

No. 13498

Supreme Court of Illinois

Stone.

vs.

Atwood.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 238. 161

State of Illinois ss

Of the April Term of the Supreme
Court 1861.

H. O. Stone

v

Attwood & Talbot

} Appeal from
book

W. B. Scates being duly sworn deposes and
says that he was retained in this cause by the
plaintiffs' counsel below, who promised
to send the Record to affidavit before leaving
Chicago. Affidavit sent to the office of
said Counsel on Tuesday afternoon, but
he was not in his office - and affidavit
supposed he was engaged about the City
election - and could not be found that
day. He believes the record is
made out & ready & he has left word
with his partner - and has written
back to have it forwarded immediately.
Subscribed & sworn

April 18th 1861.

L. Heard Clk.

Walter B. Scates

238

H. O. Stone

v

Atwood et al

Affidavit for extension
of time to file answer

Filed April 18, 1881

L. Deland
clerk

H. B. Scates for
Plaintiff

This Indenture made this tenth day of January in the year of our Lord, one thousand eight hundred and fifty nine between Levi L. Atwood of the City of Chicago, County of Cook and State of Illinois party of the first part and Abram H. Corvett, Rosell M. Hough, and Newton Chapin, parties of the second part Witnesseth that the said party of the first part for and in consideration of the execution by the said Abram H. Corvett, Rosell M. Hough and Newton Chapin as sureties, with others of a certain Replevin Bond to John Gray Sheriff of the County and State aforesaid in a certain cause commenced the said party of the first part and against Benjamin Hendricks and Horatio O. Stone in the penal sum of Twenty four hundred dollars, and the liabilities of said parties of the second part thereon, and in further consideration of the sum of one thousand dollars in hand paid, the receipt whereof is hereby acknowledged do hereby grant, sell, convey and confirm unto the said parties of the second part, their heirs and assigns all and singular the

following described goods and chattels to wit,
One mahogany office desk - Seventeen
bedsteads, mattresses and bedding - two
Coffee urns - One Tea urn - Three silver
Castors - One Soup tureen - Six dining tables -
one Secretary - Sixty yards oil cloth - two
mahogany sofas - Twelve mahogany chairs -
Two mahogany Easy chairs - One mahogany
Rocker - Three marble top centre tables -
Three carving tables - two Carpet rugs - three
hundred yards Brussels Carpet - Two hundred
and twenty five yards wool Carpet - five
dozen table spoons - five dozen tea spoons -
three table carving forks and two knives -
five and one half dozen dining knives -
five dozen tea knives - Six chafing dishes -
four dozen ladies dining chairs - one
dozen arm chairs - Three dozen cane
seat chairs - Two lounges - six black
walnut washstands - four bureaus - one
mahogany washstand with marble top -
Two toilet stands - six looking glasses for
servants - sixty napkins - sixty towels -
Eight walnut washstands, sixty dining
Plates, fifty tea plates - fifty breakfast

Plates - nine dozen sauce dishes - fifty
Goblets - fifty nine glasses - four glass
dishes - Three cake stands - five butter
dishes - three dozen vegetable dishes -
five dozen small salt cellars - six large
salt cellars - three dozen pitches - six
celery dishes - Three pictures - six arm
chairs - one laundry stove and boiler &
pipe - one Cooking stove and pipe - one
large office stove & pipe - One parlor
stove and pipe - nine stoves and pipes -
ten Bedsteads and bedding - One office
Clock - One coffee boiler - six tin pans -
five large kitchen spoons - Thirty
pie plates - One Becker and Dean's Baker
oven - Two clocks - one marble top
pastry table - two tin milk buckets -
one refrigerator - one vegetable boiler -
five sauce pans - two steamers - two
cake turners - One coffee can - one
Ice Cream freezer - one dozen Crocks -
Two tables in laundry - One walnut leaf
table - one Kitchen cupboard - One honing
stone - One walnut extension table - Map
of the United States - One hat rack - one
easy chair - one walnut desk - one bed

lounge - two patent cut beds - six
mirrors - Said property being now in
the "Orient House" (so called) situate
on the South East corner of State
and Van Buren Streets in the city of
Chicago, County and State aforesaid
Together with all and singular the
appurtenances thereunto belonging
or in any wise appertaining - To
have and to hold the same unto
the said A. H. G. Overt, R. M. Hough
and N. Chapin, their heirs, executors,
administrators and assigns, to them
and their sole use forever -

And the said Levi S. Atwood for himself
and for his heirs, executors and administrators
does covenant and agree with the said parties
of the second part, their heirs, executors, administrators
and assigns that he is lawfully possessed of the said
Goods & Chattels - that the same are free from all
incumbrances except two certain Chattel mortgages
given thereon by said party of the first part
and that he will, and his heirs and executors and
administrators and assigns against the lawful
claims and demands of all persons, except

as to said two last mentioned Chattel mortgages
Provided nevertheless that if the said
Levi L. Atwood, his heirs, executors, administrators
or assigns shall well and truly pay or cause
to be paid unto the said Abram H. Covert,
Rosell M. Hough and Brewster Chapin, their
heirs, executors administrators or assigns
the said sum of One Thousand Dollars in
six months from the date hereof with interest
and shall save and keep harmless the said
Covert, Hough & Chapin their heirs, executors
and administrators upon the said Replevin
Bond herein before mentioned, then and
from thenceforth these presents and everything
therein contained shall cease and be
null and void -

And provided also that it shall be
lawful for the said Levi L. Atwood his
heirs, executors and administrators to retain
possession of the said granted property
and at his own expense to keep and have
and enjoy the same until he, the said
Levi L. Atwood or his heirs, executors, administrators
or assigns shall make default in the
payment of the said sum of money above
specified either in principal or interest

at the time or times and in the manner
hereinbefore contained, or unless
the said Abram H. Covert, Rosell M.
Hough and Newton Chapin shall
suffer diminution, removal or waste
for want of proper care, or if the
said party of the first part shall sell
or assign said goods and chattels or any
part thereof or if any writ issued from
any Court shall be laid on any part
of the above described goods and chattels,
or if any writ of fieri facias shall be issued
from any Court against the said party
of the first party, or if judgment shall
go against said party of the first part in
said Replevin cause against said Hendricks
and Stone that then and in any of the
aforesaid cases all of said money, with
principal and interest shall become due
and payable and the said party of the
second part his heirs executors administrators
and assigns agents or Attorneys or any of
them may elect thereupon to take possession
of the said property and for that purpose
may pursue the same or any part thereof

wherever it may be found and also
may enter any of the premises of the
said party of the first part with or
without force or process of law, wherever
the said goods and chattels may be
or be supposed to be, and search for
the same and if found, to take possession
of and remove and sell and dispose of
said property, or any part thereof at
Public Auction to the highest bidder after
giving five days notice of the time, place
and terms of sale, together with the description
of the property to be sold, either by
publication in some newspapers in the
City of Chicago, County and State aforesaid,
or by similar notices posted up in three
public places in the vicinity of such
sale or at private sale with or without
notice for cash or on credit as the said
A. H. Covert, R. M. Hough and W.
Chapin their heirs, executors, administrators
or assigns agents or attorneys, or any of
them may elect and out of the money
arising from such sale to retain first all
costs and charges for pursuing, searching,
taking, removing, keeping, storing, advertising,

and selling such property, goods, chattels
and effects and all prior liens together
with the amount due and unpaid
upon said indebtedness, and also sufficient
to secure said Covert, Hough & Chapin
upon said bond rendering the overplus
of the money arising from such sale
(if any there shall be) unto the said
Levi S. Atwood or his legal representatives

Witness my hand and seal the
day and year first above written

(Signed) Levi S. Atwood (Seal)

State of Illinois
Cook County 

I, Jasper A. Hoisington
Justice of the Peace in and for the said County
do hereby certify that this mortgage was
duly acknowledged before me by the above
named Levi S. Atwood this 10th day of
January A.D. 1859

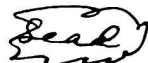
J. A. Hoisington (Seal)
J.P.

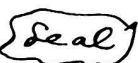
No 12032 Filed for record in the
Recorder's office of Cook County January
11. 1859 and recorded in book No 16 of
Chattel mortgages pages 163, 164, 165

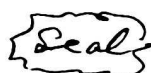
Know all men by these presents that
we, Abram H. Conant, Rosell M. Hough
and Newton Chapin for and in consideration
of the sum of one dollar to us in hand
paid by Horatio O. Stone, the receipt
whereof is hereby acknowledged and
other good and valuable consideration
to us from said Stone moving, have set
over, assigned and transferred and by
these presents do set over, assign and
transfer all our right, title and
interest in and to the within ~~mentioned~~
mortgage and the goods and chattels
therein mentioned.

As witness our hands and seals this
21st day of May, A.D., 1859

(Signed)

A. H. Conant 

R. M. Hough 

N. Chapin 

In Supreme Court of Illinois
Horatio O. Stone Third Division
" Appellant April T. 1861
Levi L. Atwood & al
Appellees

It is hereby stipulated and

agreed by and between the parties aforesaid
by their Counsel that the original
Chattel mortgage from Atwood to
Conant, Hough & Chapin, of which the
foregoing is a copy and the assignment
thereof to Stone thereon endorsed, of which
the foregoing is a copy, were introduced and
read in evidence on the hearing in
the Court below of the above entitled cause
and that the foregoing copies of said
mortgage and assignment thereof
may be used and taken in the Supreme
Court as a part of the record of this
cause - And it is further agreed that
a certain Chattel Mortgage from Atwood
to one Morgan on a few articles of
furniture in said Orient House and to
secure three hundred dollars, with the
satisfaction thereof thereon endorsed
on the 21st day of May, A.D., 1859, was
also introduced in evidence on said
hearing of said cause - And that the
foregoing with the evidence in the record
already filed in the Supreme Court is all the
evidence introduced and read on the hearing

of said cause -

Ottawa, April 30th 1861.

W. B. Seates for Stone

M. W. Fuller

for Defendants

Supreme Court
— 238-161
Copy of mortgage
At road to Covert
& als. & assignment
to Stone & Feltner
with stipulation of
Council

H. O. Stone

L. L. Atwood & al

Balance of record
omitted

Filed May 3^d 1861
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

HORATIO O. STONE

vs.

LEVI L. ATWOOD AND
ABRAM H. COVERT.

} *Appeal from Superior Court of Chicago.*

ABSTRACT OF RECORD.

Bill.

PAGE OF REC. BILL charges, that on the 17th day of May, 1859, there existed certain
1 matters of difference between the complainant, H. O. Stone, and one
Levi L. Atwood; that on that day the said Stone and the said Atwood,
by a sealed instrument in writing, appointed Permoyer L. Sherman and
Melville W. Fuller as arbitrators to hear the proof and allegations con-
cerning the matters submitted to them.

2 That by the said agreement of submission they submitted all matters
of difference to the award and determination of the said Fuller and
Sherman.

That on the 20th day of May, 1859, the said arbitrators made their
award and final determination concerning the matters of difference, de-
mands, and claims existing between said Stone and Atwood, and found,
among other things, as follows:

That H. O. Stone was indebted to said Atwood in the gross	
sum of	\$1,070 43
That there was a balance due H. O. Stone from said At-	
wood, of	2,123 04

3 That by said agreement of submission there was submitted to them a
difference concerning certain furniture in the Orient House, in the city
of Chicago, belonging to the complainant, on which said furniture the
complainant held a chattel mortgage to secure certain indebtedness owed
by said Atwood to said Stone, and embraced in the statement of said
Atwood's indebtedness to the said Stone so made by said arbitrators.

That by said articles of submission the said arbitrators were required
to first find the balance due from said Atwood to said Stone, upon a
statement of their respective accounts, which might be found correct.

That they were required by said submission to set aside certain par-

PAGE OF REC. cels of said furniture to be appropriated in payment of certain debts owed by said Atwood to Bowen Brothers, Messrs. A. R. and G. H. Miller, and Charles Tobey, of the city of Chicago, and amounting to about Three Hundred and Fifty Dollars, provided, however, that the indebtedness found due and owing to said Stone from said Atwood should first be paid in full, out of the furniture in said Orient House, as hereinafter mentioned; and such appropriation to said Bowen and others, should be made out of the residue of such furniture, if any there should be.

4 That by the terms of said submission it was agreed between the said Stone and said Atwood that the balance, after allowing all just offsets, should be paid and satisfied in full by said Atwood out of the furniture in said Orient House, in the following manner: The said arbitrators were to fix and determine the valuation of said furniture; whereupon the said Atwood was to deliver to said Stone, and said Stone was to receive at such valuation as aforesaid, so much of said furniture as should be necessary to pay in full the amount of such balance, so to be found in his favor as aforesaid; and said arbitrators were to set aside so much of the residue of said furniture at the valuation aforesaid as might be necessary to pay said debts due Bowen Brothers, A. B. and G. H. Miller, and Charles Tobey, if there should be sufficient; and as to the residue of said furniture, if any there should be, said Stone was to take and receive the same at the valuation to be fixed and determined as aforesaid, and give his promissory notes therefor in manner in said submission specified.

That said arbitrators, by the terms of said submission, did ascertain the balance due from said Atwood to said Stone, after allowing and deducting from the amount of the claims, debts, and demands of said Stone, the full amount of the debts, claims, and demands of said Atwood by way of offset, to be the said sum of Twenty-one Hundred and Twenty-three Dollars and four cents, (\$2,123 04), as herein before set forth, and awarded and determined that said Atwood was indebted to said Stone in the said sum of money over and above all claims.

5 That the said arbitrators proceeded to fix a valuation upon said furniture for the purpose of having the same applied upon, and in payment of said sum so due said Stone; also to be applied in such other way and manner as aforesaid; that in fixing said valuation the said arbitrators caused certain schedules to be prepared, showing, as near as might be, the cost price of said furniture, and of the different articles thereof; and as said furniture had been some time in use, certain per centages were agreed upon by and between said arbitrators, to be deducted from such assumed cost price, in order to arrive; as near as possible, at the present value of said articles of furniture, &c., as follows:

PAGE OF REC. The cost price of all the crockery, cutlery, &c., as appears by one of said schedules, was estimated at \$382 91, from which 12 per cent. was agreed to be, and was deducted, leaving the present value.....	\$336 96
The cost price of all the hardware, &c., as appears by another of said schedules, was estimated at \$385 93, from which 33 1/3 per cent. was agreed to be, and was deducted, leaving the present value.....	257 29
The cost price of stove ware, lamps, &c., as appears by another of said schedules, was estimated at \$84 37 1/2, from which 12 per cent. was agreed to be deducted, leaving.....	74 25
The cost price of one schedule furniture was estimated at \$78 75, from which a deduction of 30 per cent. was agreed to be, and was made, leaving present value.....	55 13
The cost price of another schedule of furniture was estimated, as appears thereby, at \$1,346 75, from which there was a deduction of 20 per cent. leaving.....	1,077 40
The cost price of the last schedule of furniture was estimated at the sum of \$1,220 03, and the rate of deduction on this schedule, in arriving at the present value of the articles therein mentioned, was by said arbitrators fixed at 20 per cent., which would leave the present value of said articles at.....	976 03

6 That since the said arbitrators have awarded and adjudged that the said Stone should take and receive the said furniture, except such as is set apart for other purposes, &c., according to the said schedules, at the valuation of Thirty-four Hundred and Twenty-two Dollars and eighty cents, (\$3,422 80), to be paid for by said Stone as hereinbefore stated, that is to say: that the said balance as so found due said Stone, should be deducted therefrom; and that said Stone should give his notes to said Atwood, or for him, for the residue, to wit: for the sum of \$1,299 76; such furniture being the residue after setting apart so much of said furniture as was necessary, at the valuation aforesaid, to pay the said Bowen Brothers, C. R. and G. H. Miller, and Charles Tobey, the sums justly coming to them.

7 That said Stone had not the opportunity of making any actual inspection of the figures and calculations upon which the several amounts before mentioned were obtained, and being satisfied with the basis and mode of calculation adopted, he made and executed his ten certain promissory notes, bearing date the 20th day of May, aforesaid, payable to the order of A. H. Covert, twelve months after date, for the sum of One Hundred Dollars each, and delivered the same to said Covert at the request of said Atwood on account of said supposed balance; promised to make his notes for the residue, to wit: for \$299 76, upon certain receipts being furnished to him, and to deliver the same to or for said Atwood.

8 That the said Stone received all of said furniture, goods and chattels from said Atwood, except such as had been set apart for Bowen Brothers, and others, and now holds the same.

That said furniture was set apart to Bowen Brothers, and others, was so set apart on the supposition that said Stone had been paid the amount of said balance.

That the said arbitrators, in valuing the furniture in the *last schedule*, found its value, with the agreed deduction of 20 per cent., to be \$976 03; but by mistake or accident, stated the said sum of \$976 03 to be \$1,976 03.

9 That said Stone was not aware of said mistake until after he executed the notes aforesaid and received the furniture into his possession.

PAGE OF REC. That the said Stone has a right to the whole of said furniture, including that so set apart for the payment of said Atwood's indebtedness to other persons; that so much of said furniture so set apart remains under the control of said Atwood and unappropriated, and, unless the said notes are delivered back to said Stone, he should hold the said furniture.

That said Atwood and Covert have applied one of the said notes so executed by said Stone to pay the said debt due to said Charles Tobey; and that they, or one of them, hold the residue of said notes for the benefit of said Atwood; that said Covert has knowledge of the consideration for which they were given; that the sum of money for which said
 10 notes were given is equal to the amount of said mistake in the valuation of said goods.

Complainant prays that said Atwood and Covert, their ~~debts~~ ^{notes} being waived, may make full answer to the matters hereinbefore charged; that the mistake in said award be corrected, and the award so corrected be carried into effect; that the said promissory notes which have not been negotiated be surrendered and cancelled; that said Stone may be permitted to execute and deliver to said Atwood, or for him, a note or notes for the true amount after the correction of said mistake; that said Stone may pay in money in lieu of executing such note or notes; that said Stone may have a lien upon said furniture as far as it may be necessary to protect said Stone, and that said Atwood and Covert may be restrained and enjoined from disturbing the possession of said Stone of said goods, and from transferring said promissory notes, or either of them.

Answer of L. L. Atwood.

19 The defendant admits there were differences between this defendant and said complainant, and that, on the 17th day of May, 1859, by articles of submission, Permyer L. Sherman and Melville W. Fuller were appointed arbitrators, to hear the proofs and allegations of the parties concerning the matters in said agreement submitted.

That said arbitrators proceeded afterwards, on the 20th day of May, 1859, to determine the matters of difference upon the basis specified in the articles of submission, and made their final award.

Admits that the arbitrators found this defendant indebted to the complainant in the gross sum of \$3,193 47, and that the balance due to said complainant was \$2,123 04, and says the said balance was declared due said complainant in consideration of a certain large amount due this defendant for the furniture in the Orient House, in the city of Chicago, which said amount was first ascertained by said arbitrators, and formed
 20 the inducement to the allowance of the said \$2,123 04 as due to the said complainant.

This defendant denies that there was any dispute or difference submitted to the arbitrators concerning certain furniture in the Orient House, owned by the said complainant, in the city of Chicago, on which

PAGE OF REC. he had a chattel mortgage; but he avers that the complainant held a chattel mortgage upon about half of the said furniture, which he claimed to have foreclosed before the execution of the articles of submission, and by these articles the said furniture in said Orient House was valued by the arbitrators, and formed no matter of difference in and of itself.

21 This defendant denies that the arbitrators were required, by the articles of submission, to *first* find the balance due from this defendant to said complainant upon an allowance of their respective accounts; but says no definite or particular order of proceeding was specified, the basis of their decision only being defined. That, in point of fact, said arbitrators did not first strike a balance between the parties, but *first* fixed their valuation of said furniture, and upon that valuation had their further proceedings under said articles of submission.

This defendant denies that the said arbitrators "thereupon" (to wit, after finding the balance due to complainant) were required to set aside certain parcels of said furniture to be applied in payment of certain debts owed by said defendant to Bowen Brothers, A. R. & G. H. Miller, and Charles Tobey, amounting to the sum of three hundred and fifty dollars, provided, however, that the indebtedness found due and owing from this defendant to said complainant should *first* be paid out of the furniture in said Orient House, and such appropriation to said Bowen Brothers and others should be made out of the residue of such furniture.

22 This defendant expressly denies that it was agreed between the parties that the balance, after allowing all offsets, found due the complainant, should be paid in full by this defendant out of the furniture in said Orient House; that is to say, that the said arbitrators were to fix the valuation of said furniture; whereupon the said defendant was to deliver, and the said complainant was to receive, at such valuation as aforesaid, so much of said furniture as should be necessary to pay in full the amount of such balance so to be found in his favor as aforesaid; and said arbitrators were to set aside so much of the residue of said furniture at said valuation as might be necessary to pay said debts due Bowen Brothers, A. R. and G. H. Miller, and Charles Tobey, if there should be sufficient; and said Stone was to receive the residue of said furniture at the valuation so to be fixed and determined as aforesaid, and give his promissory note therefor. But this defendant avers, that the arbitrators
23 were left wholly to their own discretion, the basis of their decision being defined in said articles of agreement generally to be, that said arbitrators should strike a balance between said parties, and, for the sake of convenience, should set aside certain furniture for the payment of said Bowen Brothers, A. R. & G. H. Miller, and Charles Tobey by this defendant; that the said arbitrators should estimate and fix the value of the furniture then in said Orient House; and that said complainant should take the same at said valuation of this defendant, and in payment therefor be credited with whatever amount, if any, might be found to be due to him from this deft., and pay the value to the deft. by giving his notes therefor, payable in 12 months from the date thereof, to wit, the date of said award. But this defendant denies that the said articles of submission do prescribe, or were ever intended to prescribe, the order in which said arbitrators were to proceed, or that this defendant was first to deliver to said

PAGE OF REC. complainant, and said complainant was to receive, an amount of furniture sufficient to pay him, said complainant, in full, and then said arbitrators were to set aside an amount of furniture for the payment of Bowen Brothers and others, and the residue of said furniture was then to be delivered to said complainant, who was then to receive and pay for the same as aforesaid; but this defendant says that said arbitrators were to fix a valuation upon said furniture, and, if they found there was enough there, to set aside an amount thereof to this defendant sufficient to give him immediate means wherewith to pay Bowen Brothers and others, and the complainant was to take all of the residue of said furniture, and to pay this defendant in full therefor, according to said valuation, said complainant being credited with whatever amount might be due him from said defendant.

Admits that said arbitrators determined the balance due from this defendant to said complainant to be the sum of two thousand and one hundred and twenty-three 04-100 dollars, hereinbefore mentioned, and so awarded; but they did not find said sum due until after they had estimated and fixed the value of said furniture, and said amount was so fixed wholly in consideration of the amount of said furniture as previously found by said arbitrators.

This defendant denies that said arbitrators, after finding said balance, proceeded to fix a valuation upon said furniture; but says that they first agreed upon said valuation, and afterwards upon the amount of said indebtedness.

25 This defendant denies that the said arbitrators caused certain schedules to be prepared, showing the cost price of said furniture and of the different articles thereof, and denies that certain per centages were agreed upon by and between said arbitrators to be deducted from such assumed cost price, in order to arrive at the present value of said articles of furniture, &c.; and denies that any of the gross amounts, or deductions therefrom, of the said schedules set forth in said bill of complaint were ever adopted or fixed by said arbitrators as alleged, but says it was understood between the parties before the execution of the articles of submission that said arbitrators should take the cost price of said furniture at the time of its purchase, using the bills of purchase as evidence of the price paid for the articles specified therein, and from said cost price deduct the present value thereof, and should also obtain the evidence of boarding house and hotel keepers as to what the ordinary wear and tear of said furniture would be in a house similar in character to the Orient House during the time this had been in use, and that the difference between such ordinary wear and tear, and the actual wear and tear of this furniture, (which actual wear and tear would be shown by the difference 26 between the present value and the cost price thereof,) was to be allowed this defendant as part of the damages sustained by him in the seizure and removal of said furniture by said complainant, on or about the 5th day of January, A. D. 1859.

This defendant says that said arbitrators did call in certain dealers in furniture to estimate the cost price of said furniture, if purchased new at the time of said arbitration, and to estimate a per centage to be de-

PAGE OF REC. ducted for the wear and tear which said furniture had actually undergone. That said Fuller, the arbitrator on the part of the defendant, stated to said Sherman explicitly that the price such furniture could be purchased for was not to be found by them, but what the actual cost was; that said Fuller should not consider the opinion of dealers as to the cost of new furniture as binding upon him, and that he would call other
 27 dealers in furniture to get the present value of said furniture, and ascertain the ordinary wear and tear of the same kind of furniture.

This defendant admits that certain schedules were prepared and annexed to the award; but he denies that said schedules and prices affixed were binding upon said arbitrators. Also, he denies that any calculations were made on the basis of said schedules.

28 This defendant says that said Sherman offered to fix the valuation of said furniture at \$3,779.51, and that said Fuller accepted the proposition without examining the calculations; and after such valuation they set
 29 aside a portion of said furniture for the payment of Bowen Brothers and others to the amount of \$356.71, leaving a balance of \$3,422.80.

This defendant says, that after deducting the amount due said complainant from this defendant, it left a balance due this defendant of \$1,299.76 as alleged; and that the said balance of \$2,123.04, due said complainant, was found after fixing the valuation of said furniture, and
 30 that the amount of said furniture was taken into consideration in making up the balance, and formed a chief element therein.

