
John Evans

vs.

Edmund Stoken & George  
M. Kennedy, Alfred M. Hewlett  
& Willard H. Downer Executors  
of John D. Norton deceased,  
Et al.

State of Illinois  
County of Cook & ss.

I Bra Scott

Master in Chancery of the Superior Court of Chicago  
do hereby certify that before the commencement  
of the examination of the witnesses whose names  
are subscribed to the foregoing depositions - they  
were each by me duly sworn according to  
law and their said depositions were subscribed  
and sworn to before me at the times heretofore  
mentioned by said witnesses respectively - that  
the same were taken before me with the  
consent of the solicitors of the respective parties  
subject to the reservation mentioned in the  
caption thereto - and that the foregoing are all  
the proofs taken before me on the part of the  
complainant in the above entitled cause.

Dated Chicago March 25<sup>th</sup> 1862

Bra Scott

Master fee \$ 25. paid  
by complainant

Master in Chancery of the  
Superior Court of Chicago.

And afterwards to wit, on the  
Nineteenth day of April in the year  
last aforesaid John Evans  
filed herein his Certain Motion  
in words and figures following  
to wit:

State of Illinois }  
 Cook County } ss.  
 Superior Court of Chicago

John Evans }  
 v } In Chancery  
 E. Aiken et al }

And now comes the  
 said Complainant and moves the  
 Court to suppress the deposition of the  
 defendant E Aiken heretofore taken in  
 this Cause for the following reasons

1<sup>st</sup> For that the said Aiken being a defen-  
 dant, is not a competent witness in  
 said Cause for his co-defendants, being a  
 party to the same

2<sup>nd</sup> For that said Aiken is a party to the  
 same and interested in favor of the co-de-  
 fendants, calling him as a witness

3<sup>rd</sup> For that said Aiken is liable for costs  
 in said Cause, or may be liable for such  
 costs if the parties calling him are cast  
 in said suit, the bond of indemnity to  
 him notwithstanding

29/1 4<sup>th</sup> For that the bond of indemnity given to him by his late partner and co-defendant Aikew, is insufficient to do away with said Aikew's interest in favor of the defendants

\* of justice and is void and has the bond of indemnity forwarded upon it is also void, and the said Aikew is still interested in the said. Cornell Lameran & Hobbins Complainants

5<sup>th</sup> For that said Aikew is interested in the event of the suit in which he is called to testify, in favor of the party calling him

6<sup>th</sup> For that it appears from the deposition itself, that said Aikew assigned his interest in the judgment in question in said suit to Norton, his copartner and co-defendant for the purpose of enabling himself to testify in this cause, said assignment being made after this suit was commenced, and being made with the understanding that said Aikew should sustain the validity of said judgment as against the complainant by his testimony

7<sup>th</sup> For that the assignment by Aikew of his interest in said judgment to his copartner and co-defendant Norton, with the purpose and design of rendering himself competent as a witness to sustain a contested claim of said copartner by his own oath, in this Court, is a fraud upon the administration

and afterwards to wit on the  
twenty sixth day of May in the  
year last aforesaid said day  
being one of the days of the May  
term of said Court the following  
among other proceedings was had  
and entered of Record to wit:

John Evans

<sup>vs</sup>  
Edmund Aiken John W. Bill  
Traughop, George W. Lay John  
Gray, George W. Kennedy  
Alfred R. Howlett and  
Willard H. Donner Executors of  
the last will & testament of  
John D. Norton deceased

Now on this  
day this cause came on to be  
heard upon the bill taken as  
Confessed by the defendants John  
Gray & John W. Traughop and  
upon the answers replication Exhib-  
its and proofs on file therein.  
Messrs Cornell Jameson & Hubbard  
appearing as counsel for said  
Complainant and Messrs Hosmer  
& Peck and Jesse B. Thomas Esq<sup>r</sup>

appearing as Counsel for the defendants, and after considering the pleadings and evidence in said Cause and hearing the arguments of Counsel thereon, it appears to the Court that all the material facts alleged in said bill of Complaint are true, that said Complainant signed the notes mentioned in said bill as surety merely for the defendant Maughop one of the makers thereof, that this fact was known to the payees thereof Aikew & Norton when they received said notes, that upon the receipt of said notes by said Aikew & Norton they made a loan thereon to said John W. Maughop of two thousand dollars, one thousand dollars upon each of said notes, reserving therefrom usurious interest on said loan at two per cent per month for thirty and sixty days respectively, the times of the maturity of said notes, that the amount of said loan was paid over by said Aikew & Norton to said Maughop and was used by him alone for his own purposes. No part

thereof being appropriated by or to the use of said Complainant that at the maturity of the thirty day Note upon which said judgment was rendered, the said payee thereof Aiken & Norton then being the owners and holders thereof without the knowledge or consent of said Complainant for a valuable consideration to wit, the sum of twenty dollars paid by said Houghoff and received by said Aiken & Norton as interest in advance for the period of thirty days then next following, it tended and gave time of payment of said note for such period of thirty days.