This defendant denies that said complainant had not full opportunity to examine the calculations mentioned in the award, and says that except the figures in the award there were no calculations for the inspection of parties.

31 This defendant admits that certain schedules containing lists of the articles to be delivered up to said complainant were annexed to the award, simply for the purpose of enabling the complainant to take possession of said furniture, and had not been regarded by said arbitrators in making up said valuation.

This defendant denies that he ever stated that the present valuation was made up as in said bill alleged, and says that said furniture cost \$4,200, and that by reason of Fuller's acceptance of the offer made by said
 32 Sherman, no witnesses were called in behalf of this defendant in regard to the cost or value of said furniture—its present value, &c.

This defendant says that said arbitraiors, after fixing the value of said furniture, proceeded to find and strike the balance between said complainant and this defendant.

That this defendant owed said complainant.....	\$3,193.47	
That said complainant was indebted to this defendant as follows.....	1,070.43	
Leaving a balance due said complainant of.....		\$2,123.04

This defendant says, upon information and belief, that this balance was made so large in consideration of the large amount found to be due this defendant for the furniture as aforesaid; that said arbitrators allowed said complainant \$368.43 more than he was entitled to, and disallowed

PAGE OF REC. claims of this defendant of upwards of seven hundred dollars, thereby
 34 making a difference of one thousand dollars in favor of said complainant.

This defendant charges upon belief that said abitrators agreed to allow this defendant about \$1,300 over and above everything, and struck the balance of \$2,123.04 with a view of bringing out about \$1,300 due to this defendant after said complainant should take said furniture, and that they were guided by no particular system in arriving at said balance, and paid no great regard as to the items disallowed on one side or the other, and further, that the balance of \$2,123.04 was not struck upon an allowance of items found to be correct.

35 This defendant says that, on the 9th day of June, A. D. 1858, said complainant advanced the sum of \$1,000 to this defendant to purchase furniture for the Orient House, and received back a chattel mortgage upon certain furniture therein described, and afterwards placed in the Orient House; and that the nominal consideration of said mortgage was three thousand dollars, and that said complainant held the defendant's three notes for one thousand dollars each, but only one thousand dollars was actually advanced on said mortgage

This defendant says that in the fall of A. D., 1858, he being the lessee of said Orient House, a writ of *fiery facias* against this defendant was levied on the furniture in the said Orient House as the property of this defendant, whereupon said complainant foreclosed his said mortgage, and replevied the said goods, &c., and got judgment in said replevin
 36 suit, but allowed this defendant to remain in possession.

This defendant says that, he kept adding furniture to that in said Orient House from June, 1858, until January, 1859, when said furniture exceeded in value \$4,000, and about half of the sum was not included in said complainant's mortgage at all; and further that he had devoted nearly the entire proceeds of his business in paying for said furniture, and had closed all accounts except those of Bowen Brothers, C. Tobey, and A. R. & G. H. Miller, amounting to about \$350.

This defendant says that in and by the lease the complainant agreed to occupy rooms 18 and 19 in the Orient House, at \$30 dollars per month, for six months every year, and that said complainant left said rooms after two months' occupancy. Also, the complainant, while occupying the said rooms, amused himself with ordering repairs about the building without consulting this defendant.

This defendant says, that in Dec., A. D. 1858, said complainant wished this defendant to exclude or dismiss several individuals boarding at the Orient House, from said house, as they had given offence to said complainant by inviting his lady to a social gathering held in said house, and neglecting to invite said complainant. This defendant refused to dismiss said boarders, whereupon the complainant threatened to foreclose said chattel mortgage, and on the 5th day of January, 1859, levied a distress warran t upon the furniture in said Orient House; also foreclosed his said mortgage and seized all the furniture in said house,—and further says there was no rent at that time due, although this defendant was
 38 indebted on other accounts, but had paid rent to date.

PAGE OF REC. This defendant states that none of the conditions of said mortgage had at that time been broken by this defendant; that the same was not due; that the only breach was the levy of the *fiere facias*, which took place three months before said 5th January, A. D. 1859, and said complainant had allowed said defendant to remain in possession after such levy, and had no legal right to foreclose said mortgage, or levy said distress warrant, and that he levied said warrant and seized the furniture maliciously, on account of the imaginary slight hereinbefore stated.

This defendant says that he replevied said furniture, but that it was all more or less injured, which injury was to have been allowed this defendant.

39 This defendant commenced an action of trespass on the case, in January, 1859, against said complainant for damages, in addition to the damages claimed by him in the replevin action already commenced, and in the month of February, A. D. 1859, was about to file a bill in Chancery against said complainant to settle the amount actually due said complainant for borrowed money, and to get back the notes of this defendant, given for usurious interest. But this defendant was particularly requested by said complainant not to file such bill as he would settle amicably.

40 This defendant says he was kept in said Orient House from the last part of February to the 17th of May, 1859, by the representations of the complainant that he was willing to arbitrate, &c., and ought not to have been charged rent for that time; that he paid the rent to the 1st March, 1859.

This defendant says, that at the time the Orient House was broken up he was making money, with a house full of paying boarders, and afterwards could not make running expenses, and was compelled to pay out over \$200 in cash, and \$50 worth of furniture was utterly destroyed. The best rooms in the house were unoccupied for four months, by the conduct of the complainant, and at a great loss to this defendant.

41 This defendant says that by the articles of submission this defendant waived all claim to exemplary damages, but was to be allowed all the actual damage sustained by the seizure of the furniture.

This defendant says that he preferred a claim of \$749.13 for the damage actually sustained by him, for money paid out, &c., expecting, however, an allowance of two or three hundred dollars as damages for the actual wear and tear of the furniture aforesaid, and that he was allowed \$171 for the cash paid out, and no one was examined on this defendant's behalf, thus making a difference of at least One Thousand Dollars in favor of said complainant, and against this defendant; and
42 that said arbitrators did this with the design of bringing the items of account to the sum of \$1,300, to be paid to this defendant.

Admits that said complainant executed his ten certain promissory notes bearing date the 20th day of May, aforesaid, payable to the order of A. H. Covert, twelve months after date, for the sum of One Hundred Dollars, and delivered the same to said Covert in payment for the assignment

PAGE OF REC. of a certain mortgage by said Covert to said complainant, and that said complainant promised to make his notes for the residue \$299.76, upon certain receipts being furnished him, but denies that they were to be delivered to or for this defendant.

- 43 This defendant admits the receipt by said complainant of said furniture under the award, except such portion as was set apart to this defendant, to enable him to pay Bowen Brothers, Messrs. Miller and C. Tobey; said goods were not set apart to Bowen Brothers and others, but to this defendant, to enable him to pay them.

This defendant denies that said arbitrators, in valuing the said furniture in the last schedule annexed to said award, set down the estimated cost prices, and deducted therefrom a certain per centage; and further denies that in making such deduction there was an accident or mistake to the amount of One Thousand Dollars; and further denies that the complainant had a right to the *whole* of said furniture, including that so set apart for the payment of the indebtedness of this defendant.

- 45 This defendant denies that said furniture, so set apart, remains under the control of this defendant; but this defendant has sold said furniture, 21st May, A. D. 1859, to Melville W. Fuller, of the city of Chicago, and received payment therefor, and before such sale it was agreed between the parties that the debts due said Bowen Brothers, and others, should be otherwise satisfied.

This defendant denies that complainant feared lest this defendant would pass over said furniture, so set apart to said persons, to wit, to Bowen Brothers, and others, as by agreement with said complainant, said debts were to be otherwise satisfied.

This defendant says it is true that said defendant, Covert, applied one of the notes so executed by said complainant to pay a debt due said Charles Tobey, and that it was with the consent of the complainant, who received the receipt of said Tobey; that this defendant does not hold said notes, nor does any one hold them for his benefit; that they were made payable to said Covert for good and valuable consideration.

This defendant denies that said Covert had full knowledge of the consideration for which said notes were given by said complainant, and that the sum for which they were given is equal to the amount of the alleged mistake; but this defendant knew at the time of making said award by said arbitrators, nothing more about said notes or their consideration than that such award had been made, and the sum of \$299.76 was to be paid this defendant by said complainant, on his notes in twelve month's time, but was ignorant of the amounts otherwise found by said arbitrators.

- 48 This defendant did not know, at the time of the making of said award, by what calculations the said arbitrators arrived at the result specified in said award, and he denies upon information that there was any error
49 committed by said arbitrators therein, as he has already in detail and specifically denied the same.

PAGE OF REC. This defendant says that upon the seizure of said furniture under a
 48 distress warrant and chattel mortgage, by said complainant, on the 5th day of Jan., A. D. 1859, as aforesaid, that Russell M. Hough, A. H. Covert, N. Chapin, and others, became security on a replevin bond to enable this defendant to replevy said furniture, and that, on the 10th day of Jan., A. D. 1859, this defendant executed and delivered a chattel mortgage upon the furniture aforesaid to said Hough, Covert and Chapin, to secure them from loss on said bond, and to secure to said Covert and Chapin the One Thousand Dollars which had been advanced by them to this defendant.

This defendant says that at the time of said submission and award the said chattel mortgage to said Hough, Covert, and Capin, was wholly unsatisfied, and was the principal cause which induced this defendant to consent to an arbitration.

This defendant says that by the award, made on the 20th day of May, A. D. 1859, it was provided that said complainant should take possession of said furniture, with the exception of certain articles expressly set aside to this defendant, for the payment of the claims of C. Tobey, A. B. and
 51 G. H. Miller, and Bowen Brothers; that possession of said Orient House should be given up and leases cancelled, and said complainant should pay this defendant the sum of \$1,299.76, giving his notes therefor on twelve months, that being the amount due this defendant over and above all the claims of complainant.

This defendant says that he had also begun an action of Trespass on the case against said complainant for damages, and, although it was not required by the award, he dismissed said action, and complainant dismissed his action of Distress for rent, and judgment was rendered, by consent, in favor of this defendant in his replevin suit, with one cent damages.

This defendant believes the balance found his due by said arbitrators the sum of \$1,299.76, was much less than should have been paid by said complainant, after receiving all of said furniture; but this defendant, by
 52 reason of the premises and the debts due said defendant, Covert, and said Chapin, was induced to assent to said award.

This defendant says that he surrendered possession of said Orient House to said complainant, and delivered to said complainant, all of the furniture specified in said award, and the schedules annexed thereto, the mortgage of said Hough, Covert & Chapin being unpaid.

This defendant says that the said arbitrators certified on said 21st day
 53 of May, 1859, to the full performance of all the conditions of said award by the parties thereto, and that the bonds given, conditioned on the performance of said award, were surrendered and cancelled on said 21st day of May, 1859.

This defendant says that he remained after the making said award, in the said Orient House for a few days, at the request of said complainant, said complainant keeping, at the same time, possession through his agents.

PAGE OF REC. This defendant says that the complainant wished the lien and mortgage of said Hough, Covert & Chapin, upon said furniture, to be assigned to him, and that he might himself pay and satisfy said claim of said mortgagees; and that he might deduct the notes used in so doing from
 54 the amount to be paid to this defendant; and that accordingly said complainant executed his ten certain promissory notes for one hundred dollars each, payable to the order of said defendant, Covert, as one of, and representing the said mortgagees, and delivered the same to him in payment of the mortgagee's claim and purchase of said mortgage, and that the said mortgage was assigned to said complainant; and that there remained to be given this defendant the notes of said complainant to the amount of \$299.76, and that it was arranged between the parties that
 55 said Covert should devote a portion of said notes in payment of said Bowen Brothers, A. B. & G. H. Miller, and C. Tobey, and that said defendant, Covert, should receive said balance of \$299.76 after adjusting said claims; and that this defendant, to protect said Covert from loss, agreed to convey to him \$125 worth of furniture not included in said award, and complainant gave said Covert a bill of sale therefor.

This defendant says that said Covert did endorse and deliver to said Tobey one of said complainant's notes in settlement of his claim, and took said Tobey's receipt therefor, and delivered said receipt to said complainant.

This defendant avers that said Covert took the receipt of defendant's attorney for the delivery of said complainant's notes for said balance of
 56 \$299.76 to him, as soon as the receipts in full of Bowen Brothers, A. R. & G. H. Miller should be delivered to him by said Covert.

This defendant believes that said bills of said A. R. & G. H. Miller and Bowen Brothers would have been paid by said defendant Covert, had he not been prevented, by the injunction of this court, from disposing of said complainant's notes.

This defendant says that said furniture so set apart by the subsequent agreement of parties as aforesaid, belonged to this defendant, and was not to be used in the payment of said claims.

This defendant denies all combination and confederacy, &c.

Answer of Abram H. Covert.

58 This defendant believes that on the 17th day of May, A. D. 1859, said complainant and said defendant Atwood, by an instrument in writing, appointed P. L. Sherman and Melville W. Fuller as arbitrators to decide certain matters of dispute between them; and that said arbitrators
 59 found said Atwood indebted to said complainant in a balance of \$2123.04.

60 This defendant has never examined the articles of submission; but denies upon information that the arbitrators were required by said articles to proceed, or did in fact proceed, as alleged in said bill of complainant.

This defendant, upon information, admits that the aforesaid balance was awarded to said complainant; but denies that a valuation was thereupon fixed upon certain furniture in the Orient House, in the city of

PAGE OF REC. This defendant says that the complainant wished the lien and mortgage of said Hough, Covert & Chapin, upon said furniture, to be assigned to him, and that he might himself pay and satisfy said claim of said mortgagees; and that he might deduct the notes used in so doing from
 54 the amount to be paid to this defendant; and that accordingly said complainant executed his ten certain promissory notes for one hundred dollars each, payable to the order of said defendant, Covert, as one of, and representing the said mortgagees, and delivered the same to him in payment of the mortgagee's claim and purchase of said mortgage, and that the said mortgage was assigned to said complainant; and that there remained to be given this defendant the notes of said complainant to the amount of \$299.76, and that it was arranged between the parties that
 55 said Covert should devote a portion of said notes in payment of said Bowen Brothers, A. B. & G. H. Miller, and C. Tobey, and that said defendant, Covert, should receive said balance of \$299.76 after adjusting said claims; and that this defendant, to protect said Covert from loss, agreed to convey to him \$125 worth of furniture not included in said award, and complainant gave said Covert a bill of sale therefor.

This defendant says that said Covert did endorse and deliver to said Tobey one of said complainant's notes in settlement of his claim, and took said Tobey's receipt therefor, and delivered said receipt to said complainant.

This defendant avers that said Covert took the receipt of defendant's attorney for the delivery of said complainant's notes for said balance of
 56 \$299.76 to him, as soon as the receipts in full of Bowen Brothers, A. R. & G. H. Miller should be delivered to him by said Covert.

This defendant believes that said bills of said A. R. & G. H. Miller and Bowen Brothers would have been paid by said defendant Covert, had he not been prevented, by the injunction of this court, from disposing of said complainant's notes.

This defendant says that said furniture so set apart by the subsequent agreement of parties as aforesaid, belonged to this defendant, and was not to be used in the payment of said claims.

This defendant denies all combination and confederacy, &c.

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 59 found said Atwood indebted to said complainant in a balance of \$2123.04.

60 This defendant has never examined the articles of submission; but denies upon information that the arbitrators were required by said articles to proceed, or did in fact proceed, as alleged in said bill of complainant.

This defendant, upon information, admits that the aforesaid balance was awarded to said complainant; but denies that a valuation was thereupon fixed upon certain furniture in the Orient House, in the city of

PAGE OF REC. Chicago, to be applied in payment of said balance of \$2123.04; but says
 61 that said valuation was first fixed, and afterwards the balance determined.

This defendant denies that certain schedules were prepared showing the cost price of said furniture, and that certain per centages were to be deducted from such cost price, or that they formed a basis, or were adopted by said arbitrators; but says that it was agreed before the execution of said articles of submission that the cost price of said furniture at the time of its purchase should be ascertained, and the ordinary wear
 62 and tear, but not the actual wear and tear of said furniture, should be deducted therefrom, and the balance taken as a correct valuation, and says that was the course pursued.

This defendant, upon information, admits that it was awarded that said complainant should take said furniture, except certain parcels set aside to said Atwood in order to give him the means to pay certain debts of certain parties, to wit: Bowen Brothers, C. Tobey, A. R. & G. H. Miller, and to pay for the same \$3422.80, after deducting therefrom the sum subsequently found due said complainant from said Atwood,
 63 which left a balance of \$1299.76 due.

This defendant charges, upon information, &c., that there were no other figures or calculation made by said arbitrators at all, upon which the aforesaid amounts were obtained, other than those contained in the award.

This defendant says there were certain schedules annexed to the award in order to enable the complainant to take possession of certain articles of furniture, and for no other purpose.

This defendant admits that on the 20th of May, A. D. 1859, the said complainant made, executed and delivered his ten certain promissory notes, bearing even date, payable to the order of this defendant, twelve months after date, for the sum of one hundred dollars each, on account of the balance to be paid by said award according to said award; but
 64 denies that they were given to, or for said Atwood.

This defendant believes that said complainant took, and still holds all said furniture, except such as had been set apart to said Atwood.

This defendant charges that said furniture was so set apart to enable Atwood to pay said Bowen Brothers and others, before any balance had been found due to said complainant.

This defendant, upon information, &c., denies that any calculations were made by said arbitrators, as alleged in said bill, by which a mistake of one thousand dollars occurred in favor of said Atwood and against
 66 said complainant.

This defendant has never seen or read the articles of submission, and has no information as to said complainant's right to the whole of said furniture, including that so set apart as aforesaid; and admits that said Atwood has sold and disposed of the said furniture so set apart as aforesaid, and has not applied the same to the payment of the said debts due Bowen Brothers and others.

PAGE OF REC. This defendant denies that the complainant, at the time of filing of
 66 his said bill of complaint, feared lest said Atwood would pass over said furniture to said Bowen Brothers and others; but charges that said complainant was a party to an agreement by which this defendant was to pay said claims with said complainant's notes.

This defendant admits that he applied one of said notes in payment of said debt due said Charles Tobey, and took his receipt therefor; but that said complainant was a party to the arrangement, consenting to it, and receiving said Tobey's receipt.

This defendant admits that he now holds the residue of said notes,
 67 but denies that he holds the same for the benefit of said Atwood, but that he took and received the same for good and valuable consideration, in payment for the assignment by himself, R. M. Hough and Newton Chapin, to the said complainant, of a certain chattel mortgage held by them as hereinafter stated, and that he held the same for the benefit of himself and said Chapin.

This defendant denies that at the time of the filing of said bill of complaint he had knowledge of the consideration for which said notes were given, and that the sum for which they were given is equal to the amount of said mistake in the valuation of said goods; and avers that he only knew that said complainant was to pay said Atwood the sum of \$1299.76, and take all the furniture at the valuation of \$3422.04, and that certain
 68 furniture was set aside to give Atwood means for the payment of Bowen Brothers and others.

This defendant further says that so far from supposing that an error was committed by said arbitrators in estimating the value of said furniture at the sum of \$3422.80, this defendant believes the said furniture well worth that sum; and this defendant denies, upon belief, that there
 69 was any such error committed; on the contrary thinks the amounts allowed to said Atwood as altogether too small.

This defendant denies any knowledge of such error at the time of the execution of said notes.

70 This defendant supposed the settlement by the award satisfactory to said complainant, and was so told by said complainant.

This defendant says that in the month of June, A. D. 1858, said defendant Atwood gave a chattel mortgage on certain furniture therein described for the nominal consideration of three thousand dollars to said complainant; and that on the 5th day of January, 1859, said defendant Atwood had purchased and placed in the Orient House \$4000 worth of furniture, a portion of which was not included in said complainant's chattel mortgage.

71 This defendant is informed that said complainant, being angry, levied a distress warrant, for arrears of rent, upon the furniture in said Orient House, and foreclosed said mortgage.

This defendant charges that said complainant had no right to foreclose said mortgage, or levy said warrant.

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This defendant says that said defendant Atwood offered to him Russell M. Hough and Newton Chapin as security if they would go upon a replevin Bond, to enable him to replevin said goods so levied upon; that he would give them a chattel mortgage upon the furniture in said Orient House; and this defendant, R. M. Hough and N. Chapin did sign a replevin bond as sureties of said Atwood, in the penal sum of \$2000, on 72 10th January, A. D. 1859, and also this defendant advanced to said Atwood a sum of \$800 on the strength of said security, and said Chapin assumed the payment of \$200.

This defendant says that on the 10th January, A. D. 1859, said defendant Atwood executed and delivered to this defendant, R. M. Hough and N. Chapin, as security for said \$1000 so advanced, and to protect the mortgagees from loss by reason of their liability on said replevin bond, a chattel mortgage upon all the furniture in said Orient House.

This defendant says that the said chattel mortgage of this defendant, 73 Hough and Chapin, still remained unsatisfied at the time the said award was made.

This defendant says that said complainant wished to purchase said mortgage instead of allowing said Atwood to do so, leaving a balance of \$299.76 to be paid said Atwood.

This defendant says that said mortgage was delivered to said complainant, duly assigned and set over to him by this defendant, said Chapin and Hough, for which said complainant made his ten certain promissory notes payable to the order of this defendant.

This defendant charges the fact to be that this defendant was, and is, the *bona fide* of said notes for good and valuable consideration. Eight 74 of said notes belong to this defendant and two to said Chapin.

This defendant says that complainant consented that this defendant should settle the claims of said Bowen Brothers and others, and receive the balance, \$299.76, thus leaving said Atwood free to dispose of the 75 furniture set apart to him.

This defendant further says, that he endorsed one of the said notes over to Charles Tobey, and settled his bill, and handed the same receipted in full to said complainant, or his attorney; and it was also agreed by complainant that this defendant should receive the balance of said the \$299.76 upon the delivery of the bills of said Bowen Brothers, and A. R. & G. H. Miller receipted in full, and said Atwood thereupon conveyed to this defendant \$125 worth of furniture, and the said complainant conveyed to him his interest therein under the said mortgage.

This defendant says that he was absent from the city and State for a few days after the making of the award, and was prevented from settling 76 said claims of Bowen Brothers, and A. R. & G. H. Miller, by the writ of injunction of this Honorable Court; also, for the same reason, he has not passed over to said Chapin the two notes for one hundred dollars each, given him by complainant.

This defendant denies all combination and confederacy, &c.

77 Motion made to dissolve injunction.

78 Stipulation filed 15th July, A. D. 1859.

80 Replication filed for plaintiff 10th day of June, A. D. 1853.

Deposition of *Albion R. Miller*, taken for the complainant:

83 Am acquainted with the parties; know Messrs. Sherman and Fuller,
May 20th, 1859; Mr. Sherman asked me to appraise the hardware, stoves,
84 &c., in the Orient House; Mr. Fuller was there; Mr. Sherman said he
wished the original cost of the articles; my appraisal is attached to the
awards, and marked Exhibit number (1); it was given to the parties;
85 the basis was the original cost; Exhibit number (2) was sent to me; I
86 thought 33 1-2 per cent. discount should be taken off.

Cross-Examination.—I think I went at noon; I saw the hardware in
different parts of the house; my book keeper wrote it (appraisal) down
87 as I read it; some stoves were in use.

Deposition of *Arthur G. Burley*, taken for the complainant:

88 I know the complainant and Mr. Atwood; I went in the evening, and
took a list of the goods in my line; Atwood, Fuller, and Sherman went
with me; I took the value as I should sell it, of crockery, dishes, plates,
pitchers, &c., and discounted 12 1-2 per cent. for the damages, break-
89 ages, and tare of the goods; my report (Exhibit 3), shows the value, with-
out the reduction of 12 1-2 per cent.; I know the value of the goods
90 appraised, and the estimate with the deduction would show a fair
valuation; I gave my report to some of the parties; the paper marked
(Exhibit 4) is in my hand writing.

Cross-Interrogatories.—The per cent. of deduction was fixed upon as
91 the average—the average of the actual wear and tear; the basis of val-
uation was what we could sell the goods for at the time; I sent up the
paper marked (Exhibit 4) the morning after my examination of the
goods.

Deposition of *E. F. Hollister*, taken for the complainant:

I reside in Chicago, and know complainant and defendant Atwood;
92 I was applied to by Mr. Atwood, about the 20th of May, 1859, to esti-
mate the value of certain carpeting, upholstery, &c., in the Orient
House, and made an appraisement—paper marked Exhibit number 5;
93 there was a deduction, in the average, of 20 per cent.; my estimate was
the value if new, with deduction of wear and tear; I returned the paper to
Sherman and Atwood; both parties understood what I was to do; made
the appraisement under direction of Sherman and Atwood; think
94 Fuller knew I was requested to make the appraisement.

Cross-Examination.—Was applied to the morning the appraisement was
taken; there was a depreciation of 5 per cent., in 1859, on such goods
95 from what they were in 1858; the appraisement represents the value of
the goods—what they could have been purchased for new, May 20th,
A. D. 1859.

Direct Examination Resumed.—A portion were valued from the bill
of purchase, and the balance from my own knowledge of the worth of
96 goods when new; I saw one bill of purchase.

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Deposition of *Caleb Morgan*, taken for the complainant;

Reside in Chicago; occupation, furniture dealer; know Fuller and Sherman; about the 20th of May last, was requested to make an inventory of furniture, &c., in the Orient House, in the city of Chicago; the paper marked Exhibit number 5, is my inventory; I appraised the furniture at its worth at the time; my impression now is, that it was the value of the goods when they were new; 20 per cent. deduction was made for the wear and tear; it represents the value of the goods, as I appraised them, when the goods were bought and purchased new; the amount of said footings are \$823.25.

100 *Cross-Examination.*—The minute of the deduction of 20 per cent. on the Exhibit number 5, is not in my writing; there was a great difference in the price of new furniture between June, 1858, and May, 1859; there was a reduction of 25 per cent.; the reduction on cottage bedsteads was about 12 1-2 per cent.; Mr. Fuller was there, I think; have no distinct recollection further than I have stated; the 25 per cent. was meant to cover the damages to the furniture; my appraisal was not what the furniture could have been bought for in May, 1859.

Deposition of *Penoyer L. Sherman*, taken for the complainant:

102-3-4 Am of lawful age; live in Chicago, and know the parties; know of Levi L. Atwood and Horatio O. Stone making an agreement in writing, and executing it to arbitrate their differences, and I have it here; it has been marked Exhibit number 6; the arbitrators named in it were M. W. Fuller and P. L. Sherman; We made an award on the 20th of May, 1859; it is in my possession, and was made by said Fuller and Sherman; signatures are in their handwriting; it is made up of an account between the parties; there is a schedule of the hardware and stoves, marked Exhibit one; also of furniture marked Exhibit seven; also an Exhibit marked number eight (8), mostly of earthenware; also of furniture, marked Exhibit number five (5); also of crockery, marked Exhibit number three (3); also of upholstery, beds, carpets, &c., marked Exhibit 4, and made by Hollister.

105 Exhibit 1 was made by A. R. Miller, at the instance of the arbitrators; the price, as carried out in said schedule, was the value of said property at the time, if new; on the Exhibit is the estimate of said Miller, of the deduction for wear and tear, in handwriting of Sherman; Exhibit 7 was made by Charles Tobey, at the instance of the arbitrators; the price, as carried out in Exhibit 7, is the value of the property, if new; said Toby's estimate of 30 per cent. deduction for wear and tear, endorsed in Sherman's handwriting on said Exhibit; Exhibit eight (8) was made by M. W. Fuller, at the instance of the arbitrators, for the purpose of getting a list of the articles and their value at the time, if new; thirty per cent. deduction, in Sherman's handwriting, endorsed on said Exhibit; as to
106 Exhibits 5, and 3 and 4, number 5 was made by Caleb Morgan; number 3 by A. G. Burley; number 4 by Hollister, and were all made for the purpose of getting lists of the articles and their value; memorandums 5, 3 and 4, in handwriting of Sherman, of the deduction for wear and tear;
107 correctly speaking there is no memorandum on Exhibit 8.

PAGE OF REC.

108-9

The schedules are attached to the award, and marked one, eight, seven, five, three, and four, and have not been changed since said award was made. According to the schedules, assuming the footing up of each schedule to be correct and the deductions made therefrom for wear and tear, the value of said furniture was not \$3422.80, but \$2422.80. *There was a mistake made in making up said award concerning the value of said furniture.* In making the deduction of 20 per cent. for wear and tear from the amount of Exhibit four (4) *a mistake of one thousand dollars was made in computation.* It was made at the time of getting the value of the furniture in order to know the amount of balance to be paid by said Stone to said Atwood. It was made at the time of the finding the award at the Orient House in Chicago. The amount, as footed up in Exhibit four (4), is in figures \$1220.03, and the deduction from it of 20 per cent. was \$244. *In making the subtraction of \$244 from \$1220.03, the result was found to be \$976.03, while it should have been \$976.03.* I have the paper in my possession upon which are the figures as originally made by P. L. Sherman, marked Exhibit nine. When these figures were made Mr. Fuller was sitting by my side figuring to get the value of the property. The sum of \$1976.03 was reckoned into the award instead of the sum of \$976.03, and was reckoned to designate the value at that time of the property, and articles of furniture contained in Exhibit four after deducting 20 per cent. for wear and tear. *The same was not correct, and should have been \$976.03, or one thousand dollars less.* I know Abram H. Covert. He knew of the arbitration. Said Stone executed, and delivered to me to carry out the award on his part, his ten promissory notes for one hundred dollars each, payable to the order of Abram H. Covert in one year. They were delivered to Atwood, or some one whom he appointed, to take them on the evening of the finding of the award. The consideration for said notes was the carrying into effect of said award by said Atwood, the surrender of the lease of the said Orient House, and giving possession thereof peaceably and quietly, and the transfer of the furniture embraced in said schedules.

110-11-12

113

Covert knew the consideration for which the notes were given, and they were handed to him by Atwood's direction on the evening of the carrying out of the award. M. W. Fuller was present at the delivery of the notes; also a Mr. Boole, George Higgins, Atwood, Covert, and myself. *There was no consideration between Stone and Covert.* The notes were made payable to Covert's order, to place them beyond the reach of Atwood's creditors. Covert transferred one of the said notes, at the time, to Charles Toby, to pay a debt due said Toby from Atwood, and took Toby's receipt therefor. Covert did not claim any interest in the notes. Claimed that Atwood owed him something. Was to use some of the notes in paying certain debts of Atwood.

114-15

Atwood was insolvent. Two or three days after the award was made I discovered the mistake. Stone made no examination prior to the execution of the notes.

116

The award was handed to Mr. Boole for Mr. Stone, as his agent, to take possession of the Orient House at the time of the execution of said award.

117

PAGE OF REC. *Cross-Examination.*—The award is in Sherman's handwriting, and 118-19 has been in the possession of H. O. Stone; is unchanged. I understood the makers of the schedules were to make a deduction on account of the existing condition of the property from the value of the property at that time, if new.

120 Fuller wished to estimate the value of the property, before any deductions were made, at its cost value at the time it was purchased. Sherman claimed the agreement to be, to estimate the value of the property, before deductions made, at the market value at the time the schedules were made, if the property was new.

121-2-4. Stone only executed ten notes. He was to execute three others when Atwood obtained releases of certain debts from Bowen Brothers, A. R. & G. H. Miller, and Charles Toby. Toby's receipt was taken for Atwood's and Stone's benefit. Atwood, in making these debts, had represented himself as Stone's agent. Stone objected to giving the notes, as he feared some trick. I understood that there was sufficient to be retained by Stone to take care of the debts due Bowen Brothers and others, if Atwood did not.

124-5 Eleven notes were executed by Stone under a mistake; only ten were delivered. Boole was there to take possession of the furniture for Stone. The bonds conditioned for the performance of the award were cancelled.

126 The balance of \$2123.04, found due to Stone from Atwood, was found at the same time the valuation of said property was fixed.

127-28 The matter of account between the parties was made up at the same time, but I do not know whether it was before or after the valuation was fixed upon the furniture; we had a painter examine the paint in the house; he estimated \$200 for painting to put the house in repair; I went to the painter with Mr. Fuller's consent; Fuller denied the claim for repairing the paint.

129-32 I think all the items making up the amount of \$3,193.47, were allowed at the same time; have no recollection whether the allowance of the account in Stone's favor, was before or after the valuation of the property; the items making up the account between the parties, were considered together, and there was a good deal of difficulty in settling them.

The debts of Atwood, to pay which, Covert was to use some the Stone notes, were due to Bowen Brothers, A. R. and G. H. Miller, and Charles Tobey.

133-4-5 There was a chattel mortgage on some of said property made by Atwood to Stone, and one by Atwood to Covert alone, or Covert and others; also another to one Morgan; the mortgage of Covert and others was assigned to Stone by Covert, R. M. Hough, and Chapin, to protect Stone from Atwood's creditors; the suits pending between Stone and Atwood were settled by the award; stipulations were entered into to that effect; Exhibit A was executed by me at the time of carrying into effect the award spoken of.

PAGE OF REC. Stone did not deliver all the notes, and Atwood did not pay the debts mentioned; nor did he give Stone the amount of furniture as provided in the award.

I have no recollection of making an offer of \$1,300 to Atwood over and above the balance between the parties, and what the value of the property might be.

None of the items of account were fictitious, nor allowed without vouchers, or with a purpose of finding a balance of \$1,299.76.

I may have talked in the office of Dow & Fuller, with Mr. Fuller, as to the mode of valuation of said property; but no such talk, understanding, or agreement was in the final agreement of submission.

Exhibit A.—A bill of sale of goods from H. O. Stone to A. H. Covert.

Exhibit 2—Containing note of P. L. Sherman.

Exhibit 4—Contains note of A. G. Burley.

Exhibit 9.

Exhibit 6—Contains articles of submission between Levi L. Atwood, and Horatio O. Stone.

Copy of Award and Schedule annexed thereto.

Exhibit 1.

Exhibit 8.

Exhibit 7.

Exhibit 5.

Exhibit 3.

Exhibit 5.

Exhibit 4.

Deposition of *Melville W. Fuller*, taken for defendants, 1st March, 1859:

I reside in Chicago; know the parties, and know that they entered into a submission for arbitration in the year 1859; I was Mr. Atwood's Attorney, and acted as one of the arbitrators; the agreement between Mr. Sherman and myself, before the execution of the articles was, that in fixing the valuation of the furniture, in the Orient House, we were to take the cost price of the furniture at the time it was purchased, to be established by the bills of purchase; from that the actual valuation of the furniture, &c., was to be taken; the ordinary wear and tear to be ascertained by the evidence of boarding house keepers.

The value of said furniture was to be what Mr. Atwood gave for it, less the ordinary wear and tear of like furniture in a like place, but not the actual wear and tear.

PAGE OF REC. With this understanding Mr. Atwood executed said articles of agreement; I proposed to embrace it in the articles, but Mr. Sherman thought it would lengthen the articles, and it was as well if understood between ourselves; Mr. Sherman mentioned that we were to take the bills of purchase to ascertain the cost of the articles mentioned therein.

175 We made an award bearing date 20th May, A. D. 1859; Sherman proposed to call in Morgan and others, to estimate the price of the furniture, if purchased new, that day; Mr. Sherman insisted we were to take the cost price of the furniture, if purchased new then; I told him to proceed in his way, and I would proceed in my way; I took little interest in the estimates as I considered the mode of valuation contrary to the agreement; Mr. Sherman's valuation, by the schedules, was \$3,779.57; I had figured its value over \$3,700; we had struck no balance between the parties before the valuation was put upon the furniture; Sherman
176-7 offered me \$300, to be paid Mr. Atwood, over and above everything; I agreed to take that sum; the balance struck was \$1,299.76; and furniture to the amount of \$356.71 was set aside to pay certain accounts of Tobey, Bowen Brothers, A. R. and G. H. Miller.

178-9 The schedules annexed to the award were made in accordance with Mr. Sherman's mode of procedure. They were for the purpose of taking possession, by complainant, of the articles mentioned, and for no other purpose. I did not assent to their correctness, and the last one was a mere memorandum. I had nothing to do with making the figures referred to by Mr. Sherman in his answer to 9th interrogatory. I have some of the original figures made by me at the time. They are marked Exhibits B, C, and D. Sherman had nothing to do with making them.

180 By Exhibit B the amount to be paid to Atwood by Stone was \$1307.76.

181 Exhibit C shows the amount to be paid by Stone to Atwood to be \$1380.72.

Exhibit D shows the said amount to be \$1304.76.

182-3-4 The balance was struck, and fixed after the valuation of the furniture. After the valuation of the furniture I agreed to take \$1300, and we figured the balance of account so as to make the final balance \$1300. I can name instances of items allowed or disallowed in the accounts between Stone and Atwood, to bring the final amount to be paid by Stone as it was brought.

185-6 I knew Abram H. Covert. He was not present during the making of the award. He knew about it very well; was on Atwood's arbitration bond; claimed that Atwood owed him. The bond was given to Mr. Sherman, and delivered upon the performance of the award. It is marked Exhibit F.

187 Did not see Mr. Stone make any notes, but Mr. Sherman had 11 or thirteen notes purporting to be signed by Stone—notes for \$100 each, and payable one year after date. Ten of them were handed to Covert, or to Atwood, and by him to Covert. One was passed over to Charles Toby, in settlement of his account against Atwood. It was agreed between Covert, Atwood, and the arbitrators that Covert should settle

PAGE OF REC.

188 the accounts of Toby, Bowen Brothers, and A. R. & G. H. Miller with the notes of Stone. A bill of sale for same articles of furniture was made to Covert by Stone. It is the exhibit marked A attached to Mr. Sherman's deposition. The articles conveyed to Covert were estimated at \$125.

189-90-91 The claims of Bowen Brothers and others were specified in the articles of submission because they claimed to hold Mr. Stone responsible. There was a mortgage to R. M. Hough, Newton Chapin, and Abram H. Covert from Atwood upon the property. It was assigned by them to Mr. Stone. The consideration with them for the assignment of the mortgage moved between Atwood and them, to secure them from liability on a replevin bond.

192 I understood it important to Stone to have the award carried into effect on the 21st of May, 1859, because his mortgage matured that day. There was no more haste on the part of Atwood than on the part of any body else.

193 The whole award was carried out and performed.

194 *Cross-Examination.*—I made out certain articles of submission which were not used. Morgan, one of the appraisers, suggested a deduction of 20 per cent., to get the value of the things in the condition they were in.

194 to 199 I had nothing to do with Sherman's figuring, and took no part in his computations. I know that I did not go over or look through this paper which has been introduced here, and which shows the mistake committed by Mr. Sherman in his figuring. The offer of Sherman, for Atwood, of \$1300 was made after the valuation of the furniture had been fixed at \$3779.51, and after deducting the percentage spoken of from the schedules. I had nothing to do with the deductions, or with the schedules annexed to the award. The valuation was first fixed, and then the offer was made of \$1300 at the same sitting.

In figuring on the back of Exhibit B, I deducted 20 per cent. from the appraised value of the property to go to Atwood.

200 Exhibit I is the mortgage made by Atwood to Stone.

I had no actual knowledge of the amounts of money advanced to Atwood by Chapin & Covert.

201 I did not examine the schedules annexed to said award: I may have glanced at some of them, but not all; the hardware schedule I saw, and Tobey's; I did not see Hollister's and Morgan's; Hollister's schedule was the last one brought before the arbitrators; it came in about 8 o'clock in the evening of the 20th of May, 1859.

I have no recollection of having examined all those schedules; I regarded them from the first as Mr. Sherman's testimony, and his side of the case; I paid more attention to the first of the schedules than I did to those that last came in, because I had given up the idea that we could agree.

PAGE OF REC. My only hope for an agreement was by jumping at an amount
203 to be paid to Atwood; I took the \$1,300 which he offered, with great
misgiving.

204 Exhibit B.

205 Exhibit C.

Exhibit D.

206 Exhibit E.

207 Exhibit F. is the arbitration bond of L. L. Atwood.

208 Exhibit G., memorandum by P. L. Sherman.

209 Exhibit H. is lease from H. O. Stone to L. L. Atwood, of Orient House.

215 Exhibit I., chattel mortgage and bill of sale, signed by H. O. Stone
and L. L. Atwood.

220 Deposition of *Samuel K. Dow* taken for defendants April 7th, 1960.—
Occupation, an attorney; 29 years of age; know Atwood and Co-
vert; I know that Atwood signed articles of submission; Fuller
221 was my law partner; the articles were prepared by Fuller and Sherman,
the arbitrators.

While the articles of submission were preparing, Mr. Sherman was in
our office, and discussed them with Mr. Fuller.

It was agreed between Fuller and Sherman that Atwood should pro-
duce his original bills of purchase of the furniture; that those original
bills should be taken as evidence of the value of the furniture when
222 new; that they should take the opinion of some persons as to the actual
wear and tear of the furniture, and then they should take the actual dam-
age; and the difference between the ordinary wear and tear, and the
actual wear and tear, should be considered the real damage to the fur-
niture.

Mr. Sherman said, he did not consider it necessary to put it into the
articles of submission, as it was understood between him and Mr. Fuller,
as to the manner of getting at the value of the furniture.

I recollect it was agreed that no claim should be allowed against
Stone in favor of Atwood, on account of Stone's ripping Atwood out of
the Orient House.

223 *Cross Examination.*—Sherman was in the office of Dow & Fuller
several times; Atwood came morning, noon, and night; it may have
been two months before the final submission that I saw Sherman in the
office, engaged with Mr. Fuller in this business.

224 I have detailed the conversation from recollection; I have not seen
the articles of submission, and do not know the contents; I think I
heard them read once.

PAGE OF REC. At the time I have mentioned, I heard all the conversation; don't know that I was present at every interview between them.

227 Ordered that the bill be dismissed and appeal prayed.

229 Appeal bond of H. O. Stone filed 15th day of March, A. D. 1861.

Assignment of Errors.

1. The Court admitted parol evidence to vary and contradict, and explain a written award.

2. The Court dismissed the plaintiff's bill, and refused to give him the relief prayed for, and to correct the award.

3. The Court rendered a judgment for the defendants, and against the plaintiff.

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Horatio O. Stone

vs

Levi L. Attwood

Abstract

Filed May 6th 1861

L. Leland
Clerk

13498

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

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

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

Newsp. Higgins }
Grand Governor } Judges.

Charles Haven Prosecuting Attorney.

Anthony L. Henry Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that heretofore to wit on the twenty sixth day of May A.D. Eighteen hundred and fifty nine came Horatio C. Stone by Sherman & Stiles his Solicitors and filed in the Office of the Clerk of said Court his certain Bill of Complaint, on the Chancery side thereof, against Levi L. Atwood et al; Which said Bill of Complaint is in the words and figures following, that is to say.

"State of Illinois }

Cook County . . }

ss. In Chancery.

To the Honorable Judges of the Superior Court of Chicago.

Humbly Complaining sheweth unto your Honors your Obedt Horatio C. Stone of the City of Chicago and State of Illinois, that heretofore to wit on the 1st day of May 1859

2
and before that time there were divers matters of difference & disputes claims and demands existing between your Orator and one Levi S. Atwood of the City of Chicago aforesaid,

That afterwards to wit on the day and year aforesaid your Orator and the said Atwood, by an instrument in writing of that date under their hands and seals duly made and executed, did appoint Fenner S. Sherman and Dileville M. Fuller as arbitrators to hear the proofs and allegations of said Levi S. Atwood and said Horatio O. Stone your Orator of and concerning the matters in and by said agreement submitted to them: And by said agreement did they and there submit all and every the said matters of difference to said Fuller and Sherman to award, adjudge and determine of and concerning the same. As by the said agreement of Submission when the same is produced will more fully and at large appear; That afterwards to wit on the twentieth day of May 1859 the said arbitrators under and in pursuance of the said articles of Submission did proceed to hear and determine the said several matters of difference upon the basis specified in the said agreement of Submission, and then and there made their award and final determination of and concerning the said matters of difference demands and claims existing between said Stone and Atwood; in and by which said award the said arbitrators found and determined amongst other things as follows:

That said Atwood was indebted to your Orator in the gross sum of \$3193.47

That your Orator was indebted to said Atwood
 in the gross sum of \$1070.43
 That there was ^{a balance} due your Orator from
 said Atwood of \$2123.14

Your Orator further shows unto your honors that at
 the time aforesaid by said agreement of Submission there was
 among said disputes thereby submitted to them, a difference of
 account concerning certain furniture in the Orient House, owned by
 your Orator in said City; on which said furniture, or on most
 of it your Orator held a Chattel Mortgage to secure certain
 indebtedness owed by said Atwood to your Orator, and embraced
 in the statement of said Atwood's indebtedness to your Orator
 so made by said Arbitrators as aforesaid; that in and by
 said articles of Submission the said arbitrators were required
 to first find the balance due from said Atwood to your
 Orator, upon a statement and allowance of their respective
 accounts, which might be found correct; that thereupon they
 were required by said Submission to set aside certain parcels
 of said furniture to be appropriated in payment of certain
 debts owed by said Atwood to Bowen Brothers - Messrs A. R.
 and L. H. Miller and Charles Jones of the City of Chicago
 and amounting as your Orator is informed and believes to be
 about Three thousand and fifty dollars, provided however
 that the indebtedness found due and owing to your Orator from
 said Atwood should first be paid in full out of the furniture
 in said Orient House as hereinafter mentioned; and such
 appropriation to said Bowen and others should be made out of

the residue of such furniture, if any there should be.

4 That by the terms of said Submission it was agreed between your Orator and said Atwood that the balance after allowing all just offsets found by said Arbitrators to be due from said Atwood to your Orator should be paid and satisfied in full by said Atwood out of the furniture in said Orator's House in the following manner that is to say; the said Arbitrators were to fix and determine the valuation of said furniture and every part thereof, Whereupon said Atwood was to deliver to your Orator, and your Orator was to receive, at such valuation as aforesaid; so much of said furniture as should be necessary to pay in full the amount of such balance so to be found in his favor as aforesaid; and said Arbitrators were to set aside so much of the residue of said furniture at the valuation aforesaid as might be necessary to pay said debts due Brown Brothers, A. B. & C. Miller & Charles Foley if there should be sufficient; and as to the residue of said furniture, if any there should be said Orator was to take and receive the same at the valuation to be fixed and determined as aforesaid, and give his Assigning Notes therefor in manner in said Submission specified.

Your Orator further sheweth unto your honors that said Arbitrators in pursuance of the terms of said Submission did ascertain the balance due from said Atwood to your Orator after allowing and deducting from the amount of the claims debts and demands of your Orator the full amount of the debts claims and demands of said Atwood by way

5- of offset, to be the said sum of Twenty one hundred and twenty three dollars and four Cents ($\$2123\frac{04}{100}$) as heretofore set forth; and also that the award adjudged and determined that said Ottwood was indebted to your Grator in the said sum of money over and above all claims.

Your Grator further shows that said Arbitrators thereupon proceeded to fix a valuation upon said furniture for the purpose of having the same applied upon and in payment of said sum so due your Grator; and also to be applied in such other way and manner as aforesaid. That in fixing said valuation the said arbitrators caused certain Schedules to be prepared showing as near as might be the cost price of said furniture, and of the different articles thereof, and as said furniture had been sometimes in use, certain per Centages were agreed upon by and between said arbitrators to be deducted from such assumed cost price, in order to arrive as near as possible at the present value of said Articles of furniture &c as follows.

The cost price of all the Crockery, Cutlery &c as appears by one of said Schedules was estimated at $\$382.91$. From which 10 per Cent was agreed to be and deducted leaving the present value $\$336.96$

The cost price of all the Hardware &c as appears by another of said Schedules was estimated at $\$385.93$ From which 33 $\frac{1}{3}$ per Cent, was agreed to be and deducted leaving the present value $\$257.29$

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The cost price of Stone Ware, Lamps &c
 as appears by another of said Schedules
 was estimated at \$84.37 1/2 from which
 10 per Cent was agreed to be deducted leaving \$ 74. 25
 The cost price of our Schedule furniture
 was estimated at \$78. 75 from which a
 deduction of 30 per Cent was agreed to be
 made and was made leaving present value . . \$ 55. 13
 The cost price of another Schedule of furniture
 was estimated as appears thereby at \$1346.75
 from which there was a deduction of 20 per
 Cent leaving \$1077. 40
 The cost price of the last Schedule of
 furniture was estimated at the sum of \$1226.03
 and the rate of deduction on this Schedule
 amounting at the present value of the articles
 therein mentioned was by said arbitrators fixed
 at 20 per Cent which would leave the present
 value of said articles at \$ 974. 03

That your Orator further shows unto your honors that
 the said Arbitrators have awarded and adjudged that your
 Orator should take and receive the said furniture except
 such as is set apart for other purposes &c according to the
 said Schedules, at the valuation of Thirty four hundred and
 twenty two dollars and eighty cents (\$3422. 80), to be paid for
 by your Orator as hereinbefore stated, that is to say, that the
 said balance so found due your Orator should be deducted

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therefrom; And that your Orator should give his Notes to said Atwood, or for him, for the residue to wit, for the sum of \$1299.76, such furniture being the residue after setting apart so much of said furniture as was necessary at the valuation aforesaid to pay the said Bowen Brothers - A B & G. H. Miller. Charles Tobey the sums justly coming to them; that your Orator had not the opportunity of making any actual inspection of the figures and calculations upon which the several amounts before mentioned were obtained and being satisfied with the basis and mode adopted by said arbitrators in the performance by them of their said duties, and believing that all the estimates of the cost-price of said goods and furniture had been correctly carried out according to said Schedules and the proper deductions therefrom correctly made at the several per Centages before specified; and being informed by said arbitrators and by said Atwood that the present valuation of said furniture had been made up and ascertained in manner aforesaid Your Orator made and executed his two certain promissory Notes bearing date the 20th day of May aforesaid payable to the Order of Chh Court twelve Months after date for the sum of One hundred dollars each and delivered the same to said Court at the request of said Atwood on account of said supposed balance; and promised to make his Notes for the residue to wit for \$299.76 upon certain receipts being furnished to him; and to deliver the same to us for said Atwood, - and to your Orator then and there took and received all of said furniture goods and chattels from

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said Atwood except such as had been set apart for said Bowen Brothers and others as aforesaid, and now holds the same - and that said furniture so set apart for Bowen Brothers and others was set apart to them on the supposition that your Grator had been paid the amount of said balance so far as his debt, out of the other furniture goods &c.

And your Grator further shews unto your Honors, that the said arbitrators did in fact in making the numerical calculation of the present value of the furniture in the last Schedule attached to said award, set down the estimated cost prices of the articles therein mentioned, & ascertain the aggregate cost-value thereof to be the sum of \$1220.03, that they then attempted according to the basis they had adopted to ascertain and deduct therefrom twenty per cent-off from said sum, to arrive at the present value of the articles of furniture &c therein mentioned; that such 20 per cent would be the sum of Two hundred and forty four dollars (\$244.) which deducted from said sum of \$1220.03 would leave the sum of \$976.03 for the present value of the furniture mentioned in said Schedule; but that said arbitrators in making said deduction by accident or mistake in the said calculation stated said sum of \$976.⁰³ to be \$1976.03, which latter sum greater by one thousand dollars than it should have been, or was by said arbitrators assigned to be, by reason of the mistake aforesaid was taken to make up the aggregate present value of the goods and furniture received by your Grator, after the setting aside of the furniture so appropriated to the payment of said debts.