On motion of John A. Jameson Esq of counsel of said Complainant it is ordered, adjudged and decreed that the judgment rendered upon said last mentioned note and specific in said Bill of Complaint as against said Complainant John Evans be and is hereby vacated, and annulled, and that the defendants Aiken, Kennedy, Hallett, & Downer

Executors of the last will & testament of said John D. Norton deceased their Solicitors Attorneys Agents and Servants, be perpetually enjoined from collecting or attempting to collect said judgment by Execution or otherwise howsoever from and out of the property of said Complainant. It is further ordered adjudged and decreed that the Defendants Aiken & Kennedy Howlett & Downer, and as executors of John D. Norton deceased pay the costs of this suit to be taxed

State of Illinois  
Cook County, Ills

I, Thomas  
Plaster Clerk of the Superior  
Court of Chicago within and  
for said County and State  
aforesaid Do hereby Certify the  
above and foregoing to be a  
fully true and complete transcript  
of all papers on file in my  
office and of all orders and  
decrees made and entered of  
record in said Court in a  
Certain Cause wherein John  
Evans is Complainant and  
Edmund Aiken and others  
Defendants on the Chancery side  
of said Court.

In testimony whereof I  
hereunto set my hand and  
affix the seal of said Court  
at the City of Chicago in  
said County this Tenth  
day of October A.D. 1862.

Thomas Plaster  
Clerk

And hereupon the said George W. Kennedy,  
Alfred A. Hallett, and William H. Brown, Execu-  
tutors as aforesaid and Edmund Arden esq  
and each of them for himself says, that in the  
record and proceedings aforesaid, and also in the  
recognition of the ~~judgment~~ <sup>Decree</sup> aforesaid there is  
manifest error in this

1. The Court erred in overruling the Defendants  
Decree & Complainant's Bill of Complaint
2. The Court erred in receiving and considering  
the testimony of Mr Braughoff, & refusing to exclude  
the same -
3. The Court erred in excluding the testimony of  
Edmund Arden
4. The Court erred in rendering a decree va-  
-cating the judgment against Brown & Braughoff
5. The decree is informal & erroneous
6. The decree should have been for  
Defendants, and not for Complainant

Walter Thomas

Att'y for Plff in Error

Supreme Court of the State of Illinois  
Third Grand Division

George A. Kennedy  
et al

implied &c

Plaintiffs in Error

vs

John Evans

Defendant in Error

And now comes the said  
John Evans, the defendant in error  
herein, by Clarke, Cornell & Norton,  
his attorneys, & says that there is  
no error either in the record &  
proceedings aforesaid or in the  
 rendition of the said decree  
Clarke, Cornell & Norton  
for Negt. in Error

\$1000.00  
1000

Chicago September 4th 1858

Thirty days after date, for

Value Received, we promise to pay  
to Aiken & Norton on order,

the sum of one thousand Dollars,

with interest for value received

(Signed)

J W Maughrop  
Geo Evans

Know all Men by these Presents, That whereas the Subscriber are  
justly indebted to Aiken & Norton upon a certain Promissory Note  
bearing even date herewith, for the sum of one thousand  
dollars and no cents; made payable to the said

order, and due thirty days after date

Now, therefore, in consideration of the premises and of the sum of one dollar to we  
by the said we the receipt whereof is hereby acknowledged,

do hereby make, constitute and appoint Leane Claplin or any attorney of any  
Court of Record, to be our true and lawful attorney, irrevocably, for us and in  
names, places and stead, to appear in any Court of Record, in term time or vacation, in any  
of the States or Territories of the United States, at any time after the date hereof to waive service of process, and  
confess a judgment in favor of the said Aiken & Norton

or their assigns, or assignees, upon the said  
note for the above sum, or for as much as appears to be due, according to the tenor and effect of said note, with  
to the day of the entry of such judgment interest thereon, together with costs, and ten dollars and attorney's fees  
to be added to the amount due on entering up judgment; also to file a cognovit for the amount, that may be so  
due, with an agreement therein, that no writ of error or appeal shall be prosecuted upon the judgment entered by  
virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of such judgment, and to  
release all errors that may intervene in the entering up such judgment, or issuing the execution thereon, and also  
to consent to mediate execution upon such judgment. Hereby ratifying and confirming all that our  
said attorney may do by virtue hereof.

WITNESS, our hand & seal this fourth day of September A. D. 1858

IN PRESENCE OF

John W Maughrop



Geo Evans



1100.  
35-2-1  
11 copy  
1145

707 3/1 860

George W. Kennedy et al } Supreme Court of Ill.  
Plff in Error } April Term 1863.  
John Evans }  
Def. in Error }

It is hereby stipulated and agreed between these parties hereto, that the annexed paper is a true copy of the note and warrant of attorney referred to in the Bill of Complaint herein, that the copy which judgment was entered by the said Arken & Norton - that the said note and warrant of attorney were produced and offered in evidence on the hearing of said cause, and that the said annexed copy may be <sup>considered</sup> treated on the hearing in this court, as though embodied in the record -

It is further agreed that on the hearing of said cause, objection was made by the Complainant to the admission of the deposition of S. Arken, for the reasons assigned in his motion on file, and like objection was made by said defendants Kennedy, Hallett & Downer to the admission of the deposition of J. M. Wrayport on the ground of incompetency of the said Wrayport as a witness by reason of his interest in the result of this suit, ~~and it is agreed that said objections may be considered by this Court~~ and it is hereby stipulated <sup>that</sup> the facts above stated may be considered as embodied in the record.

~~as fully as if embodied in a bill of exceptions or  
Certificates of evidence & extracts in the usual~~

John M. Cornell & Norton

Solicitors for Complainant

Walter Thomas

Solicitor for Defendant