9
by said Atwood to Bowen Brothers, A.R. Hy. St. Miller & Charles Tobey: by reason of which said accident or mistake your Orator was charged the sum of One thousand dollars more for said furniture taken by him, than he should have been: and your Orator avers that he was not aware of said mistake nor had he any knowledge or belief thereof till after he had executed and delivered the notes aforesaid and received into his possession the said furniture.

Your Orator further shows that by the terms of said Contract of Submission he has as he is informed and believes a right to have the whole of said furniture, including that so set apart for the payment of said Atwood's indebtedness to other persons, first applied to the payment of the said balance so by said arbitrators found to be his due; that so much of said furniture as has been so set apart still remains under the control of said Atwood, as yet unapplied and unapplied on such debts, and unless the said Notes so made by your Orator are delivered back to him your Orator should hold the said furniture, and your Orator fears that unless said Atwood is restrained and prohibited from so doing by this Court he will pass over said furniture so set apart, to the said persons, and your Orator will lose whatever lien he may have thereon growing out of the matters aforesaid.

Your Orator further says he is informed and believes that said Atwood and some or one of them have applied one of the said Notes so executed by your Orator as aforesaid upon, and therewith paid the ^{said} debt due to said (Chas. Tobey:

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and that they are one of them now hold the residue of said
Notes for the benefit of said Atwood; that said Court has
full knowledge of the consideration for which said Notes
were given by your Orator; that the sum of money for
which all of said Notes were given is equal to the amount
of said mistake in the valuation of said goods; And your
Orator fears that unless the said Levi E. Atwood and
Abraham H. Court are enjoined and restrained from transferring
the said Notes that they will negotiate and dispose of the
same to innocent persons, and your Orator will be compelled
to pay the same.

And your Orator well hopes that the said Levi E.
Atwood would have corrected or caused to have been
corrected the said mistake so made in the said award,
in the valuation of the said furniture goods and chattels
received by him as aforesaid.

But now so it is that the said Atwood confederating
with divers persons to your Orator unknown both hitherto
wholly neglected so to do.

In consideration whereof and soasmuch as your Orator
is remediless in the premises at and by the strict rules
of the Common Law.

To the end therefore that the said Levi E. Atwood
and Abraham H. Court may full true direct and perfect
answers make, without oath, their oaths being hereby waived,
to all and singular the matters aforesaid, and that as fully
and particularly as if interrogated as to the matters herein before
stated and charged; And that they may answer the premises;

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that the mistake in said award heretofore specified may be corrected and the said award in that respect reformed, and when so corrected carried into effect; that said promissory notes, or so many of them as have not been negotiated or disposed of may be surrendered up to your Orator and be cancelled. That your Orator may be furnished to warrant and deliver to said Atwood or for him a Note or Notes for the true amount of balance coming to him on said furniture after the correction of said mistake over and above the amount of his said indebtedness to your Orator; or that your Orator may be furnished to pay him such amount in money in lieu of receiving such Note or Notes; that your Orator may have a lien upon the said furniture to set apart as aforesaid to pay certain debts due from said Atwood to other persons, so far as such lien may be necessary to protect your Orator and secure him in the premises; that said Atwood may be enjoined from parting with said furniture; that said Lewis and Atwood and each of them may be enjoined from in any way disturbing the possession of your Orator in respect of the goods and chattels so taken and received from said Atwood as aforesaid and that they may be enjoined and restrained from parting with or in any manner transferring said promissory Notes or either of them; and that your Orator may have such relief in the premises touching this case as may be agreeable to Equity and good Conscience.

May it please your Honor to grant unto your orator the Proper Writ of Injunction enjoining and restraining the said Lewis, T. Atwood and Abner H. Hunt in manner aforesaid;

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as well as the People's Writ of Summons issuing out of and under the Seal of this Court, to be directed to said Levi S. Atwood and Abram H. Court commanding them at a certain day to be and appear in this Court and answer the premises and to stand to and abide by the Order of the Court therein.

Sherman & Stales }
Comptrols Solrs }

Horatio O. Stone.

"State of Illinois }
Cook County .. }

Horatio O. Stone of said County being duly sworn doth depose and say that he is the Complainant in the foregoing Bill of Complaint - that he has read the same and knows the contents thereof, and the same is true of his own knowledge, except as to the matters therein stated upon information and belief and as to those matters he believes it to be true.

Sworn to and subscribed before }
on this 26th day of Nov. A.D. 1859 } Horatio O. Stone."
J. C. Davis Clerk

Master in Chancery - Cook Co.

(Enclosed in which said Bill is the following Order.)

"Let the Writ of Injunction issue in conformity with the prayer in the foregoing Bill of Complaint the complainant paying a Bond in the penalty of One thousand dollars with William H. Stone as security.

To the Clerk of the Superior Court of Cook County }
Court of Chicago . . . } Judges of Superior Court of Chicago"

13 And thereupon accordingly on the twenty sixth day of May A. D. eighteen hundred and fifty nine the said complaint filed in the Office of the Clerk of said Court in conjunction therewith in words and figures as follows to wit:

"Superior Court of Chicago

Horatio O. Stone

vs

Levi S. Atwood and } In Chancery.

Albrand H. Covert }

Know all Men by these Presents that we Horatio O. Stone and Albrand H. Covert are jointly & severally jointly bound unto Levi S. Atwood & Albrand H. Covert in the sum of One thousand dollars lawful money for the payment of which said sum well and truly to be made we do jointly and severally bind ourselves our respective heirs executors administrators and assigns jointly by these presents,

Witness our hands and seals this 26th day of May 1859 at Chicago.

The condition of the foregoing obligation is such that whereas the said Horatio O. Stone has commenced a certain suit in the Superior Court of Chicago in the Chancery side thereof against the said Atwood and Covert defendants therein, and has prayed that they be enjoined & restrained in manner in said Bill stated.

Now therefore if the said Stone shall pay all such costs and damages as said defendants shall sustain in

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also said Injunction shall not have been properly obtained
then this obligation shall be void, otherwise to remain
in full force.

Horatio O. Stone (Seal)
Abraham H. Stone (Seal)."

And thereupon on the said twenty sixth day of
May A. D. Eighteen hundred and fifty nine, there
accordingly issued out of and under the Seal of said
Court Peoples Writs of Injunction and Summons; which
Writs, with Sheriffs returns thereon enclosed, are in words
and figures as follows, to wit:

"State of Illinois }
County of Cook } ss.

To the People of the State of Illinois
To Levi S. Atwood and Abraham H. Covert and to your
Attorneys, Solicitors, Agents and Servants, and to each and
every of them Greeting.

Whereas it hath been represented to the Honorable
Grant Goodrich one of the Judges of the Superior Court
of Chicago, in said County and State aforesaid on the
part of Horatio O. Stone Complainant in his certain Bill of
Complaint exhibited before said Judge, and filed in said
Court against you the said Levi S. Atwood and Abraham
H. Covert, to be relieved touching the matters therein
complained of. In which said Bill it is stated among
other things that you are combining and confederating with

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others to injure the complainant, touching the matters set forth in said bill, and that your doings and sayings in the premises are contrary to equity and good conscience And the said Judge having under his hand endorsed upon said Bill an Order that a Writ of Injunction issue out of said Court according to the prayer of said bill, He therefore in consideration thereof and of the particular matters in said Bill set forth Do strictly command you the said Levi C. Atwood and Abram H. Court and each of you and the persons before mentioned, and each and every of you that you do absolutely desist and refrain from parting with the possession of so much of the furniture goods and chattels lately now in the Orient Store in the City of Chicago as were set apart and designated by P. L. Sherman & M. W. Fuller to be applied to the payment of certain debts owed by said Atwood to Bowen Brothers, A. B. & H. Miller & Charles Tobey and that they and each of them be restrained from in any manner interfering with or intermeddling herewith; that they and each of them be and they hereby are restrained and enjoined from selling transferring, getting over or assigning, or in any manner parting with the possession or control of all or any of said certain promissory Notes each payable twelve months after date to the order of said Court for the sum of One hundred dollars each bearing date the 20th day of May 1859 and made by said Horatio O. Stone, and they are also hereby restrained from interfering with the furniture goods or chattels received by said Stone from said Atwood in manner in said Bill set forth and

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from in any way disturbing said Store in his possession &
thereof by suit or otherwise, until this Honorable Court
in Chancery sitting shall make other order to the contrary.
Hereof fail not under penalty of what the law directs.

To the Sheriff of said County to execute and return
in due form of law.

Witness Walter Kimball Clerk of our said
Court and the Seal thereof at Chicago in
said County this 26th day of May, A.D. 1859.
Walter Kimball - Clerk "

(Endorsed) " Served this Writ on the within named
Levi L. Atwood & Abraham McQuinn by delivering a true
copy thereof to them this 27th day of May 1859.

John Gray, Sheriff

By Chas. Steung - Deputy "

" State of Illinois
County of Cook }
p

To the People of the State of Illinois to the
Sheriff of said County, greeting.

We command you that you summon Levi L. Atwood
and Abraham McQuinn, if they shall be found in your
County personally to be and appear before the Superior Court
of Chicago of said County of Cook on the first day of the
next term thereof to be holden at the Court House in the
City of Chicago in said County on the first Monday of June
next to answer unto Horatio A. Store in his certain Bill of
Complaint filed in the said Court on the Chancery side thereof.
Thus done you then and there this Writ with and in

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Endorsement thereon in what manner you shall have executed
the same

Things Walter Kimball Clerk of our said Court
(Seal) and the Seal thereof at the City of Chicago aforesaid
said this 26th day of May A. D. 1859.

Walter Kimball... Clerk."

(Endorse) "Served this Writ on the within named
Levi Atwood and Abraham St. Courts by delivering a copy
thereof to each of them this 27th day of May 1859.

John Gray... Sheriff

By W. L. Steving - Deputy."

And afterwards to wit on the Sixth day of June
(being one of the days of the June Term of said Court)
A. D. eighteen hundred and fifty nine the following
proceedings were had in said Court and entered of record
in said Court to wit:

"Horatio O. Stone

vs

Levi L. Atwood and

Abraham St. Courts

} Bill

On Motion of Defendants it is Ordered
that Rule 10 answer herein be extended till Thursday
morning next,

And hereafter to wit on the Eighth day of June A. D.
Eighteen hundred and fifty nine came said defendant Abraham

by his Solicitors Dow & Fisser, and filed in the Office of the Clerk of said Court his answer in said cause, which answer is in words and figures as follows to wit,

"State of Illinois } In the Superior Court of Chicago
Cook County, } do June Term 1859.

Before the Honorable Judges of said Court

In Chancery sitting.

The Answer of Levi S. Atwood one of the Defendants to the Bill of Complaint of Horatio A. Stone Defendant Complainant.

This Defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of Exception which now or may be had or taken to the many errors uncertainties and other imperfections in the said Complainant's said Bill of Complaint contained for answer hereunto, or unto so much and such parts thereof as he, this Defendant, is advised is or are material or necessary for him to make answer unto, answering says

That it is true as alleged in said Complainant's said Bill of Complaint that heretofore to wit on the 14th day of May 1859 and before that time there were divers matters of difference, disputes, claims and demands existing between the said Complainant and this Defendant and that on the day and year last aforesaid the said Complainant and this Defendant by an Instrument in writing of that date under their hands and seals duly made and executed did appoint

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Pennyon, S. Sherman the Attorney of said Complainant and
Melville H. Fuller, the Attorney, of this Defendant as arbitrators
to hear the proofs and allegations of this Defendant and the
said Complainant of and concerning the matters in and by
said agreement submitted to them - and by said agreement
did then and there submit all and every the said matters
of difference to said Fuller & Sherman to award, adjudge &
determine of and concerning the same - that afterwards to wit
on the 20th day of May A.D. 1859 the said arbitrators did
proceed to hear and determine the said several matters of
difference under the said Articles of Submission and upon the
basis specified therein - and did then and there make their
Award and final determination of and concerning the said
matters of difference demands and claims existing between said
Complainant and this Defendant.

And this Defendant further answering admits that the
said Arbitrators found and determined among other things as
follows, as alleged in said Bill, - that this Defendant was
indebted to said Complainant in the gross sum of \$3193.47 -
that said Complainant was indebted to this Defendant in the
gross sum of \$1070.43 and that the balance due to said
Complainant from this Defendant was the sum of \$2123.04 -
but this Defendant expressly and positively denies that said
balance due to the said Complainant was found in the for-
instance by the said Arbitrators but says that the same was
declared by said Arbitrators to be due said Complainant in
consideration of a certain large amount due to this Defendant
by said Complainant for the furniture in the Great House

in the City of Chicago belonging to this Defendant as hereinafter detailed; That said amount was first ascertained by said Arbitrators and formed the inducement to the allowance and determination of the said amount of two thousand one hundred and twenty, three $\frac{04}{100}$ dollars (\$2123 $\frac{04}{100}$) as due to said Complainant as aforesaid, as this Defendant believes, and as will be more fully and at large hereinafter set forth.

And this Defendant further answering expressly denies that at the time aforesaid by said agreement of Submission there was among said "disputes" thereby submitted to the said arbitrators any difference of and concerning certain furniture in the Orient House owned by the said Complainant in the City of Chicago, on which said furniture, or on most of it the said Complainant held a Chattel Mortgage to secure certain indebtedness as alleged in said Bill but on the contrary thereof this Defendant avers that the said Complainant had a Chattel Mortgage upon about half of the said furniture which said Mortgage the said Complainant had so claimed to have already foreclosed long before the execution of said Articles of Submission as will be more fully hereinafter set forth and that in and by said Articles of Submission it was agreed by and between the said parties thereto that said Arbitrators should estimate and fix the value of the furniture in said Orient House and that said Complainant should take and pay for the same at said valuation in the manner therein provided as hereinafter set forth. And this Defendant avers that the said furniture was mentioned and included in said Articles of Submission as part of the basis and means of the

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the settlement of the matters actually in difference, but was not a matter of difference in and of itself.

Also this Defendant further answering denies that in and by said Articles of Submission the said Arbitrators were required to first find the balance due from this Defendant to said Complainant upon a statement and allowance of their respective accounts which might be found correct, but says, that in and by said Articles of Submission no definite or particular order of proceeding on the part of said arbitrators is specified - the basis of their decision only being defined but no particular mode of procedure thereon pointed out and that in fact said Arbitrators as hereinafter set forth did not first proceed to strike a balance between this Defendant and the said Complainant, but first fixed their valuation of said furniture and upon that valuation had their further proceedings under said Articles of Submission as will more fully hereinafter appear.

Also this Defendant further answering expressly denies that the said Arbitrators "thereupon" (to wit, after finding the balance due to said Complainant from this Defendant, if any there should be) were required to set aside certain parcels of said furniture to be appropriated in payment of certain debts owed by said Defendant to Bowen Brothers, A.B. & H. Miller and Charles Tobey amounting to the sum of Three hundred & fifty dollars, providing however, that the indebtedness found due and owing from this Defendant to said Complainant should first be paid out of the furniture in said Court House and such appropriation to said Bowen Brothers & others should be made out of the residue of such furniture, if any there should be,

in manner and form as alleged in said Complainant's said Bill of Complaint.

And further this Defendant expressly denies, that by the terms of said submission it was agreed between this defendant and said Complainant, that the balance after allowing all just offsets found by said Arbitrators to be due from this defendant to the said Complainant should be paid and satisfied in full by this Defendant out of the furniture in said Pruit House in the manner alleged in said bill, that is to say,

That the said Arbitrators were to fix & determine the valuation of said furniture and every part thereof whereupon the said Defendant was to deliver to said Complainant and said Complainant was to receive at such valuation as aforesaid so much of said furniture as should be necessary to pay in full the amount of such balance so to be found in his favor as aforesaid; and said Arbitrators were to set aside so much of the residue of said furniture at the valuation aforesaid as might be necessary to pay said debts due Bowen Brothers, C. B. & H. H. Miller & Charles Tobey if there should be sufficient; and as to the residue of said furniture, if any there should be, said Jones was to take and receive the same at the valuation to be so fixed and determined as aforesaid and give his promissory notes therefore - but this Defendant expressly avers that the mode of procedure by and on the part of the said arbitrators was wholly left to their own discretion, but the basis of their decision was defined in said articles of agreement generally to be, that said arbitrators should strike a balance between said parties and for the sake of convenience should set aside certain

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furniture for the payment of said Bowen Brothers, & R. H. H. Miller & Charles Tobey, by this Defendant; that said arbitrators should estimate and fix the value of the furniture then in said Court House and that said Complainant should take the same at said valuation of this Defendant and in payment thereof be credited with whatever amount, if any, might be found to be due to him from this Defendant and pay the value to this Defendant by giving his Notes therefore payable in twelve months from the date thereof, to wit, the date of said award - but this Defendant denies that the said Articles of Submission do prescribe or were ever intended to prescribe the Order in which said Arbitrators were to proceed or that this Defendant was first to deliver to said Complainant & said Complainant was to receive an amount of furniture sufficient to pay him, said Complainant, in full and then said arbitrators were to set aside an amount of furniture for the payment of Bowen Brothers & others and the residue of said furniture was then to be delivered to said Complainant who was then to receive and pay for the same as aforesaid, but this Defendant says that said arbitrators were to fix a valuation upon said furniture, and if they found there was enough then to set aside an amount thereof to this Defendant sufficient to give him immediate means wherewith to pay and satisfy the amounts due to Bowen Brothers and others and the Complainant was to take all of the residue of said furniture and to pay this Defendant in full therefore according to said valuation, said Complainant being credited with whatever amount might be due him from said Defendant.

And this Defendant further answering admits that said

Arbitrators in pursuance of the terms of said submission ascertained or determined the balance due from this Defendant to the said Complainant to be the sum of Two thousand one hundred and twenty three ⁶⁴/₁₀₀ dollars hereinafter mentioned and did then and there award a judgment and determine that this Defendant was indebted to the Complainant in the said sum of money over and above all claims, but this defendant says that said Arbitrators did not find said sum to be due to said Complainant from this Defendant until after they had estimated and fixed the value of said furniture, and that said amount was so fixed, as this Defendant for reasons hereinafter given believes, almost wholly in consideration of the amount of said furniture as previously found by the said Arbitrators as hereinafter stated and set forth and that in truth and in fact this Defendant was not indebted to said Complainant in any such amount.

And this Defendant further answering denies that said Arbitrators thereupon to wit after finding said balance, proceeded to fix a valuation upon said furniture for the purpose of having the same applied upon and in payment of said sum so due the said Complainant but says that the said arbitrators first agreed upon said valuation and afterwards upon the amount of said indebtedness.

And this Defendant further answering expressly denies that in fixing said valuation the said arbitrators caused certain Schedules to be prepared showing as near as might be the cost price of said furniture and of the different articles thereof and expressly denies that certain per centages were agreed

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upon by and between said arbitrators to be deducted from such assumed cost price, in order to arrive as near as possible at the present value of said articles of furniture & and denies that any of the gross amounts or deductions therefrom of the said Schedule set forth in said Bill of Complaint or all or either of them, were ever adopted or agreed upon estimated or fixed by said arbitrators as alleged and set forth in said Bill of Complaint, but says that it was distinctly understood by and between this Defendant and said Complainant and by between their respective Attorneys, said subsequently appointed arbitrators, to wit, said Fuller and said Sherman, before the execution of said Articles of Submission by this Defendant that said arbitrators should in making up their Valuation of said furniture take the cost price thereof at the time of its purchase by this defendant as shown by the bills of purchase in the presence of this defendant or otherwise and that said arbitrators would take such bills of purchase as far as they would go as the evidence of the price paid for the articles specified therein and from said cost price deduct the present value thereof and should also obtain the evidence of Boarding House and Hotel Keepers as to what the ordinary wear and tear of said furniture as that in the Orient House would be in a house of similar character during the time this had been in use and that the difference between such ordinary wear and tear and the actual wear and tear of this furniture; which actual wear and tear would be shown by the difference between the present value and the cost price thereof, was to be allowed this defendant as part of the damages sustained by him in the seizure and

removal of said furniture by said Complainant on or about the 5th day of January A. D. 1859 as hereinafter set forth, or that said Arbitrators (which would amount to the same thing) should take the ordinary wear and tear of said furniture as stated by Hotal and Boardinghouse Keepers entirely ~~and~~ irrespective of the actual wear and tear of said furniture had been and subtracting such ordinary wear and tear from the cost price thereof, allow the balance to said defendant as the correct valuation of the same.

And this Defendant further answering says that after the execution of the said articles of Submission by this defendant upon the agreement aforesaid and when the said arbitrators were about to commence the discharge of their duties, to wit, on the 20th day of May last - the said Sherman the attorney and arbitrator of said Complainant did as this defendant is informed and believes advise certain dealers in furniture to be called in to estimate the cost price of said furniture, if purchased new at the time of said arbitration, and also to estimate a few cents that would be deducted for the wear and tear which the said furniture had actually undergone, and that said Fuller the Arbitrator on the part of this Defendant stated to said Sherman explicitly that the price such furniture could be purchased for on the 20th May, 1859 was not to be found by them but what the furniture actually did cost this Defendant, but that if said Sherman desired to get the opinions of Furniture Dealers on the subject of what new Furniture would cost, he, said Fuller, did not consider he had any power to prevent him from so doing, but that the said Fuller should not consider their opinion

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as binding upon him, or upon either of them, said arbitrators
and would call as witnesses other Dealers in furniture, to get
the present value of said furniture under consideration and
Hotels and Boardinghouses keepers to ascertain the ordinary
use and wear of furniture of the same description in Hotels
or Boardinghouses of the same character as the Orient House
and should use the original bills of purchase of said furniture
to establish the cost thereof when purchased, as far as they went
and otherwise ascertain the cost thereof and should insist on the
original understanding and agreement between said arbitrators
in fixing the valuation of said furniture.

And this Defendant further says that he believes
certain Dealers in furniture were called in at the request of said
Shuman and that said Dealers prepared certain Schedules, which
together with one or two others made by said Arbitrators were
annexed to the award subsequently made by said Arbitrators
with the view and for the purpose hereinafter set forth, and
no other; but this Defendant distinctly and positively denies
that there was ever any agreement between the said arbitrators
that said Schedules and the prices affixed to the articles there-
named were binding or considered binding upon said arbitrators
or that they agreed to the amounts thereof, or to any two out of
three so deducted therefrom.

And this Defendant further denies that there were
ever any deductions from or on the amounts of said Schedules
or ever any calculations upon that basis, made by said arbitrators
so far as this Defendant knows or has ever been informed same
by said complainants said Bill of Complaint.

That this Defendant further says upon information and belief that said Sherman the Arbitrator and Attorney of said Complainant, on said 20th day of May 1859 offered to allow as the valuation of said furniture and the sum at which he was willing to fix the value of the same in gross, the sum of Four thousand seven hundred and seventy five ⁵¹/₁₀₀ dollars, and that the said arbitrator of this Defendant accepted said amount as the correct valuation of said furniture and said arbitrators agreed thereto, but this Defendant further says that neither himself or his said Arbitrator, as he believes, had ever seen the figures and calculations by which said result was arrived at by said Sherman, nor does this Defendant now know what calculation was made by said Sherman in making said offer or by said Fuller in concluding to accept the same but he affirms and asserts that the said amount was fixed upon by said Sherman and was accepted by said Fuller as aforesaid without any examination by the latter of the calculation upon which said Sherman based his said proposition, if indeed there were any such: but this Defendant avers that said sum so fixed upon as the valuation of said furniture was no more than a fair Estimate of the value thereof deducting ordinary wear and tear herefrom.

And this Defendant further answering says that after fixing the valuation of said furniture as aforesaid, the said arbitrators proceeded to select and set aside certain of the said furniture to this Defendant to be by this Defendant used in the payment of the claims of Bowen Brothers & others hereinbefore enumerated (which said claims it had been provided

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should be paid by this Defendant) and estimated the value of the same at \$356⁷¹/₁₀₀ and from the said sum of \$3779.⁵¹ deducted the said sum of \$ 356⁷¹/₁₀₀ leaving the balance \$ 3422.⁸⁰ at which said sum this Defendant further answering admissibly the said arbitrators awarded and adjudged that the said Complainant should take and receive all of said furniture in said Orient House (that portion set apart to this Defendant being expressly excepted and deducted from said gross amount of said valuation as just stated and set forth and there being also about One hundred and twenty five dollars worth of different and small articles belonging to this Defendant not taken into consideration by said arbitrators and not included in said amount awarded). The said sum to be paid for by said Complainant by giving his notes therefor after being credited with whatever amount was found to be due to him from this Defendant.

And this Defendant further says that after deducting from said sum of \$3422.⁸⁰ the sum afterwards adjudged to be due said Complainant from this Defendant, it left a balance to be paid this Debt by said Complainant of \$1299.⁷⁶ as alleged. And this Defendant denies that the amount so found by said arbitrators to be due to said Complainant was so found by said arbitrators before their valuation of said furniture. But on the contrary hereof this Defendant expressly declares and avers that said balance of \$2123⁰⁴ found to be due by this Defendant to the said Complainant was found by said arbitrators after fixing the

valuation of said furniture, and that in fact the amount of said ~~valuation~~^{furniture} was taken into consideration by said arbitrators in making up the balance against this Defendant and formed the chief element therein as this Defendant has been informed and believes and so charges the fact to be.

Now this Defendant further answering denies that the said Complainant had not the opportunity of making any actual inspection of the figures & calculations upon which the several amounts in said award mentioned were obtained, if he thereby means the figures in said award, for this Defendant says that the said award of said arbitrators was from the 21st day of May 1859 at which time its contents were first conveyed to this Defendant & from thence hitherto hath been and still is in the hands and possession of the said Complainant or his agents. And this Defendant charges the fact to be that there were no figures or calculations upon which the several amounts in said Bill mentioned were obtained (other than contained in said award) made by said arbitrators for the actual inspection of either the said Complainant or this Defendant, and this Defendant has not to this day seen any figures or calculations of said arbitrators except the figures contained in said award and charges that there were none other made or prepared by said arbitrators.

And this Defendant further answering says that certain Schedules as has been heretofore set forth were prepared by certain Dealers in Furniture & now or two by said arbitrators & that said Schedules inasmuch as they contained the articles to be delivered up to said Complainant, were annexed to the award

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of said arbitrators in order to enable the said Complainant to take possession of the furniture therein mentioned and not to enable said Complainant to calculate and figure up said ~~to~~ furniture at the prices set down in said Schedules which prices had never been considered or assumed as binding upon said arbitrators and had not been regarded by said arbitrators in making up the valuation aforesaid, and the said Complainant and his agents were repeatedly informed by both of said arbitrators in the presence of this Defendant, and this Defendant was repeatedly informed that said Schedules were annexed to said award simply as lists for the said Complainant to go by in taking possession of said furniture and for no other or different purpose.

And this Defendant further answering expressly denies that he ever informed said Complainant that the present valuation of said furniture had been made up and ascertained in manner as charged in said Bill of Complaint and says that at the time of said award he did not know in what manner the award was made; but now charges it to have been arrived at as hereinbefore set forth and in no such manner as alleged in said Bill.

And this Defendant further answering says that the said furniture in said Orient House cost this Defendant about ^{two} thousand two hundred dollars and that all of the same have been well and carefully kept and have suffered with some slight exceptions very little damage except such as it had particularly sustained at the time it was seized by the said Complainant in January 1859 as will be more fully ^{hereafter} set forth - And this Defendant further says that by reason of the acceptance by said Fuller of the offer by said Sturman

of the sum heretofore set forth, as he is informed & believes the said Fuller did not call a single witness on behalf of this Defendant in regard to the cost or value of said furniture. The ordinary wear and tear & the present value of any of the other points of inquiry as he would otherwise have done.

And this Defendant further answering says that the said Arbitrator after fixing the valuation of said furniture as aforesaid and upon finding that the balance against said Complainant would be large after deducting any correct amount of what was actually due said Complainant, proceeded to find and strike the balance between said Complainant and this Defendant, and made it as follows by items; as this Defendant has since paid award, and since the filing of this Bill been informed and believes.

That this Defendant owes said Complainant-

For Cash loaned & interest	\$ 1199 " 39
For Rent	1133 " 32
Gas Bill which Complainant was liable ^{for}	100 " 90
Cash paid out by Comp. for a replacement	2 " 25
Painting Bill - Barry Hushing	20 " 86
Robinsons Bill - Repairs	14 " 75
For Painting House	200 " 00
	\$ 3193 " 47

That said Complainant was indebted to this Defendant as follows.

Cash paid on Money borrowed	306 " 64
" " " Rent	326 " 10

Board applied on Rent	266 " 69
Damages	100 " 00
For repair of damaged furniture	15 " 00
For rent of Room 18 - two weeks	31 " 00
	<u>\$ 1070 " 43</u>

and that the balance due to said Complainant was \$2123.04

And this Defendant further answering says upon information and belief, that said arbitrators struck said balance and made it as large a sum as they did, almost solely in consideration of the large amount found to be due this defendant for the furniture as aforesaid, although as this defendant states and shows to this Court the said sum so fixed by said arbitrators as the valuation of said furniture was only a reasonable valuation by the ordinary wear and tear, and this defendant was as much entitled to all that was otherwise due to him, as if the amount of furniture had been less, and that they did thereby expressly allow to said Complainant on his claims the sum of \$368⁹² more than he was entitled to (and this Defendant believes much more than that) the items of which are as follows to wit \$133³² for rent - \$20⁸¹ for painting \$14⁷⁵ for repairs and \$200 towards painting said Green House, the last of which items in particular was a mere trumped up claim, not insisted upon, not founded upon any right, not included in said articles of submission as contemplated by them and simply slipped into said account at the last moment by said arbitrators with the design as this defendant believes of gratifying said Complainant, and that said arbitrators did further disallow of this Defendants claims upwards of seven hundred dollars as

This Defendant believes chiefly on account of said amount of furniture, and in order to bring the amount to be paid by said Complainant down to a certain limit (which said claim of this Defendant is disallowed by said arbitrators in consideration of said amount due to him, or which would become due to him for said furniture will be more fully hereafter specified and set forth), thereby making a difference to this defendant of over One thousand dollars in favor of said Complainant and against this defendant.

Now this Defendant further charges upon belief that the said arbitrators agreed to allow to this defendant the sum of Fifteen hundred dollars to be paid by said Complainant and above everything and that they struck said balance of \$2123⁰⁴ as due to said Complainant, with a view of bringing out about Fifteen hundred dollars due to this Defendant after said Complainant should take said furniture.

Now this Defendant further charges that said arbitrators were guided by no particular system in arriving at said balance due said Complainant but simply arrived to reduce the balance to be paid to this Defendant to the sum above named to wit, Fifteen hundred dollars, without any great regard as to the items disallowed on one side or the other.

Now this defendant further says that the sum of \$2123⁰⁴ so found to be due to said Complainant was not a balance struck upon an allowance of items found to be correct, as charged in said Bill of Complainant, and that he did not understand and was not informed until after the filing of this Bill how the result was arrived at.

And this defendant further answering says that on or about the 9th day of June A. D. 1858 the said Complainant advanced the sum of \$1000 to this deft. to purchase furniture for the Orient House and this defendant gave back a Chattel Mortgage to said Complainant upon a certain lot of furniture herein described but which with few exceptions was not then in the Orient House but was afterwards purchased and placed therein by this defendant. And this defendant further says that the nominal consideration of said Mortgage was Three thousand dollars and that said Complainant held this deft's Three Notes for One thousand dollars each, but that only One thousand dollars was actually advanced on said Mortgage by said Complainant, and two of said Notes were totally without consideration.

And this defendant further says that sometime in the fall of 1858, this defendant being at that time the lessee of said Orient House and tenant of said Complainant a Writ of fieri facias against this defendant was levied on the goods & chattels and furniture in said Orient House as the property of this deft, whereupon said Complainant claimed to foreclose his said Mortgage and replevin the said goods & chattels &c and subsequently got judgment in said replevin suit, but allowed this deft. still to remain in possession of said goods & chattels &c.

And this Defendant further says that he kept adding furniture to that in said Orient House from time to time from June 1858 until January 1859, at which time said furniture in said house was worth far exceeding four thousand dollars and about half of the same not being included in said Complainant's said Mortgage at all. And this defendant in fact says that he devoted

nearly the entire proceeds of his business in paying for said furniture and had at the time of said arbitration closed up all accounts for said furniture except the accounts of L. Tobey, Bowen Brothers & A.B. & H. Miller amounting in all to about three hundred and eighty^{fifty} dollars.

Now this Defendant further says that in and by the Lease executed by and between the Complainant and said Defendant it was provided among other things that this Defendant would allow said Complainant to occupy Rooms 18 & 19 in said Orient House with board for himself, his lady and a man ^{or} servant at thirty dollars per month and the said Complainant was to furnish the same. And this Defendant avers that said Complainant had agreed before this Defendant had become his tenant to take said rooms and occupy the same at least six months every year at the rate aforesaid which was one of the inducements to this Defendant in taking said House. And this Defendant further says that said Complainant did take said rooms in the month of November 1858 and agreed to occupy the same for six months, and occupied the same at the rate aforesaid for about two months when he left and abandoned the same about the 15th January 1859 as heretofore mentioned.

Now this Defendant further says that while said Complainant was boarding at said Orient House he had the rooms occupied by him painted, on his own account and as this Defendant believed at his own expense and that the bill of \$20⁸⁶ allowed by said Arbitrators to said Complainant was the bill for painting his own rooms. And the said Complainant also had certain repairs about the house for his own amusement & comfort.

consultation with this defendant and without the Order & authority of this defendant and at his own expense as this Defendant supposed & still believes and that the bill of \$14⁷⁵ allowed by said arbitrators was as this deft. believes the amount of such repairs although this deft. never hears anything about such an account until the said Arbitration as aforesaid.

Once this Defendant further says that in the latter part of the Month of December 1858 during the absence of this defendant in the State of Michigan, a social gathering of a strictly private and select character was had by some one of the boarders at said Orient House, to which said Complainant was not invited, or said Complainant's lady was invited and said Complainant was not, or something of that kind, but precisely what this Defendant does not know & never could exactly ascertain and that said Complainant there, or therefrom became angry with certain boarders in said Orient House and upon the return of this defendant requested him to expel or to dismiss the said individuals from said House, to which request this Defendant did not and could not accede - And this defendant further says that said Complainant again requested this defendant to dismiss said Boarders and threatened to foreclose the said Charles Mortgays so held by him as aforesaid if said deft. did not comply with his request which said deft. was again compelled to decline to do - And this Defendant further says that thereupon to wit, or about the 5th day of January 1859 said Complainant bore a Quire's Warrant for two hundred dollars alleged by him to be due as rent for the Month of December 1858 upon the furniture in said Orient House and also foreclosed his said Mortgage & seized all of the furniture in said House. And this defendant further

pays that there was not a cent of rent due to said Complainant for the Month of December 1858 or any other Month or part of a Month at the time of the issuance and levy of said Warrant. That this debt was somewhat indebted to Comfert on other accounts but had kept the rent settled to date.

Then this defendant further states and shows to this Honorable Court that none of the conditions of said Mortgage had at that time been broken by this defendant - and that the same was not due - and that the only breach of any of the conditions of said Mortgage was the levy of the writ of fieri facias hereinbefore mentioned which took place three months before said 5th day of January 1859 and said Complainant after replying from said levy had allowed this Defendant to remain in undisturbed possession of said furniture from the time of such levy to the said 5th day of January 1859 and in fact that said Complainant had no legal right to foreclose said Mortgage or levy said Distress Warrant, but that he levied said Warrant and seized such furniture thereunder and under said Mortgage maliciously and without any reasonable or probable cause whatsoever and solely on account of his anger excited by the imaginary flight hereinbefore set forth.

Then this defendant further answering says that he was unable to remove said goods, chattels, furniture &c as will be hereinafter set forth and did remove the same, but that he was by reason of the premises greatly damaged and injured and broken up in his business and compelled to pay out a large amount of money - that a considerable amount of said furniture was broken beyond repairing & destroyed - and a portion thereof was repaired by this defendant at considerable expense, but that

almost all said furniture was more or less injured which was to have been allowed this defendant as damage as aforesaid, to wit, by allowing the difference between the ordinary and the actual wear and tear of said furniture.

And this defendant further says that he commenced in said month of January 1859 his action of trespass on the case for damages against said Complainant in addition to the damages claimed by him in the Replevin action by him commenced as hereinbefore stated and hereinafter more fully set forth.

And this defendant further says that said Complainant had certain notes of this defendant principally composed of ~~a~~ usurious interest certain notes given without consideration and that in the month of February 1859 this defendant was about to file a bill in Chancery against said Complainant to settle the amount actually due to said Complainant for borrowed money and to get back the notes of this Defendant given for usurious interest and without consideration but that this defendant was particularly requested on behalf of said Complainant not to file any such bill as there was no necessity of it, that said Complainant would settle all matters amicably.

And this defendant further says that he was kept in said Green Stables from the latter part of February to the 17th day of May 1859 by the representations of said Complainant that he was ready to settle and was willing to arbitrate and would surrender the usurious notes and other statements of that description and that the said Complainant wished this Defendant to stay to keep the boarders there so that when a settlement was effected a new tenant might more easily be obtained who could

take the house full and carry it along. And this defendant further says that under the existing state of facts, this defendant being unable to pay said House by reason of the premises, by any advantage and becoming more and more indebted every day that he continued there, and all through the malicious action as this defendant claims, and still claims, of the said Complainant in the premises, and this defendant staying at last simply to keep the house full, this defendant considered it Equitable for the said arbitrators not to allow rent to said Complainant for at least that portion of the month of May 1859 during which he remained in said house, and this defendant believes that this item, to wit, \$133 $\frac{32}{100}$ two pence for May 1859 was allowed simply for the reasons above given and ought not to have been allowed as aforesaid.

And this defendant further says that he paid the rent for said Orient House up to the 1st day of March 1859 and ceased to pay any after that in expectation of a Settlement from day to day.

And this defendant further says that at and during the time the said Orient House was broken up in January 1859 by the action of said Complainant—as aforesaid this defendant was compelled to pay out over Two hundred dollars in cash—and that in addition to that there was over fifty dollars worth of furniture &c broken as to be utterly destroyed. And this Defendant further says that ^{he was} at that time making money, with a house full of paying boarders and that said house was broken up for fully ten days and that it never in fact recovered its standing so that this defendant was unable to ever make

the running expenses of the House at any time hereafter.

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And this defendant further says that said Complainant left said house and left the rooms which he was occupying and for which he was paying \$30 per month, to wit Nov 18 & 19 and that this Deft was unable to rent No 18 which was the best room in the House and had been occupied by said Complainant because this Deft after said break up was unable to get the furniture on credit & unable to get the money wherewith to furnish said room and was therefore unable to rent the same, which stood empty for four months at a serious loss to this Defendant, although this Deft used every means to rent the same.

And this Defendant further says that by the articles of Submission this Deft, waived all claim to exemplary & damages by reason of said seizure of said Goods & Chattels Furniture &c as aforesaid, but was to be allowed all the actual damage he sustained thereby.

And this Defendant further answering says that inasmuch as said Arbitrators had agreed to allow the difference between the actual wear and tear and ordinary wear & tear of said furniture as damage generally upon all the furniture, he, this defendant preferred a claim for the sum of \$749 ¹³/₁₀₀ only for the damage actually sustained by him for money paid out \$0, expecting however an allowance of two or three hundred dollars as damages of the actual wear of the furniture aforesaid. And this defendant further says that he was allowed by said Arbitrators one hundred and seventy one dollars all told for all the Cash he had paid out & damages

* he had sustained, and not now in was examined on behalf of this Defendant & in support of his claims. And this Defendant therefore charges that the said Arbitrators made the difference of at least One thousand dollars in striking the balance between said Complainant and this Defendant, & against ~~this~~ Defendant and in favor of said Complainant and did so in fact with the design of bringing the items of account in all the matters submitted to them, valuation and all, down to the sum of Thirteen hundred dollars to be paid this Defendant.

And this Defendant further answering admits that said Complainant made and executed his two certain & promissory Notes bearing date the 20th day of May aforesaid payable to the Order of W. J. B. Court twelve Months after date for the sum of One hundred dollars each being made & payable according to the agreement between said arbitrators & said Complainant and this defendant and said Court as hereinafter set forth and being delivered to said Court in payment for the assignment of a certain Mortgage by said Court and others to said Complainant - said Notes being on account of the sum to be paid by said Complainant according to said Award.

And this defendant admits that the said Complainant promised to make his Notes for the residue of the amount to be paid by said Complainant, to wit, \$299⁷⁶ upon certain receipts being furnished him, but denies that they were to be delivered to or for this defendant, but on the contrary asserts and declares that the same were to be made payable to said Court.

and to be delivered to him, on his (said Courts) procuring certain receipts and furnishing and delivering the same to the said Complainant.

And this Defendant further answering admits that the said Complainant then and there took and received all of said furniture goods and chattels from this Defendant mentioned in the award and the Schedules annexed thereto - except such as were expressly excepted in the body of the award, having been therein set apart to this defendant to enable him to pay Bowen Brothers, Messrs Miller, & Co. Tobey and that said Complainant now holds the same.

And this defendant further answering says that said furniture so set apart as aforesaid was so set apart not to wit for said Bowen Brothers and others but to this defendant to give him immediate means wherewith to pay said bills of said Bowen Brothers & others and that the same was so set apart before the balance had been struck at all between this Complainant and the said Defendant, said arbitrators having fixed and determined as matter of fact that whatever balance was due to said Complainant could be fully satisfied out of the remaining furniture as afterwards was done.

And this defendant further answering expressly and positively avers that said arbitrators did in fact in making the numerical calculation of the present valuation of the furniture in the last Schedule annexed to said award, set down the estimated cost prices of the articles therein mentioned & ascertain the aggregate cost value thereof to be the sum of \$1220 ⁰⁰/₁₀₀, that they thus attempted according to the basis they had adopted to

ascertain and deduct therefrom, twenty two Cent off from said
 to arrive at the present value of the Articles of Furniture & other
 mentioned and further this defendant expressly denies that said
 Arbitrator in making the deduction mentioned in said Bill by
 accident or mistake in any calculation stated the sum of—
 \$976.²⁵ to be \$1976.⁰³, which latter sum, greater by one
 thousand dollars than it should have been so was by said
 Arbitrator designed to be was taken to make up the aggregate
 present value of said Goods & Articles & received by said
 Complainant after setting aside the furniture before mentioned;
 by reason of which said accident or mistake the said Complainant
 was charged One thousand dollars more for said furniture
 than he should have been— but this defendant expressly &
 positively avers that in truth and in fact the said arbitrator
 did not set down & fix the valuation of said last mentioned
 Schedule to be \$1976.⁰³ or agree to deduct or attempt to
 deduct 20 two Cent therefrom or make any such calculation
 as alleged in said Bill of Complaint, or proceed according to
 any such basis as set forth in said Bill of Complaint, but on
 the contrary thereof that the facts in regard to fixing said
 Valuation were as hereinbefore in this answer set forth.

And this defendant further answering expressly denies
 that by the terms of said ^{Said Contract of} Submission the said
 Complainant had or might to have the whole of said furniture
 including that so set apart for the payment of the indebtedness
 of this defendant to the persons hereinbefore named, first applied
 to the payment of the said balance so by said arbitrator found
 to be said Complainant's due, but avers that by said agreement

this defendant was to pay said claims of Bonner Brothers and others out of all of said furniture unless there should not be more than sufficient to pay said Complainant his balance, if any, against this Defendant and that said arbitrators having ascertained that there would be a large balance due to this defendant on said furniture, then set apart the portion before mentioned amounting to a little over Three hundred and fifty dollars to give this defendant immediate means to pay said indebtedness to Bonner Brothers and the others heretofore enumerated and finally adjusted the balance at the amount and in the manner hereinbefore stated and set forth.

And this defendant further answering denies that said furniture so set apart to this defendant as aforesaid, remaining under the control of this defendant, but on the contrary thereof this defendant on said 21st day of May A. D. 1859 sold and delivered the same to Melville H. Fuller of the City of Chicago aforesaid and received payment in full therefor and that the same belongs to and is the property of said Fuller and was duly taken possession of by him on said 21st day of May 1859.

And this defendant further says that before he sold said furniture to said Fuller it had been and was agreed by and between said Complainant, this defendant and said arbitrators and said defendant knows that the debts due to said Bonner Brothers, A. B. H. H. Miller & Co. they should be otherwise satisfied from the proceeds of said furniture as will hereinafter be more fully and at large set forth.

And this Defendant denies that the said Complainant at the time of the filing of his Bill of Complaint as aforesaid had

that unless this defendant should be restrained and prohibited from so doing, by this Court, he, this defendant would have one said furniture so set apart, to said persons, to wit, said Bowen Brothers & others for this defendant says that said Complainant well knew in the first instance that said debts were to be paid by this defendant out of the proceeds of said furniture or otherwise and that it had been subsequently agreed with the knowledge and consent of these Complainants that said debts were to be otherwise satisfied as will hereinafter appear.

And this defendant further answering says that it is true as alleged in ^{said} Bill that said defendant Court applied one of the said Notes so executed by said Complainant as aforesaid upon & therewith paid the debt due to said Charles Toly and further says that said Note was so appropriated with the knowledge and consent of said Complainant and in accordance with the agreement hereinafter specified and that the receipt of said Toly of his said debt in full was taken and delivered to said Complainant and by him received.

And this defendant further answering says that he does not hold the said Notes already executed and delivered by said Complainant or either of them for his own benefit or that of any one else, and that the same or either of them are or is not held by any one for the benefit of this defendant, but that the same were made payable to and delivered to said defendant Court for good and valuable consideration as next hereinafter set forth and this defendant believes the same are still held by said Court paying and excepting one of the same transferred to said

Copy as aforesaid.

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And this defendant further answering denies that the said defendant Court had full knowledge of the consideration for which said Notes were given by said Complainant and that the sum of money for which all of said Notes were given is equal to the amount of the said alleged mistakes in the valuation of said goods chattels &c, but on the contrary, hereof this defendant states upon information and belief that the said defendant Court knew at the time of the making of said award by said Arbitrators nothing more about the said Notes or their consideration than that such an award had been made and the sum of \$899.76 was found to be due to this defendant and was to be paid by said Complainant on his Notes in twelve months but was wholly ignorant of the amounts otherwise found by said Arbitrators or of any calculations by which they arrived at such results contained in said award.

And this defendant further answering says, that he, this defendant did not know at the time of the making of said award and does not now know except as he is by said bill of Complaint informed and from other information since the filing of said bill by what calculation or estimate said arbitrators arrived at the result specified in said award save as he was by said award informed and that he performed the conditions of said award without any other knowledge in regard thereto than he derived therefrom, and he denies from all the information and knowledge he has upon the subject, utterly and totally that there was any error committed by said arbitrators therein as charged in said Bill of Complaint as he has already in detail specifically and

positively denied the same.

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When this defendant further answering says that on or about the 5th day of January 1859 the furniture in said Circuit House owned by this defendant as aforesaid was levied on by the said Complainant under a Distress Warrant, and also seized under the Chattel Mortgage held by said Complainant as aforesaid, as has been already set forth - that this defendant then stated to Russell, N. Hough, A. H. Court, N. Chapin & others the circumstances attending said seizure unto which they were already of their own knowledge somewhat acquainted and earnestly beseeched and persuaded them to become security for him, this defendant, upon a Replevin Bond running to the Sheriff of Cook County in order to enable this defendant to replevy said goods chattels & furniture so seized by said Complainant as aforesaid and offered them the security next herein after mentioned and also desired said Hough, Court and Chapin to advance upon said security certain moneys to aid him in his trouble as aforesaid.

When this defendant further says that on or about the 10th day of January A. D. 1859 the furniture in said Circuit House was valued by this defendant at over four thousand dollars and that the Mortgage held by said Complainant only included a portion to wit, about half thereof, and that the sum of One thousand dollars only had been advanced thereon, which said Mortgage had been before that time foreclosed as aforesaid and that in consideration of the premises this defendant offered to said Hough, Court and Chapin a Mortgage on all of said furniture &c to secure them from liability on such replevin bond, if executed by them and paid advances as they might make to

him as aforesaid And this defendant further says that in consideration of said security the said Strongh Court and Chapin agreed to sign a Replevin Bond for this Defendant and to advance certain money to this defendant - as next hereinafter mentioned. And this defendant further says that the amount of money claimed by said Complainant on said Mortgage was the sum of One thousand dollars and the amount of rent was Two hundred dollars for the Month of December 1858 as aforesaid, being Twelve hundred dollars in all and that said Strongh Court & Chapin with others signed and executed a Replevin Bond as sureties with this Defendant in the penal sum of Twenty four hundred dollars running to the Sheriff of Cook County and that this defendant was thereby enabled to and did replevy the said goods chattels &c on or about the 10th day of January 1859 from said Complainant by Writ of Replevin issued of and under the Seal of the Circuit Court of Cook County -

And this defendant further says that on and about said 10th day of January A.D. 1859 and on the strength of the security hereinbefore mentioned the said Defendant Court advanced to this defendant the sum of Eight hundred dollars (whereby subsequently advanced but unsecured by said Mortgage the ^{further} sum of Twenty four dollars) and that the said defendant Chapin on the strength of the security before mentioned assumed the payment of Two hundred dollars which this defendant had previously borrowed and took up and held this defendant's Note given therefor

And this defendant further answering says that he therefore, to wit, on or about the said 10th day of January 1859 made good & delivered to the said Strongh Court &

Chapin a chattel Mortgage upon the furniture aforesaid to secure them from loss by reason of liability on said Bonds and also to secure to said Court and Chapin the said sum of One hundred and no dollars so advanced by them to this defendant as last aforesaid.

And this defendant further answering says that at the time of the said submission to Arbitration aforesaid, and at the time the award of said Arbitrators was made as aforesaid the said Strong, Court & Chapin still held their said Mortgage upon said furniture goods & chattels of & wholly unsatisfied and that it had always been the intention of this defendant to have that claim fully satisfied and that was the principal cause which drove this defendant to consent to an Arbitration as aforesaid.

And this defendant further answering says that the said Arbitrators made their said award on the 20th day of May A.D. 1859 and that the same was shown to this Defendant on the morning of the 21st day of said month of May - that in and by said award among other things it was provided that the said Complainant should have and take possession of the furniture in said Court Store mentioned in certain Schedules annexed to said award & which said Schedules were so annexed in order (and for the sole purpose and no other) to enable said Complainant to take possession of said furniture &c, with the exception of certain articles of furniture enumerated in the body of said award & which were expressly set aside for this defendant - that this defendant should pay and satisfy the claims of E. Joby, A.B. & G. M. Miller & Bowers Brothers, and should have to enable him to do so the said Articles of furniture as aforesaid.

Chapin a chattel Mortgage upon the furniture aforesaid to secure them from loss by reason of liability on said Bonds and also to secure to said Court and Chapin the said sum of One thousand dollars so advanced by them to this defendant as last aforesaid.

And this defendant further answering says that at the time of the said Submission to Arbitration aforesaid, and at the time the award of said Arbitrators was made as aforesaid the said Strong, Court & Chapin still held their said Mortgage upon said furniture goods & chattels of & wholly unsatisfied and that it had always been the intention of this defendant to have that claim fully satisfied and that was the principal cause which drove this defendant to consent to an Arbitration as aforesaid.

And this defendant further answering says that the said Arbitrators made their said award on the 20th day of May A.D. 1859 and that the same was shown to this Defendant on the morning of the 21st day of said Month of May - that in and by said award among other things it was provided that the said Complainant should have and take possession of the furniture in said Court Store mentioned in certain Schedules annexed to said award & which said Schedules were so annexed in order (and for the sole purpose and no other) to enable said Complainant to take possession of said furniture &c, with the exception of certain Articles of furniture enumerated in the body of said award & which were expressly set aside for this defendant - that this defendant should pay and satisfy the claims of E. Joby, A.B. & G. M. Miller & Bowers Brothers, and should have to enable him to do so the said Articles of furniture as aforesaid.

that this defendant should give up peaceable possession of said
 Court House to said Complainant and the leases of the same
 should be cancelled and this defendant released from liability
 thereon and that said Complainant should pay to this defendant -
 the sum of \$1299.⁷⁶ and give his Notes therefor on twelve months
 said amount being over and above all the claims of the said
 Complainant against this defendant.

And this defendant further says that after commencing
 the Replevin suit he had brought in January 1859 as aforesaid
 against said Complainant he had also commenced an action of
 trespass on the case against said Complainant - for damages
 sustained by him by reason of the premises and that, although
 as he believes it was not specially required by said award, it
 was the understanding that judgment should be rendered in
 favor of this defendant in his Replevin suit against said
 Complainant with one cent damages and that this defendant was
 to dismiss his trespass suit and said Complainant his action of
 trespass for rent then still pending - but this left charges upon
 belief that this disposition of said cases was not a provision of
 said award.

This defendant further says that by said award it was
 stated that the balance due from this debt to the said Complainant
 as made by said Arbitrators was \$2123 ²⁴/₁₀₀ as has been heretofore
 stated and set forth And this defendant believes and still believes
 that no such balance was never due to said Complainant and that
 the sum of \$1299.⁷⁶ was a small less sum than should have
 been found by said arbitrators to be paid by said Complainant to
 this defendant, after receiving all of the said furniture: but this

defendant by reason of the premises and the debt due to said defendant Court and said Chapin which were, pressing this defendant and inasmuch as he had given bond in the penal sum of Five thousand dollars to perform said award, assented thereto without making any calculations or figures or seeing any receipt there in said award, and the said Complainant also assented to said award and separately expressed his satisfaction therewith.

Also this defendant further says that he immediately surrendered possession of said Green House to said Complainant on said 21st day of May 1859, and said Complainant entered into full possession thereof which he still retains and that defendant also delivered to said Complainant all of the furniture specified in said award and the Schedules annexed thereto, excepting that which was set apart as aforesaid, and said Complainant as he alleges in his said Bill of Complaint-accepted and received the same, the Mortgage of said Street, Court and Chapin being implied ^{to} said Complainant as hereinafter set forth.

Also this defendant further says that the keys of said building were also delivered up and cancelled by said Arbitrators and this defendant released therefrom. And this defendant further says that he also gave a stipulation to said Complainant for the dismissal of his (this defendant's) action of trespass on the case and the entry of judgment for the Plaintiff in the before said suit and for the payment of the costs therein by this Debt, which this Debt, has as yet not been able to ascertain, but intends to pay as soon as the costs are taxed. And this defendant received the stipulation of said Complainant to dismiss his said

action of Deceit for just at the Costs of the Plaintiff (said Complainant) Herein. And this defendant further says that the said award was fully and entirely complied with by this defendant on said 21st day of May 1859 in every particular unless in the payment of said Bowen Brothers & Messrs A B & H, H. Miller which would have been done had not said payment been prevented by the act of said Complainant as hereinafter set forth. And this defendant further says that the said arbitrators certified on said 21st day of May 1859 to the full performance of all the conditions of said award by the parties thereto - there still remaining a balance to be paid over by said Complainant as hereinafter named the manner and mode of paying which was however made the subject of special agreement as will be hereinafter set forth. And this defendant further says that the Bonds given by said Complainant to this defendant - by this defendant to said Complainant conditioned on the performance of said award were duly surrendered and cancelled on said 21st day of May 1859.

And this defendant further says that after the making of said award & compliance therewith at the request of said Complainant, he this defendant remained for a few days in said Orient House, with a view of keeping the boarders already there until some new tenant should take the house - the said Complainant at the same time keeping possession by his agents - but that said Complainant subsequently desiring this defendant to leave the same, he did so leave the said House and there residing there also left the same.

And this defendant further says that before the above,

of said furniture by this defendant to said Complainant, it ~~was~~
 became now was necessary for this Defendant to remove there
 from the lien & Mortgage of the said Hough, Court & Chapin
 by the satisfaction of their said claim and that said Com-
 plainant desired that instead of satisfying said Mortgage, the
 same should be assigned to him with all the rights of the
 Mortgages hereunder. And this defendant consented that the
 said Complainant - instead of satisfying this defendant and allowing
 him to obtain satisfaction of said Mortgage might himself pay
 said claims of said Mortgages and obtain the assignment of
 said Mortgage by said Mortgages to himself and all their
 rights hereunder and direct the Notes he might use in so
 doing from the amount to be paid to this Defendant & accordingly
 the said Complainant made and executed his ten certain &
 promissory Notes for One thousand dollars each payable to the
 Order of the said Defendant Court as one of and representing
 all of said Mortgages and delivered the same to him in ~~a~~
 payment of the said Mortgages claims and the purchase of
 their said Mortgage, being the One thousand dollars said ~~a~~
 Mortgage was given to secure. And this defendant further says
 that the said Notes for One thousand dollars being given to said
 Court as aforesaid and the said Stipulation for payment in the
 Return put in favor of the Plaintiff having also been made
 and entered into whereby their liability on the said Return
 would be released, that, the said Mortgages, R. M. Hough, Atk.
 Court & Newton Chapin assigned said Mortgage and all their
 right under the same to the said Complainant which said Mortgage
 the said Complainant still has and holds - And this defendant

further says that there then remained the said Complainants' note for \$299⁷⁶ to be given by him to this Defendant and it was then and there proposed by the two said Arbitrators, this Deft, & said Complainant that said Court should devote a portion of the notes so held by him in payment and settlement of the claims of said Bowen Brothers, A. B. & Co. J. P. Miller & Co. Tobey and that the said Defendant Court should receive said balance of \$299⁷⁶ after deducting said claims - and as said Court would thereby lose about \$50 ^{$\frac{24}{100}$} on the principal sum due to him to wit \$800 this defendant agreed to convey to said Court about one hundred and twenty five dollars worth of articles of furniture belonging to this Deft and not included in said award.

And this Defendant further says that said defendant Court accordingly agreed to satisfy said claims out of said notes & this defendant conveyed said articles of furniture to said Court - and inasmuch as the said Complainants interest articles were included in the Mortgage assigned to said Complainant, the said Complainant also gave said Court a Bill of Sale of the same conveying all his right title and interest thereto to said Court.

And this defendant further says that the said defendant Court did immediately and in the presence of the Attorney of said Complainant, this defendant, Totters endorse and deliver to said Charles Tobey one of said Complainants said notes in full settlement of his claims and said Tobey gave said Court a receipt of his account in full (which amounted to about One hundred dollars) and said Court delivered the same to said Complainant, who took and received the same.

And this deft further avers that said Court - also took the

receipt of said Complainant's Attorney for the delivery of said Complainant's paid Notes for said balance of \$299⁷⁶ to him as soon as the receipts ^{in full} of said A. R. & G. H. Miller & Bowen Brothers or their respective demands should be delivered to him by said Defendant Court.

And this defendant further says that he believes that said bills of said A. R. & G. H. Miller & Bowen Brothers would have been paid by said defendant Court and the receipts therefor delivered to said Complainant had not said Court been prevented by the order and injunction of this Honorable Court from disposing of said Complainant's paid Notes in his possession as aforesaid.

And this defendant further says that the said furniture so set apart as aforesaid by the subsequent agreement of said parties as aforesaid was no longer to be devoted to the proceeds thereof devoted to the payment of the said claims and the said furniture thereby remained in this defendant's hands and possession, belonging to him and under his control and that he disposed of the same as aforesaid.

And this defendant submits to this Honorable Court that all and every the matters in said Complainant's Bill ~~as~~ mentioned & complained of are matters with respect to which the said Complainant is not entitled to the relief he has therein asked from this Court and this defendant hopes he shall have the same benefit thereof as if he had demurred to said Complainant's Bill.

And this defendant denies all and all manner of unlawful combination and confederacy whereunto he is by the said Bill charged, without this that there is any other matter, cause or

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thing in said Complainant's said Bill of Complaint contained material so necessary for this defendant to make answer unto and not herein thereby well and sufficiently answered, confessed, traversed and avoided or denied is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to ever maintain and prove, as this Honorable Court shall direct and humbly prays to be heard dismissed with his reasonable costs and charges in this behalf most wrongfully sustained."

"Dow & Fuller

"Levi, L. Atwood."

Defts. Sols."

"State of Illinois
Cook County, . . . ss."

Personally comes Levi, L. Atwood being duly sworn on oath declares and says that he is the defendant in & whose name is subscribed to the foregoing answer and that he has heard the said answer read and knows the contents thereof and that the same is true of his own knowledge except as to the matters & things therein stated to be on information and belief and as to those he believes it to be true.

Sworn to and subscribed before me this 7th day of June A.D. 1859
Malto Kimball. Clerk."

Levi, L. Atwood"

And also on the said Eighth day of June A.D. Eighteen hundred and fifty nine came the said defendant Court by his Solicitors and filed in the Office of the Clerk of said Court his Answer in said cause; Which last mentioned answer is in the words and figures as follows to wit.

'State of Illinois
Cook County . . .

In the Superior Court of the
City of Chicago.

Before the Honorable Judges of said
Court - In Chancery Sitting

The Answer of Abram Stewart one of the
defendants to the Bill of Complaint of Horatio A.
Storrs, Complainant.

This defendant now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many and uncertainties and other imperfections in the said Complainant's said Bill of Complaint contained, for answers thereto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto answering says that it is true as this defendant believes that heretofore to wit, on the 17th day of May 1859 and before that time there were divers matters of difference, disputes, claims and demands existing between said Complainant and said defendant Levi L. Atwood and that on the day and year last aforesaid the said Complainant and said Defendant Atwood by an Instrument in writing of that date under their hands and seals duly made

executed did appoint Pennoyer, C. Sherman & Melville H. Fuller as arbitrators to hear the proofs and allegations of said Complainant and said Defendant Answerers of and concerning the matters by said agreement submitted to them and by said agreement did then & there submit all and every the said matters of difference to said Fuller & Sherman to award adjudge and determine of & concerning the same and that afterwards to wit on the 20th day of May 1859, the said arbitrators under said articles of Submission proceeded to hear and determine the said several matters of difference upon the basis specified in the said agreement of Submission, and thus and there made their award & final determination of the same concerning the said matters of difference &c between the said parties as alleged in said bill of Complaint. And this defendant further answering says that he believes it to be true that in and by said award the said arbitrators found and determined amongst other things as follows, to wit, that said Alwood was indebted to said Complainant in the sum of \$3193.⁴¹ and said Complainant to said Alwood in the sum of \$1070.⁴² and that there was a balance due to said Complainant by said Alwood of \$2123.⁰⁴ as alleged in said Bill of Complaint, but this defendant says that he knew nothing thereof until he was by said Bill of Complaint informed.

And this defendant further answering says that whether or not by said articles of Submission there was among the disputes submitted to said arbitrators a difference of & concerning the furniture in the Orient Store owned by said Complainant in the City of Chicago and that in and by said articles said arbitrators were required to first find the balance due from said

Deft Atwood to said Complainant upon a statement & allowances
 of their respective accounts which might be found correct; that
 they were therefore required to set aside certain parcels of said
 furniture to be appropriated in payment of the debts specified in
 said Bill of Complaint, provided the indebtedness found due to
 said Complainant by said Atwood should first be paid in full
 and that the balance found to be due from said Atwood to said
 Complainant should be paid and satisfied by said Atwood in
 full out of the furniture in said Great House in the manner
 set forth in said Bill of Complaint and therein particularly set
 forth this defendant cannot pay of his own knowledge as he
 never examined or has seen said articles of Submissions; but
 this defendant upon information and belief denies all of the afore-
 said allegations of said Bill and says that no distinct order of
 proceeding was prescribed by said articles of Submissions and
 that the said arbitrators were thereby required to estimate and fix
 a valuation upon said furniture and from said furniture to set
 aside so much thereof to said Atwood as would give him an
 immediate means to pay the debts due to the persons designated
 in said Bill of Complaint to wit, Bowen Brothers, A. B. & L. H.
 Miller & Co. Tobey and that said Complainant should take the
 remainder of said furniture at said valuation & that said Atwood
 therefor, first being credited with whatever amount should be
 found by said arbitrators to be due to said Complainant from
 said Atwood - which amount was also to be determined by said
 arbitrators, but denies that said arbitrators were required to
 proceed or did in fact proceed as alleged in said Bill of Complaint

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And this defendant further answering upon information and belief admits that the said arbitrators estimated and determined the balance due to said Complainant by said Atwood over and above all offsets and claims against Atwood to be the said sum of \$2123 $\frac{3}{4}$ and awarded adjudged and determined that said Atwood was indebted to said Complainant in that sum as alleged in said Bill of Complaint, but says as before that he does not know this of his own knowledge and was not informed thereof until after the filing of said Bill.

And this defendant further answering denies upon information and belief that the said arbitrators thereupon proceeded to fix a valuation upon said furniture for the purpose of having the same applied upon and in payment of said sum so due to said Complainant but says that the said arbitrators did in fact first fix said valuation and afterwards strike the balance between said parties and determined the amount due from said Atwood as last aforesaid.

And this defendant further answering denies that said Arbitrators caused certain Schedules to be prepared showing as near as might be the cost price of said furniture and of the different articles thereof and that certain per centages were agreed upon by themselves said arbitrators to be deducted from such assumed cost price in order to arrive as near as possible at the present value of said articles of furniture and also upon information and belief further denies that the Schedules set forth in said Bill of Complaint and the amounts thereof and the per centages therein named to be deducted therefrom were ever agreed upon by said Arbitrators or taken as a basis or that any such

calculations or estimates were ever made or adopted by and between said arbitrators or any such deductions ever made by them but says that it was agreed before the execution of said articles of Submission as aforesaid as this defendant was at that time informed & believed and still believes that the cost price of said furniture at the time of its purchase was to be ascertained by said arbitrators and the ordinary wear and tear of similar furniture in houses of the same description as the Green House but not the actual wear and tear of this furniture & deducts therefrom that the balance was to be taken as the correct valuation of said furniture, that is to say, that said Alwood was to be allowed as part of his damages for the seizure of said furniture by said Ford as hereinafter set forth the difference between the actual wear and tear of said furniture and that which it would have ordinarily undergone.

And this defendant further says that he this defendant at the time of the making of the award by said arbitrators as aforesaid believed that that was the course pursued by said arbitrators and so continued to believe during the entire performance of said award and so charges the fact to be

And this defendant further answering admits upon information and belief that the said arbitrators awarded a damages and decreed determined that said Complainant should take said furniture deducting therefrom certain parcels thereof set aside to said Alwood in order to give him the immediate means to pay the debts before mentioned to wit, Powers Brothers, Co. & Co. and O. B. & H. M. & Co. and pay for the same the sum of \$3422⁸⁰ after deducting therefrom the sum subsequently found

by said arbitrators to be due said Complainant from said Atwood which left a balance of \$1299⁷⁶/₁₀₀ for which said Complainant was to give his Notes to said Atwood.

And this defendant further answering says that it may be true that said Complainant had not the opportunity of making any actual inspection of the figures and calculations upon which the several amounts before mentioned were obtained as alleged in said Bill of Complaint, of which this defendant is entirely ignorant but this defendant charges upon information & belief that there were no figures or calculations open or intended to be open to the actual inspection of said Complainant or said defendant Atwood, and that there were no other figures or calculations made by said arbitrators at all, upon which the aforesaid amounts were obtained other than those contained in said award.

And this defendant further says that there were certain Schedules annexed to said award as this defendant believes but which this defendant never had the opportunity to examine, and never did examine, in order to enable said Complainant to take possession of the articles of furniture therein contained, and for no other purpose, and under which said Complainant did take possession thereof.

And this defendant further answering admits that the said Complainant made and executed his two certain promissory Notes bearing date the 20th day of May, 1859 payable to the order of this defendant Twelve Months after date for the sum of One hundred dollars each and delivered the same to this defendant, the same being on account of the balance to be paid by said

Complainant according to ^{the} said award and that said Complainant promised to make his Notes for the residue to wit for \$299 ⁷¹/₁₀₀ upon certain receipts being furnished to said Complainant, but this defendant denies that the said Complainant promised or was to deliver the same to or for said Atwood but on the contrary that the same were to be made payable to this defendant and delivered to him by said Complainant in accordance with the agreement & understanding hereinafter mentioned and set forth between this defendant, the said Atwood and said Complainant.

And this defendant further answering says that he believes it to be true that said Complainant then and there took and received all of said furniture goods & chattels from said Atwood except such as had been set apart for said Atwood wherewith to pay said Bowen Brothers & others as aforesaid and that he now holds the same as alleged in said Bill.

And this defendant further answering says that it may be true for anything which this defendant of his own knowledge knows to the contrary that the said furniture so set apart to said Atwood to pay said Bowen Brothers & others was set apart to them on the supposition that the said Complainant had been paid the amount of the balance found to be his due out of the other furniture &c but this Defendant charges upon belief that the said furniture was so set apart before any balance had been found due to said Complainant or the amount thereof determined.

And this defendant further answering according to the best of his knowledge information and belief expressly denies that the said arbitrators in making the numerical calculations of the

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present valuation of the furniture in the last schedule attached to said award, set down the Estimated cost prices of the articles therein mentioned and ascertained the aggregate cost and value thereof to be the sum of \$1220.03; that they then attempted according to the basis they had adopted to ascertain and deduct therefrom twenty per cent off from said sum to arrive at the present value of the articles of furniture therein mentioned and that said arbitrators in making said deduction by accident or mistake in the said calculation stated the sum of \$976.⁰² to be \$1976.03 which latter sum greater by one thousand dollars than it should have been or was designed to be was taken to make up the aggregate present value of the furniture &c received by said Complainant, by reason whereof said Complainant was charged One thousand dollars more for said furniture than he should have been - but this defendant no information & belief-avers that the said arbitrators made no such calculation as in said bill alleged - set down & ascertained no such sum as \$1220.⁰² made or attempted to make no such deduction and committed no such error or mistake as alleged in said Bill of Complaint.

And this defendant further answering says that he does not know and has no information as to whether by the terms of the Contract of Submission the said Complainant has a right to have the whole of said furniture including that so set apart as aforesaid, first applied to the payment of the said balance so by said arbitrators found to be due, as this defendant has never seen or read said Contract of Submission & has had no information in regard to said Complainant's alleged right in the premises.

And this defendant further answering upon information

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and heist denies that the said furniture so set apart as aforesaid still remains under the control of said Atwood, but admits that the same has not been applied or appropriated in payment of the said debts due to Bowen Brothers & others and says that the said Atwood has as this Defendant believes sold and disposed of the same.

And this defendant further answering of his own knowledge denies that said Complainant at the time of the filing of his said bill of Complaint feared that unless said Atwood should be prohibited from so doing by this Court, he would pass over said furniture so set apart to said persons, to wit, Bowen Brothers & the others hereinbefore enumerated and this defendant on the contrary charges the fact to be that said debts due to Bowen Brothers, A.B. & H. Miller & Co. & others were to be settled in another and different manner than by or with said furniture or its proceeds & that said debts were to be paid by this defendant with ^{said} ~~some~~ Complainant's notes as hereinafter set forth and that said Complainant was fully cognizant of and a party to the agreement with this defendant for so doing.

And this defendant further answering admits that one of the said Notes presented by the said Complainant as aforesaid & delivered to this defendant as aforesaid was applied by this defendant upon payment hereunto made of the said debt due to said Charles Tobey and this defendant expressly & positively charges the fact to be that said Complainant was well aware of the appropriation of said Note to that purpose and that it was done in the said Complainant's knowledge & consent and in accordance with the agreement for the payment of said debts hereinafter set forth, by & between this defendant, Atwood, said arbitrators and said Complainant and that this defendant obtained said Tobey's receipt in full of the debt due to him as aforesaid.

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and delivered the same to said Complainant who took and received the same.

And this defendant further admits that he now holds the residue of said Notes so received and delivered by said Complainant as aforesaid, but positively denies that he holds the same for the benefit of said Atwood but on the contrary thereof this defendant says that he took and received the same for good and valuable consideration as hereinafter set forth and in payment for the assignment by himself R. M. Storck & Newton Chapin to the said Complainant of a certain Chattel & Mortgage held by them as hereinafter stated and set forth and that he held the same for the benefit of himself and said Chapin to whom he was about to transfer two of said Notes which actually belong to him when restrained by the injunction of this Honorable Court.

And this defendant further answering denies that he has or had at the time of the filing of said Bill of Complaint full knowledge of the consideration for which said Notes were given by said Complainant that the sum of money for which all of said Notes were given is equal to the amount of said mistake in the valuation of said goods but on the contrary thereof this defendant positively avers that he knew nothing about the calculations of said arbitrators at the time of the filing of this Bill of Complaint or of the amounts found by them on way or the other except that said Complainant was to pay said Atwood the sum of \$1299.76 and take all the furniture at the valuation of \$3422.04 - that certain furniture was set aside to give Atwood means for the payment of Bowen Brothers & others - that this defendant did not at the

time they were executed see and has not since seen, the articles of submission under which said arbitrators acted. He also knew nothing about their deliberations and has never even examined their said award which has been under the control and in the possession of said Complainant almost entirely from the time it was made hitherto.

Now this defendant further answering says that it is true that he knew that said parties had agreed to arbitrate and entered into articles of submission therefor and that said arbitrators had proceeded to hear and determine the matters in difference between said parties and that this defendant was informed by said award on the 21st day of May 1859 when it was carried into effect and performed, but this defendant further then that this subsequent connection with the settlement of his own claim to said Chapins the agreement respecting the indebtedness to Brown Brothers & others as hereinafter set forth, was utterly ignorant of respecting the matters referred to in said Bill & since the filing of the same has been informed as hereinbefore alleged with regard to the allegations therein except as to the amounts hereinafter named which were stated to this defendant at the time of the making of said award.

Now this defendant further says that at the time he took the notes of said Complainant as aforesaid he did not know and was not informed what amount had been found to be due from said Atwood to said Complainant or at what valuation all of the said furniture had been put but was simply informed of the amount to be paid said Atwood by said Complainant, in which latter amount this defendant had a particular interest as will hereinafter appear and also of the valuation of that portion of said furniture

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taken by said Complainant.

That this defendant further says that he has been subsequently to the filing of this Bill informed of the valuation of said furniture and that on the day of the performance of the said award he was also informed by the said Complainant that an Advertisement prepared by said Complainant & published in the next morning papers that the furniture coming to said Complainant was valued by said arbitrators at \$3422.⁸⁰ And this defendant further says that so far from disposing any error had been committed by said arbitrators in making that estimate this Defendant then supposed & believed and still believes that the said furniture so obtained ^{by said Complainant as aforesaid} was well worth that sum upon the basis adopted by said arbitrators in ascertaining the value of the same as he, this defendant understood it and still understands it to have been and in fact on any basis or valuation whatsoever.

And this defendant further answering denies upon belief that there was any error committed by or on the part of said arbitrators to say that as far as the knowledge of him, this defendant, extends, the amount allowed to said Atwood by said arbitrators was altogether too small under all the facts and circumstances of the matters under consideration.

And this defendant further answering expressly & positively denies that he knew at the time of the filing of said Bill & at the time he took said Complainant's Notes as aforesaid that any error (if any has been committed at all) had been committed by said arbitrators, but on the contrary this deft says that he then believed and still believes the amount of \$1299.76 allowed to said Atwood to have been altogether very many hundreds of dollars too small and that he then believed and still believes the furniture to have been carefully and properly valued by said arbitrators at the sum of

\$3422⁰⁰ and not in the slightest at 100 high a price

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Once this defendant further says that before he took the notes of said Complainant & delivered the Mortgage held by this defendant as hereinafter set forth duly assigned by said Mortgagee to said Complainant, he was by said Complainant informed that the said Settlement was entirely satisfactory and the amount to be paid by him to this defendant Atwood also satisfactorily and that he was glad to have the matters in difference settled in that manner and this defendant had not the slightest idea but that everything was in all respects correct and satisfactory.

Once this defendant further answering says that the said defendant Atwood in the Month of June 1858 gave to the said Complainant a Chattel Mortgage on certain furniture therein described as being in said Orient House but which in fact was not placed therein with a few exceptions, until after the execution of said Mortgage - that said Mortgage was given for the nominal consideration of Three thousand dollars, but that in fact nothing like that amount of money, if any was advanced by said Complainant to said defendant Atwood thereon - Once this defendant further says that before and on or about the 5th day of January 1859 said defendant Atwood had purchased & placed in said Orient House four thousand dollars worth of furniture, a considerable portion of which was not included in said Complainant's said Mortgage heretofore mentioned and had & held the same.

Once this defendant further says that on or about said 5th day of January 1859 said Complainant being angry at this defendant was informed and believed at the time and still being at some real or imaginary flight on the part of some one or more

of the boarders at said Quirt House where said Complainant then resided, and because said Atwood would not repay the abovesaid individuals, issued a Discreet Warrant upon the furniture in said house for two hundred dollars rent alleged by said Complainant to be due for the month of December 1858 and also for foreclosure of said Mortgage & seized also of said furniture thereunder and under said Warrants.

And this defendant charges upon belief that said Complainant had no right to foreclose said Mortgage or levy said Warrant as said Mortgage was not due nor had any of its conditions ^{been} broken, nor was there any rent due, but that said Complainant did so foreclose & levy maliciously & without any reasonable or probable cause whatever.

And this defendant further says that said Atwood came to this Deft, one Russell M. Sturgh & Newton Chapin and earnestly pressed & persuaded them with others to sign a paper in Bond as parties with himself promising to the Sheriff of Cook County and thereby enable him to release his said goods and chattels so seized by the said Complainant as aforesaid and also advised them to advance him certain sums of money to aid him in his troubles and offered to this Deft to aid Sturgh and Chapin as security if they would go upon said Bond & advance said money as Chattel Mortgage upon all of the furniture in said Quirt House which at that time as this deft supposed and still believes far exceeded in value the sum of Four thousand dollars and upon only about the half of which said Complainant held a Chattel Mortgage which he had since foreclosed (as this defendant was by said Atwood informed & believed) or attempted to foreclose.

And this defendant further answering says that in consideration of the premises & particularly of the security offered by said Atwood, which this deft considered perfectly good, this deft said Strong & said Chapin consented to go upon said Bond & did on or about the 10th day of January 1859, in fact, with others sign as referees Bond as the purchase of said Atwood in the legal sum of Twenty four hundred dollars and did thereby enable him to replace said ~~furniture~~ goods & chattels which was done on or about the 10th day of January 1859, and this deft did also advance to said Atwood the sum of Eight hundred dollars on the strength of the security aforesaid, and said Deft also advanced to said Atwood undrawn money the sum of Seventy four dollars - and the said Chapin in consideration of said security affirmed the payment of Two hundred dollars unlawfully borrowed by said Atwood and took up the two bills said Atwood had given therefor.

And this defendant further says that the said Atwood thereupon to wit on or about the said 10th day of January, 1859 executed & delivered to this deft ^{said} Robert M. Strong & said Chapin a Chattel Mortgage upon all the furniture in said Guest House as security for said sum of ^{said} Two thousand dollars advanced by said Guest & Chapin and security to all of said Mortgagees from loss by reason of their liability on the said referees Bond.

And this deft further answering says that the award of said arbitrators was made on said 20th day of May 1859, carried into effect on the next day and that on said 20th & 21st day of May 1859. The said Mortgage of this deft said Chapin & said Strong still remained unsatisfied & a lien upon said furniture

and that as by the said award the said furniture with certain exceptions was to be conveyed to said Complainant it became necessary that the claim of this defendant and said Chapin should be paid as this defendant had indeed apprehended.

Now this defendant further says that the said Complainant or his Attorney particularly desired that instead of making payment to said Attorney of the balance to be paid to him to wit, \$1299⁷⁶/₁₀₀ Twelve hundred ninety nine ⁷⁶/₁₀₀ dollars and said Attorney obtaining the satisfaction of said Mortgage, that he said Complainant might purchase the said Mortgage of the said Mortgagee and the same assigned to him and that the said sum of One thousand dollars due thereunder be charged from said Account of \$1299⁷⁶/₁₀₀ leaving the balance of \$299.76 to be paid to said Attorney.

Now this defendant further says that said Attorney this day or behalf of said Mortgagee agreed that said Mortgage should be sold & assigned to said Complainant in accordance with said Complainant's desire & accordingly the said Complainant made & executed his two certain Promissory Notes as alleged in said bill payable to the order of this defendant for One hundred dollars each and delivered them to this defendant and the said Mortgage was delivered to said Complainant by this defendant duly assigned over to said Complainant by said Mortgagee through Chapin & this defendant and the said Complainant still has and holds the same.

Now this defendant therefore charges the fact to be that he this defendant became and was and still is the bona fide holder of said Notes of said Complainant for good & valuable consideration

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Eight of which said Notes belonging to this Debt were turned over to
said Chapin who this defendant induced to sign who did
join in the assignment of said Mortgage to said Stone in
consideration of security or payment of Two hundred dollars

And this defendant further says that the assignment of
of said Mortgage to said Complainant it was also stipulated that
judgment be entered for the Plaintiff in the present suit to
commence by said Attorney against said Complainant as aforesaid
and the said Mortgage released from all liability on their own
Bond, which was as this def. believes afterwards done.

And this defendant further says that after said Mortgage
was sold & assigned to said Complainant or about that time it was
proposed to this def. by said Attorney and said arbitrators, or said
Complainant, but this def. does not remember exactly who the
suggestion was first made by, that this def. should take some
of the Notes of said Complainant in his hands and settle the
accounts of Bowen Brothers, B.B. & Co. Miller & Tobey so as to
leave said Attorney the disposal and benefit of the furniture set
apart to him to pay said debts and that said Complainant should
pay the balance due to said Attorney to this def. and inasmuch
as the bills to be paid amounted to nearly or quite Three hundred
and fifty dollars, said Attorney agreed to ^{convey} to this def. some few
Articles of furniture not included in the award amounting in
value to about One hundred and twenty five dollars to prevent this
def. from the loss of Fifty dollars, which would ensue if he paid
out Three hundred and fifty dollars of the Notes and get back
only \$299.76 and also to pay another small amount which
had been advanced by this def. in addition to the Eight hundred

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dollars before mentioned. And this defendant further says that he agree so to do with the said Complainant said Atwood & said Arbitrators and that the said Complainant was a party to said agreement & consented & desired to have said claims settled in that manner.

And this defendant further says that he this day immediately indorsed & delivered one of said Complainant's Notes to Charles Joley, and settled his bill and handed the same received in full to the said Complainant or his attorney, who accepted & received the same.

And this defendant further says that it was also agreed by and between said Complainant and this Def^t that the balance of \$299 ⁷/₈ in Notes should be delivered to this Def^t upon the delivery of the bills of Bonew Brothers & A. B. & L. H. Miller & received in full and that said Atwood thereupon conveyed to him this def^t ^{defendant} ~~plaintiff~~ said articles of furniture above mentioned & the said Complainant also conveyed to this Def^t all the right title & interest he had therein under the said Mortgage so assigned to him as aforesaid or otherwise.

And this defendant further answering says that the 21st day of May 1859 was upon the last day of the week & that said award was not fully complied with until late in the evening that on the 22nd of the said Month of May this defendant was compelled to leave the City of Ohio and did not return until the 27th day of May 1859; on which day, as he was intending to settle said claims of Bonew Brothers & A. B. & L. H. Miller & obtain the receipts of said firms for their respective accounts, this def^t was restrained and enjoined from so doing by the Order & injunction of this Honorable Court; and that had it not have been

for that said indebtedness would have been paid and satisfied in full.

And this deft also further says that he had not had the opportunity to pass over to said Chopin the two notes for one hundred dollars each given by said Complainant and parcel of said lot of his notes before he was enjoined as aforesaid, and said Chopin remains unpaid and unsatisfied & defaming as well as this deft of his pecuniary as aforesaid.

And this defendant denies all and all manner of unlawful combination & confederacy wherein he is by the said Bill charged without this that there is any other matter or thing in said Complainant's said file of Complaint contained material or materiality for this deft to make answer unto that herein & hereby well & sufficiently answered Confessed & avoided however and denied is true to the knowledge and belief of this deft, - And which matters & things this defendant is ready willing to aver maintain & prove at this Honorable Court shall direct and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

Done & Signed

Abraham Stowers."

Deft Solrs."

'State of Illinois
Book County } &

Personally comes Abraham Stowers who being duly sworn on oath declares and says that he is the defendant whose name is subscribed to the foregoing answer and that he has heard the said answer by him subscribed read and knows the

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contents hereof and that the same is true of his own knowledge
except as to the matters & things herein stated to be on information &
belief and as to those he believes it to be true.

I swear to before me this } Abraham St. Gowers "
8th day of June A.D. 1859 }
J. H. Knibb, Clerk."

And thereafter to wit on the said eighth day of
June A.D. eighteen hundred and fifty nine came said
defendants by their said Solicitors and filed in the Office of the
Clerk of said Court their Motion to dissolve said Injunction:
Which Motion is in words and figures as follows to wit,

"State of Illinois }
Cook County, } ss.

In Superior Court of the City of
Chicago.

Honorable C. Shaw

vs

Levi J. Alwood

Abraham St. Gowers

In Chancery.

And now come the said defendants by Do-
w & Fuller their Solicitors and move this Honorable Court upon their
answers filed herein, to dissolve the Injunction hereinbefore granted
and issued in the above entitled cause.

Dow & Fuller

Defts Attys."

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And afterwards to wit on the seventh day of July
(being one of the days of the July term of said Court) A. D.
Eighteen hundred and fifty nine, the following proceedings
were had in said cause and entered of record in said Court
to wit

" Horatio A. Stone

(vs)

Levi. L. Atwood and

Abraham H. Court

} Bill for Injunction

24. And now comes the said Complainant by
Thermon P. Kales his Solicitor and said Defendants by their
Solicitor also come and on their Motion it is Ordered that the
Rule to answer herein be extended to Wednesday next, and thereupon
said defendants submit their Motion to dissolve the Injunction
issued herein, and Complainant submits his Motion to amend
Bill, in this cause, and the Court being advised allow
Complainant to amend his Bill herein.

And thereafter to wit on the fifteenth day of July
A. D. Eighteen hundred and fifty nine there was filed in the
Office of the Clerk of said Court a certain Stipulation in said
cause, which stipulation is in words and figures as follows
to wit

" Superior Court of Chicago

Horatio A. Stone

(vs)

Levi. L. Atwood Et al

} Chancery

Notasmuch as the Atty's for the

77
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(being one of the days of the July term of said Court) A. D.
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Office of the Clerk of said Court a certain Stipulation in said
cause, which stipulation is in words and figures as follows
to wit

" Superior Court of Chicago

Horatio A. Stone

(vs)

Levi. L. Atwood Et al

} Chancery

Notasmuch as the Atty's for the

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above parties may be absent from the City for several weeks, and it is agreed that no depositions or proofs be taken during the absence of M. H. Fuller Esq. but shall be taken within a reasonable time after his return. It is therefore stipulated that the Motion to dissolve &c in the above cause stand continued till the Sept 1859 Term of this Court.

C. H. Kales

Solr. for Complr."

Chicago.

Dow & Fuller

July 8th 1859.

Solrs for Defs."

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Order to
debtor
Dyer to come
in here.

And afterwards to wit on the Ninth day of January (being one of the days of the January Term of said Court) A. D. Eighteen hundred and sixty the following further proceedings were had in said cause and entered in said Court, to wit.

'Horatio. O. Stone

vs

Levi. S. Atwood and File

Abraham H. Covert.

This day comes said Complainant by Sherman & Hales his Solicitors and Defendants by Dow & Fuller their Solicitors also come and on Motion leave is given said Complainant to file replication herein to defendants answer now as of 10th day of June A. D. 1859 and it is ordered that taking of proofs herein on both sides be closed in ten days.

And thereupon accordingly came said Plaintiff by his said Solicitors and filed in the Office of the Clerk of said Court, as of the 10th day of June A. D. 1859, their Replication in said cause; Which said Replication is in the words and figures as follows to wit,

'Horatio. O. Stone

vs

Levi. S. Atwood &

Abraham H. Covert

In Chancery

Superior Court of Chicago

The replication of said Stone

Complainant to the several answers of the said defendant Atwood and Court.

This plaintiff saving and reserving to himself all and all manner of advantage of exception to the manifest insufficiencies of the said answers for replication thereunto faith that he will answer and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the answers of the said defendants are generally untrue uncertain and insufficient to be replied unto by this plaintiff: Without this that any other matter or thing whatsoever in said answer contained material or effectual in the law to be replied unto confessed or avoided traversed or denied, is true. And which matters and things this plaintiff is and will be ready to answer and prove as this honorable Court shall direct and himself prays as in and by his said Bill he hath already prayed.

Sherman P. Kales

Compto Solrs."

And afterwards to wit on the Nineteenth day of January (being another of the days of the said January Term of said Court) A. D. Eighteen hundred and sixty, the following further proceedings were had in said cause and entered of record in said Court to wit:

Horatio A. Stone

vs

Sam. L. Atwood and } Bill.

Abraham H. Conner

On Motion it is Ordered here to close proofs herein.

be and is hereby further Extended ten days from this day.

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Superior Court of Chicago.

State of Illinois
Cook County } S. S.

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Horatio O. Stone

^{vs.}
Leri L. Alwood &
Abraham H. Covert.

Depositions of witnesses produced,
sworn and examined, in the above entitled cause,
on the part of the complainant, before me Ira Scott,
one of the Masters in Chancery of said Court, at my
office, in the City of Chicago, on the 27th day of October
AD 1859, and taken by the consent and agreement of
the Solicitors of the respective parties, at which time
and place the said parties appeared by their respective
Solicitors

Albion W. Miller a Witness produced Sworn and
examined on the part of the complainant deposes
and says

Q. Are you acquainted with the parties Complainant
and Defendants

Ans. Yes Sir

2nd Were you acquainted with J. L. Sherman and M. W. Fuller about the 20th of May 1857. and if so state whether you had any communication with them respecting the value of hardware stores &c in the Orient House in the City of Chicago. and what was the communication

Answer

I was acquainted with J. L. Sherman and M. W. Fuller about May 20 1857. I had a communication with them respecting the value of hardware stores &c in the Orient House in Chicago. Mr. Sherman called for me and wished me to go up to appraise the said goods spoken of at the Orient House. When I went in Mr. Sherman and Mr. Fuller were there together. And I asked them if they wanted the appraisal as the goods then were, or how they wanted it. Mr. Sherman told me in Mr. Fuller's presence that he wished them appraised as any would have to pay for the same goods now to fit up such a house. to give the original cost or worth of the articles. I went on and made said appraisal in writing which appraisement is here shown me attached to the original award of J. L. Sherman and M. W. Fuller. and by the Master in Chancery marked Exhibit number 11 in this case. The appraisal is in the hand writing of H. Room my Book Keeper.

85 3 After the appraisal was made out by you, what was done with it?

Answer It was given back to the parties. I don't remember which one took it some one of the Tatters came and got it I think

4. State upon what basis the appraisal was made out by you with reference to the original costs, and with reference to any deductions therefrom, if any?

Answer. It was made out upon the basis of the original costs. after the appraisal was made I received the paper now shown to me and marked by the Master Exhibit number 2 in this cause (and admitted to be signed by the Solicitor of the Defendants and Complainant to be in the handwriting of P L Sherman and the signature of P L Sherman and M W Fuller thereto to be genuine)

5. What did you do upon the receipt of the paper last mentioned?

Ans. I wrote upon the back - to take the stores and pipe as they stand I think thirty three & 1/2 percent discount off from my appraisal would be a fair appraisal.

11 What did you do if any thing - further with said paper marked Exhibit (2) after you had written upon it as you have stated

Ans. I don't remember whether the young man who brought it took it back - or whether Mr. Sherman called for it.

12 State whether you made out the appraisal and furnished an estimate of the discount to be made upon the same. according to the directions which you received from Mr. Fuller and Mr. Sherman or how?

(Above question objected to by Solicitor for Defendants)

Ans. Mr. Fuller was present and my conversation was with Mr. Sherman I did make out said appraisal in accordance with said conversation. and also so furnished an estimate of the discount as I have already stated =

(The Solicitor for Defendants objects to all the foregoing questions and answers.)

∴ Cross Examination

1 What time of the day did you come to the Circuit House to make the appraisal of which you have spoken and when were Mr. Sherman and Fuller

at that time

Ans. I don't remember distinctly the hour but think it was near noon or just after noon. I saw them in the office of the Orient House - They were together near the door when you go down stairs to the Saloon. I don't remember any one else being in the office

2 Where was the Hardware &c

Ans. It was in different parts of the House. some stores were in the room directly back of the office which was the first lot I looked back - L L Wood went with me to the House. and pointed out the stores &c

3 When did you make out this appraisal? annexed to the award.

Ans. I made it with pencil of each article as I went along. and read it off to my Book Keeper at my Store. who wrote it down as I read it.

4 Were the stores in use at the time of this appraisal, if so what proportion. and what

Ans. Some of them were, but I don't know the

number. It was in the upper rooms.

5 What did Mr. Sherman say to you when you came in?

Ans. He answered my question how I should take the appraisal as before stated.

Albion B. Miller

Subscribed and sworn to
before me this 27th day of
October A.D. 1859.

J. A. Scott.

Master in Chancery of
the Superior Court of Chicago.

Arthur G. Purley a witness produced and
sworn on the part of the complainant. says.

1 Int. Do you know the Parties to this suit.

Ans. I know complainant and Mr. Atwood one
of the Defendants.

2nd Were you about the 20th of May 1859, requested to
make an appraisement of the Glass ware and crockery
in the Court House in the City of Chicago. by any

and what person or persons, if so state fully what you did? in that behalf.

Answer I received a pencil communication signed by Mr. Fuller and Mr. Sherman they were acting for the parties as I supposed. to go to the Orient House and appraise the goods which were in my line of trade - I went there in the evening and found Mr. Atwood Mr. Fuller and Mr. Sherman We went through the House together all of us. And I took a list of the goods that were damaged and those that were good. In the crockery these Dishes. Plates. Pitchers. cups and saucers and I think spittoons. there were also plated goods. I took the Value of it as I should sell it. What it was worth for me to sell - Then I discounted twelve and a half per cent for the damages. breakage and ware and tare of the goods. My report annexed to the original award and marked by the Master Exhibit 3 in this cause shows the Valuation without reference to the deduction of twelve and one half per cent.

3^d Are you acquainted with the value of the goods which you so appraised. if so state whether the estimate and the deduction therefrom would show a fair valuation of the goods at the time you made the appraisement.

(above question objected to by Solicitor for Defendants)

Ans. I am acquainted with the value of the goods so appraised and the estimate and deduction therefrom made by me would show a fair valuation of the goods at the time of said appraisement.

4. What did you do with your Report after the same was made out?

Ans. I gave it to some of the Parties. I can't tell who. The valuation is carried out in dollars and cents in the Report. The paper now shown me marked Exhibit (4) is in my handwriting.

The Solicitor for Defendants objects to all of foregoing interrogatories to and answers of this witness.

(Cross Interrogatories)

1. Was the percent of deduction you speak of fixed by you for the actual ware and tare which the goods had sustained?

Ans. Yes Sir. It was fixed upon as the average, upon the goods which I examined. The average of the actual ware and tare

2. Was the valuation of the goods as estimated by

41 ^{you} made upon the basis of what they could have been bought for at the time of your appraisal.

Ans^r. They were made upon the basis of what one would sell them for at that time.

3 When did you send up the paper marked Exhibit number 4.

Ans^r. I think it was the morning after my examination of the goods.

Subscribed and sworn
to before me this 27th
day of October A.D. 1859.
Ira Scott.

Arthur G. Purley.

Master in Chancery of
the Superior Court of Chicago.

adjournd by consent to the 28th Dec^r
instant.

Dec^r. 28. 1860 The Parties appear by their Counsel
respectively as before -

Eli F Hollister a Witness produced sworn
and examined on the part of the Complainant say:
I reside in Chicago I know Complainant and
the Defendant Stroed.

1 Here you applied to by any and by what person or persons in regard to estimating the value of certain carpeting upholstery &c in the Orient House. in the City of Chicago. about the twentieth of May 1859. if so state all the particulars and what was done by you in the premises?

Ans. I was so applied to by Mr. Atwood. about that time. I went through and made an appraisement of the carpets and the bedding. the articles appraised by me and the price of the articles appraised are contained in the original appraisement now shown me and marked Exhibit number 5. in this cause.

I think there was a deduction from that appraisement on the average of twenty cents

2 On what basis did you make up your original estimate. and why was there to be a deduction of twenty per cent therefrom.

Ans. My Original estimate was the value of the property if new, at that time. the deduction was made to get at the real value of the property at that time. The deduction was on account of the wear and tear of the goods.

3 To whom did you return this appraisement of

the property after you made it out.

Ans. I thank to Mr. Sherman and Atwood.

4. State whether Mr. Sherman and Mr. Fuller or either of them made any and what request to you in respect to the making up of this appraisement. and also whose directions you followed in making up the inventory marked Exhibit Number (5)

(Above question objected to by Defendants Solicitor)

Ans. Mr. Sherman requested me and gave directions about the inventory Mr. Fuller and Sherman were both together when I first went there and I believe it was understood by both parties what I was to do.

5. State whether you made up the appraisement and inventory in accordance with the understanding between the parties and yourself at the time, and if not, how otherwise.

(Above question objected to by Complainants Solicitor)

Ans. I made up the appraisement by the direction of Mr. Sherman and Mr. Atwood. I think Mr. Fuller was not present when these directions were given.

6 State whether Mr. Fuller knew at the time that you were making up or had been requested to make up the appraisement in question - and whether he knew of it after it was made up?

(Above Question objected to by Solicitor for Defendant)

Ans I think he did know of it at the time - but cannot state that he knew that it had been made up.

(Cross Examination)

1 When were you applied to, to make the appraisement?

Ans. I was applied to at my store N^o 135 Lake Street on the same morning that the appraisement was taken.

2 Was there any difference in the value of the kind of goods you appraised in 1858 and in 1859? if so what?

(Above Question objected to by Complainant Solicitor)

Ans. I think there was about five per cent depreciation

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in 1859. from what they were in 1858

3 Does the appraisement with 20 per cent off represent the value of the goods in your opinion in the state they were in when they were examined by you

Answer It Does

4 Does the appraisement represent what in your opinion the goods could have been purchased for new May 20th 1859

Answer It does.

(Direct Examination resumed)

7 From what information and by whom furnished did you make up the value of the goods without discount. as shown in Exhibit number five
(above question objected to by Solicitor for Defendant)

Answer. A small portion of them was made up from the original Bill of purchase. and the balance from my own knowledge of the worth of the goods when new. Mr. Alwood furnished the original Bill of purchase, that I saw.

(Cross Examination resumed)

5th. How many Bills of purchase did you see?

Answer. I think only one. I was called there to examine the value of the goods on my own judgment

Subscribed and sworn to
before me this 28th day
October AD 1859.

E. J. Hollister

J. A. Scott.

Master in Chancery of the
Superior Court of Chicago.

Adjourned by consent to January 11. 1860. at same place. at 2 o'clock P.M.

Caleb Morgan a Witness produced, sworn and Examined, on the part and behalf of the Complainant deposes and says.

1st Int. Where do you reside, and what is your occupation,

Answer. I reside in Chicago, My Occupation is that of a furniture dealer.

2 Do you know the Parties Complainant and

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Defendant in this suit?

Answer I have no particular acquaintance with them.

3 Do you know M W Fuller and J L Sherman?

Answer. I know M. Fuller and I think I do Mr. Sherman.

4 Were you about the 20th of May last requested by any one to make out any inventory of furniture &c in the Orient House in the city of Chicago?

(Above question objected to by Deft. Solicitor)

Ans. I was.

5th By whom were you so requested, and where is now such inventory?

(Above question objected to by Defendants Solicitor)

Answer. I do not remember the names of the parties, the paper now shown me marked Exhibit number five and attached to the award is my inventory and is in my hand writing, and is the inventory above

referred to of the furniture in the Orient House at that time

6. In what manner and for what purpose, was this inventory made out, with reference to the value of the goods.

(Above question objected to by Defendant Solicitor)

Answer I appraised the furniture as what I supposed it would be worth at the time. But upon looking over the items in the exhibit number five, my impression now is that it was the value of the goods when they were new.

7. At the time this inventory was made, what per cent off, from the value of the goods when they were new, was deducted to get the value at the time of the making the inventory on account of the wear and tear?

(Above question objected to generally and because its leading by Defendant Solicitor)

Answer. Twenty per cent.

8. State what was paid at or before the time of the making the inventory and delivering it over.

about the deduction of twenty per cent.?

(above question objected to by Defendants Solicitor)
(generally and on account of form of question)

Answer. On or about the time the inventory was completed at the house. I think the question was asked me, how much deduction should be made for wear & tear of the furniture to the parties purchasing for cash. I don't remember that any reply was made to that. the names of the parties I can't give, there were three of them

9 State whether the footing of the inventory in your own hand writing: represents the value of the furniture when new, or when you made out said Exhibit number five.

Answer. It represents the value of the goods as I appraised them, I think the amount, when the goods were bought, and purchased new. The amount of said footings are Eight hundred twenty three and ²⁵/₁₀₀ dollars

(Cross Examination)

1 Is the minute of the deduction of twenty per cent on the exhibit number five, in your hand writing?

Answer. It is not

2 Was there any difference in the price of furniture in May 1859, and of the same furniture in June 1858 for which it could be purchased new.

(above question objected to by Complainants Solicitor)

Ans. There was a great difference in the price of new furniture of the kind referred to (in the Court House) between those times. On the Cottage Bedsteads and the Chairs - there was a reduction of about twenty five per cent. On Card tables like those in said House there was not much variation. upon second thought I think the reduction on the Cottage Bedsteads and the Chairs was about twelve and a half per cent.

3 Did you recollect of seeing Mr. Fuller at the time the Inventory was taken?

Ans. I think I did

4 Have you any independent recollection of what passed at the time the inventory was taken?

Ans. I have no distinct recollection further than what I have stated,

5 When you say the twenty per cent was deducted for

wear and tear, does that cover all damage and injury which the furniture had sustained

Answer. I think that was meant to cover the damages to the furniture

Q Might not your appraisal have been what the furniture could have been bought for in May 1857?

Answer. I think not.

Isabel Morgan

Subscribed and sworn to
before me this 11th day of
January A.D. 1860

Isa Scott

Master in Chancery of
the Superior Court of Chicago

(Adjourned by consent to January 21 inst
at the same place at 2 O'Clock P.M.)

Jan'y 21. 1860. The parties appear by their Counsel respectively
as before.

Devozer L. Sherman a Witness produced
sworn and Examined on the part and behalf

of complainant deposes and says,

- 1 What is your age and occupation, and where do you reside, and are you acquainted with the Parties to this suit.

Answer. I am of lawful age, am engaged in the practice of law, reside in Chicago, and know the parties

- 2 Do you know of Levi L. Atwood and Horatio O. Stone entering into a submission to Arbitrate their differences, if yes, was that submission reduced to writing and executed by the parties, and if you have the submission in your possession annex it to your deposition to be marked Exhibit number Six (6) in this cause.

Answer. I know of their making such an agreement, it was reduced to writing it was executed by the parties, I have it in my possession and now produce it, it has been marked by the master in Chancery Exhibit number 6 in this cause, the arbitrators named in said submission were M. W. Fuller and P. L. Sherman, and this agreement was delivered to us by the Parties, at about the time of its date.

- 3 State whether the Arbitrators in said agreement mentioned, did any thing and what and

when and where under the said agreement.

(above question objected to by Defendants Solicitor)

Answer. The Arbitrators acted under the agreement previous to and up to the 20th of May 1859. inclusive. they made an award bearing date the 20th of May 1859. at the Orient House at the corner of State and Van Buren Streets in the City of Chicago.

4. Where is the said award, by whom was it made, and in whose hand writing are the signatures of J L Sherman & M W Fuller thereto.

Answer. The Award is in my possession. It was made by the said Fuller and the said Sherman. The signatures of J L Sherman and M W Fuller are in their respective hand writing and are the signatures of the said parties.

5. Describe the award and the Schedules annexed.
(above question objected to ^{by} Defendants Solicitor)

Answer. The Award is made up of an account between the parties. There is a Schedule of the hardware and stores, marked Exhibit one, also a Schedule of furniture marked Exhibit seven. Also an Exhibit marked number eight & marked

of Earthen ware. Also a Schedule of Furniture
marked Exhibit Number five, Also a Schedule
of Crockery and Cutlery &c. marked Exhibit Num-
ber 3. Also Schedule of Upholstery, Bed. Carpets
&c. marked Exhibit 4 and made by Hoagister.

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Now run the several schedules made up, by
whom, at whose instance were they furnished,
for what purpose, and state whether they were
adopted by the Arbitrators, state as to each
Schedule separately what you know about it
and if any percentages were deducted and if there
is any memorandum of such percentages of
deduction upon the Schedules respectively, in whose
hand writing is it and when was it placed there.

(Above question objected to by Defendants Solicitors)

Answer Exhibit one was made by A. R. Miller at
the instance of the Arbitrators, for the purpose
of getting the different articles of property and
their value, the price as carried out in said
Schedule, was the value of the property at that
time if new. There is a memorandum on Exhibit
one in the hand writing of P. L. Sherman, which
was the estimate made by A. R. Miller to be
deducted on account of the injured condition and
wear and tear as they then appeared. said memo-

Memorandum was placed upon said Exhibit, before the aggregate amount of the value of the various schedules was made up, as contained in the award.

Exhibit Seven was made by Charles Foley at the instance of the Arbitrators for the purpose of getting the different articles and their value. The price as carried out in Exhibit Seven, is the value of the property at that time if ours.

There is a memorandum on Exhibit Seven in the hand writing of the said P. L. Sherman containing the estimate of the said Foley for the deduction to be made on account of the injury to and the wear and tear of the property. The amount of said deduction being thirty per cent. said Memorandum was placed upon said Exhibit before the aggregate amount of the value of the various schedules was made up, as contained in the award.

Exhibit Eight (P) was made I think by W. H. Fuller, at the instance of the arbitrators for the purpose of getting a list of the articles and their value. The price as carried out in said schedule was the value of the property at that time if ours. There is a Memorandum on said Exhibit consisting of the word "L" and the number "30" subtracted from the amount of the schedule and the remainder carried out (\$84³¹4) I think in the hand

writing of the said Sherman. Said Memorandum was made for the purpose of getting the present worth of the property, by deducting 30 per cent for injury and wear and tear. Said Memorandum was placed upon said Exhibit at the same time of the Memorandum sent to the Hartford referred to on Exhibit number seven. As to Schedule marked Exhibit number five (5) then (3) and four (4). Number five was made by Caleb Morgan. Number three was made by A. G. Purley. Number four by Mr. Hollister. At the instance of the Arbitrators, for the purpose of getting a list of the articles and their value, the prices carried out in said Schedule, was the value of the property at that time if not. There is a memorandum on Exhibit five, in the hand writing of P. L. Sherman showing the deduction of 30 per cent to be made from the value on account of injury and wear and tear. There is also a memorandum on Exhibit 3, in the hand writing of P. L. Sherman showing a deduction of twenty per cent. to be made on account of injury to and wear and tear of the property. There is a Memorandum on Exhibit four, in the hand writing of P. L. Sherman, showing a deduction of twenty per cent on account of the injured condition and the wear and tear of the articles. Said Memo-

found on said schedules five thousand and four hundred made at the same time as above stated at the time of making the memorandum on Exhibit Seven (7).

On further examination of Exhibit 8. the deduction of \$1. from the amount as footed up, was made because an item was stated from the articles in Exhibit 8. and not a deduction from the injured foundation and means and tens of the property as before stated by me. (correctly speaking) there is no memorandum on Exhibit Eight.

Adjourned by consent to Friday 24th inst.

August 1861. Parties met pursuant to adjournment.

7. On looking at the award made by yourself and Mr. Fuller, you will observe that certain Schedules are therein referred to as accompanying the award - Where are now each and every of the said Schedules, and have they been in any manner changed since the said award was made?

(Above question objected to by Defendants Solicitor)

Answer Each and every of the Schedules are attached to the award, and marked Exhibit One

Eight. seven. five. three, four. I see no change
in them since said award was made.

8. On looking at the award, you will observe
it is therein stated that "we do estimate and
value the balance of furniture, not ap-
propriated in payment of debts, as before men-
tioned to be of the value of thirty four hun-
dred and twenty two dollars and eighty
cents according to accompanying Schedules
made by C. Morgan, A. C. Miller Solicitor
C. Foley, Atty. Genl., and the undersigned"
State whether according to the said Schedules
the balance of the said furniture not appor-
portioned in payment of debts was according
to said Schedules of the value of \$3422.80. And
if not - then state what was the value of such
furniture - according to said Schedules, and
whether any mistake was made in making
up the said award, concerning the value
of said balance of furniture, and if you
show did such mistake occur and to what
extent and when and where. And state all
the circumstances.

(Above question objected to generally and
as leading. by Defendants Solicitor)

Answer

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It was not of the value of \$3422.00 according to said Schedule. Upon making the footing up of each schedule to be correct, and making the deduction therefrom for injured condition was and then as before mentioned. The value of said furniture according to said Schedule was twenty four hundred and twenty two dollars and eighty cents (\$2422.80). There was a mistake made in making up said award, concerning the value of said furniture. In making the deduction for injured condition, was and then of twenty per cent. from the amount of Exhibit four (4). A mistake of one thousand dollars was made in computation. It was made at the time of getting the value of the furniture in order to know the amount of balance which said Store was to pay to said Attwood, by his promissory notes. It was made at the time of the fixing the award at the Orient House in Chicago. The amount as footed up in Exhibit four (4) is in the figures \$1220.03. The deduction to be made from this was twenty per cent. \$1220.03 was multiplied by twenty (20) making for the product the figures 244.00.60. showing the deduction to be made was \$244.00. This amount was then taken from \$1220.03. in making the subtraction of \$244.00 from \$1220.03. the result was found to be \$976.03. while it should have been \$976.03.

9. State whether you have in your possession the paper upon which the original figures were made, showing how this mistake occurred; if you state, when said figures were made, by whom and where, and accept the said paper as part of your answer to this interrogatory.

(Above question objected to by Solicitor of Defendant).

Answer I have the paper in my possession upon which are the figures as originally made at the time of finding the value of the property embraced in said Schedules, and the making of the award - which paper I now produce, marked Exhibit Number 9. All the figures thereon were made at that time, the figures were made by P. L. Sherman one of the Arbitrators.

10. At the time the figures were made, referred to by you, in your answer to the last interrogatory, where was Mr Fuller the other Arbitrator and what was he doing at that time with reference to the ascertainment of the value of the furniture.

(Above question objected to by Solicitor of Defendant)

Answer Said Fuller was sitting at my side by the table. Said Fuller was also figuring to get at the value of the property.

111 11 State whether the said sum of \$1976.03. or the sum of \$976.03. was reckoned into said award. on stating therein the amount and value of said furniture and property?

Above question objected to by Defendant's solicitor.

Answer \$1976.03 was the sum reckoned in.

12 For what was the said sum of \$1976.03 reckoned into said award. was the said amount correct according to the Schedule marked Exhibit four. and if not, what should have been the amount to be reckoned in, according to the said Schedule?

(above question objected to by Defendant's Solicitor)

Answer It was reckoned into the award - to appraise or designate the value at that time of the property & articles of furniture contained in Schedule marked Exhibit 4. after deducting twenty (20) per cent for injured condition. same was read as aforesaid. The same was not correct according to said Schedule, and should have been \$976.03. or one thousand and seventy six p.

13 Do you know Abram H. Court one of the Defendants in this suit. if yes, state whether he was present, during any part of the time the

Arbitrators were making up the said award, and whether he knew of the Arbitration in question.

Answer I know Abram H. Covert. He was present while the arbitrators were in session & taking evidence, that is to say he boarded at the house where they were off on. I do not think he was present at any time during the making of the award. But he knew of the Arbitration. He was present at the carrying out of the award.

14. State whether the Complainant Storo at the time of the carrying out of the award. To which you have alluded, executed and made any and what notes and if yes. What was the number of such notes, the amount for which they were given, when payable, to whose order, to whom and when delivered. And what was the consideration for which Storo made the same.

Answer Said Storo executed and delivered to me for the purpose of carrying out the award on his part. Sixteen promissory notes, according to the best of my recollection, for one hundred dollars each. Payable one year from the 20th day of May 1859. to the order of the said Abram H. Covert. They were delivered to Atwood or some one whom he appointed to take them - the evening of the day

following the finding the award. Stone made the same in consideration of the carrying into effect the said award on the part of said Atwood - Among other things the surrendering of the lease of the said Orient House by said Atwood to said Stone and giving up possession to said Stone quietly and peaceably, and the transfer of the furniture en- brace in said Schedules.

Adjourned by consent to 24th instant at 2 o'clock P.M.

Aug 24th 1860. Parties met pursuant to adjournment

- 15 State whether Court knew for what consideration the notes in question were made by Stone at the time said notes were executed and delivered, and whether said notes or any of them at that time were passed over to Court. Decline fully all you know.

(Above question objected to by Defendants Solicitor)
 Answer - Court did know the consideration of the notes. And I think the notes were handed over to Court by me, or by Atwood, or if by me, by Atwood's direction - perhaps Mr. Fuller handed them over to him. I don't remember distinctly - The notes were handed to him, on the morning of the day of the carrying out of the award I mean the time before referred to. Before of the delivery of the notes to Atwood.

16. State who was present when the notes were delivered to Court.

Answer M. W. Fuller - a man by the name of Porter. I think a man named George Higgins, Attorney Court and myself - I don't recollect anyone else.

17. State whether any and what consideration moved between Stone and Court, for the said notes made payable to Court's order.

(Above question objected to by Defendants Solicitor)

Answer There was no consideration between Stone and Court. the consideration of the notes was the performance of the award on the part of Atwood.

18. If the consideration of the said notes, was the performance by Atwood of the award as you have before stated, why were the said notes made out, payable to the order of the said Court, if you know state it.

(Above question objected to by Defendants Solicitor)

Answer As I understood it they were made out payable to Court's order, to place them beyond the reach of Atwood's Creditors.

(Above answer objected to by Defendants Solicitor)

19 After the said notes were passed over to Court state whether any or either of them were transferred by Court to pay any and what debt. And by whom was each debt owed and to whom?

Answer One of said notes was transferred by Court to Charles Tobey to pay a debt and said Tobey from Atwood - Atwood owed at the time or shortly after the delivery of the notes to Court. Tobey came in while the notes were being passed over. Tobey received the note and accepted the payment of the debt.

20 State whether Court at the time said notes were transferred to him, claimed to own the same or to have any interest therein and if yes state what such claim was.

(Above question objected to by Defendants Solicitor)

Answer I instructed Court to claim that Atwood owed him something. He did not claim to have any interest in the notes, as I instructed him. He was to use some of the notes if he could in paying certain debt of Atwood - that was

Specifically understood.

21. State whether at the time of making the award Ottward was indebted largely or otherwise, and what was his condition financially?

Ans. Understood from Ottward that he was largely indebted - that he was insolvent and unable to pay his debts.

22. State when the supposed mistake in the award was first discovered if you know how soon after the delivery of the award to Mr Stone, and when and how your attention first called to the matter of such mistake. And also state whether Mr Stone made any communication of the award on scheduled prior to his presenting the notes mentioned by you.

(Above question objected to by Defendants Solicitor)

Ans. I should think two or three days after the award was made and carried out as before mentioned - Stone having in his possession the award and Schenck for the purpose of seeing that he had the property, and that every thing was all right. He came to me and said he could not reconcile the

amount and the different amounts - I then looked out the amount, and the different amounts therein stated, and then referred to my original figures in the making of the amount marked Exhibit 9. And then and then discovered the mistake before stated.

Stand made no examination whatever of the amount prior to the execution of the notes. I stated to him the basis of the amount and he executed the notes.

23 State when the amount was delivered into Stones possession with reference to his taking possession of the Orient House, whether it was before or after.

Answer The amount was handed to Mr Poole who was present at the Orient House for Mr Stand, as his agent to take possession - It was at the time of the securing of the amount.

24 In looking at Exhibit 9. you will observe that one certain memorandum referring to Stones. Crocker, et cetera - and that the aggregate amounts of those figures is in figures \$13779.51. And that the different memoranda correspond with the figures contained in the amount. Now do you account for those coincidences?

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(Above question objected to as leading & generally
by Defendants Solicitor).

(Question raised by Complainants Solicitor)

(Cross Examination)

1st In whose hand writing is the award.

Answer P. L. Sherman's - signed by Sherman 25th July.

2nd In whose possession has the award and
Schedules attached thereto been since the making
thereof.

Answer I gave the award to said Stone in order
that he might get the furniture called for
in the Schedules. F. H. Kates afterwards told
me, he had the award for the purpose of
drawing the bill in this case, and I think
said Stone has had it most of the time
since - I suppose he has.

3rd Is the award now exactly as it was when
made.

Answer It is as far as I know or recollect.

(Above question objected to as leading & generally
by Defendant's Solicitor).

(Question raised by Complainant's Solicitor)

(Cross Examination)

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said Stone has had it most of the time
since - I suppose he has.

3rd Is the award now exactly as it was when
made.

Answer It is as far as I know or recollect.

4. In speaking of the deductions from the Schedule you say that the said deductions were made for injured condition and wear and tear of the property in question. Do you ^{or do} not know whether the number of said Schedule were requested to give an estimate of the ordinary wear and tear of like property in like use and not an estimate of any injury this property might have sustained if open State according to the facts.

(Above question objected to by Complainants Solicitor)

Answer This was so misstated the request referred to in the last interrogatory

(Above question objected to by Complainants Solicitor)

Answer I understood the request to be, for a deduction proper to be made on account of the then existing condition of the property from the value of the property at that time if any.

6. Was any difference in opinion exist between yourself and Mr Fuller, as to the mode of making an estimate or valuation of the property in question before making deduction therefrom. before the Arbitrator had had any session under the articles of submission

or before any of the Schedules were made.

(Above question objected to by Complainant's Solicitor)

Answer Not that I am aware of - there was difference of opinion, as to what the agreement was. Mr Fuller claimed the agreement was, to estimate the value of the property before any deductions, now made. as its best value at the time it was purchased, said Sherman claimed the agreement to be, to estimate the value of the property before deductions were made at the market value at the time the Schedules were made, if the property was not then injured; and if the market value of the property was less at that time, then at the time it was purchased. Stone & Sherman have the benefit of it in taking the property.

7 You state in answer to the 14th interrogatory that said Stone executed and delivered to you ten promissory notes of one hundred dollars each, did he not execute any other notes or notes. and if so, for what amounts and what number.

Answer My recollection is, that he only executed ten notes. He was to execute how other notes

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to carry out his part of the amount two of them
for low sum new dollars each, and one for
\$99⁷⁶ when Atwood obtained releases of
certain debts due from him said Atwood
to Bowen Brothers. A. Roly B. Miller and
Charles Tobay.

8. Where is the receipt given by Charles Tobay
referred to in your answer to the 19th direct
interrogatory - to whom was said receipt de-
livered and for whom was it taken.

Answer I don't know where it is. it was delivered
some at the time by Cobett or Atwood. I
supposed it was taken for Atwood and Stone's
benefit.

9. Why for the benefit of Stone. was the receipt
last referred to taken?

Answer Atwood represented that in the making of
the debts to Tobay. Miller and Bowen Brothers
he was acting as agent for Stone. Stone
was anxious to get the debt settled - and the
receipt was evidence of the settlement of the
debt to Tobay.

10. Why was the third note of Stone taken

the two, which then you have mentioned in your answer to Chap interrogatory seven. withheld by Stone at the time the award was presented, or attempted to be.

Answer I went to Stone for the notes to carry out the award. Stone objected to giving the notes, any of them. At that time, he wanted to wait until the next day, before he made any notes. For the reason he thought there was some trick in it, they were so anxious to carry the thing out that night. I told him they were all waiting at the Orient House, ready to deliver the property and the possession of the house to him. And I thought perhaps if he did not accept the notes - in order to perform the award at that time - they would refuse to carry out the award - by that - I mean Althood - Stone said he was afraid to accept the notes and deliver them, lest there should be some trick about it. Althoods haste made him suspicious. I finally persuaded him to accept said two notes with the understanding, that I would use no more of them than was necessary to insure the carrying out of the award on the part of Althood until he could be sure that all was right.

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Answer I went to Stone for the notes to carry out the award. Stone objected to giving the notes, any of them. At that time, he wanted to wait until the next day, before he made any notes. For the reason he thought there was some trick in it, they were so anxious to carry the thing out that night. I told him they were all waiting at the Orient House, ready to deliver the property and the possession of the house to him. And I thought perhaps if he did not accept the notes - in order to perform the award at that time - they would refuse to carry out the award - by that - I mean Althood - Stone said he was afraid to accept the notes and deliver them, but there should be some trick about it. Althoods haste made him suspicious. I finally persuaded him to accept and to note, with the understanding, that I would use no more of them than was necessary to insure the carrying out of the award on the part of Althood until he could be sure that all was right.

(Defendants Solicitor objects to above answer as not responsive)

11. Do you or do you not know that the notes for \$299.76 were withheld until receipts could be obtained from Bowen Brothers and A.R. & G.H. Miller for the debts due to them respectively hereinbefore mentioned, and were to be delivered upon the production and delivery to said Stone or yourself of the receipts in question if you state?

Answer I don't know that such was the fact. But I understand that there was sufficient to be retained by Stone to take care of those debts if Atwood did not.

12. Did you not hand or give to Abram H. Corant a memorandum in writing for the delivery to him of the three notes in question upon his procuring the receipts for the debts last mentioned.

Answer I think very likely - though I don't recollect.

Adjourned ^{by consent} to 25th instant at 2 o'clock P.M.

July 25. 1866 (Court not pursuant to adjournment)

13. You have stated in your answer to Cross

interrogatory seven that your recollection is that Stone executed only ten promissory notes. do you not remember that in passing over or in attempting to pass over - the ten notes to Coscut or abroad as you have stated was done - that eleven notes were accidentally handed over by you. and that upon the discovery of that fact one of the Eleven notes was handed back to you?

Answer I think now, as it is suggested, that that was the fact. it had gone from my recollection.

14 Your recollection being refreshed by the incident mentioned in the last interrogatory what is now your opinion as to the number of notes executed by Stone?

Answer I think it was eleven. But I think they were executed under a mistake. I think Stone must have supposed as I did, that there were only ten.

15 In your answer to direct interrogatory 16. you state that a man by the name of Poole was present at the time of the delivery of the notes to Coscut. do you or do you not know how Poole happened to be there, if you do state.

Answer I do know. he was there to take possession

for Stone. to be left in charge of the house and furniture, according to my recollection.

16th Do you or do you not know if Stone & Atwood exchanged Bonds conditioned for the performance of the award. if yes, state.

Answer I think they did

17. Do you remember what was done with these Bonds at the time of executing the award. if yes, what.

Answer I think the Bonds were marked by the Arbitrators "Cancelled by an award form" and executed, and were returned to the respective parties.

18. Do you remember whether certain articles of submission, were or were not drawn before they finally executed and referred to in evidence by you, and destroyed, and those finally executed drawn. if yes state.

(Above question objected to by Complainant's Solicitor)

Answer I recollect Mr Fuller drew a rough draft of an agreement, intended to be an agreement

The amount due Stone from Ottorod. The amount of value fixed upon the furniture, was the result of adding up the Schedules, making the above-said deductions from those amounts, taking the value of the property set aside. Paying debt from that amount. And I know of no intermediate fact between the two operations.

(Above answer objected to by Defendant's Solicitor as not responsive.)

21. In the award appears, the amount of \$3193.47. as due to Stone from Ottorod before any deduction was made therefrom of the amount due from Stone to Ottorod. Do you or do you not know, at what time relatively to the time of fixing the valuation of said property as set forth in said award, that amount of \$3193.47. was found, if you state.

(Above question objected to by Counsel for the Defendant on the ground that the award is the best evidence of the relative time in which the several items were found by the Arbitrators.)

Answer I think the matter of account between the parties was made up at the same time together. But whether it was before or after the award

was fixed upon the furniture. I don't recollect.

22. Among the items mentioned in the account as going to make up the said sum of \$3193.47 appears the item of \$200.00 for repairs in the Paint House. do or do you not know, what that item covered, and what it was intended to apply to, if gen. Stnd.

(Above question objected to by Complainants Solicitor)

Answer I recollect one thing - for painting - we the Arbitrators had a painter examine the condition of the paint in the house, which by the lease between said Stnd and Atwood, Atwood was to keep good. He estimated I think about \$200.00 for painting to put the house in repair.

(all of above answers relating to the lease objected to by Defendants Solicitor as not responsive and incompetent).

23. Do you not know that Mr Fuller had nothing to do with reference to calling the painter in to examine the condition of the paint in the house and refused to recognize that act.

(Above question objected to by Complainants Solicitor)

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Answer I think I went to the painter with Mr Fuller's knowledge and consent - it is true Mr Fuller said there ought not to be a claim made for repairing the paint.

24 What was that Painter's name?

Answer Harrison Park.

25 Do you say that that item of \$200.00 was allowed by Mr Fuller, before the valuation was fixed upon the property in question.

(Above question objected to by Complainant's Solicitor)

Answer I do not say so.

26. Do you remember how the fact was in regard to that item, was it allowed by Mr Fuller, before or after the valuation was fixed upon the property.

(Above question objected to by Complainant's Solicitor)

Answer I think all the items making up the amount of \$3193.47. was allowed at the same time.

27. Now that before or after the fixing the valuation

upon the property in question.

(Above question objected to by Complainants Solicitor)

Answer I have since had no recollection whether it was before or after, in my answer as to the time of the allowance of the account in Storen favor, of which this is an item.

28 In the record appears the amount of \$1070.43. as the amount due from Storen to Atwood, before striking the balance between them. Do you or do you not know, at what time relating, to the time of fixing the valuation upon the property in question, that amount of \$1070.43 was found, if yes, state.

(Above question objected to by Complainants Solicitor)

Answer I think the items, making up the account between the parties, were considered together, but whether it was before or after the finding the value of the furniture, I do not recollect. it was all at the same sitting, and within a few moments of each other.

29 Do you not remember and distinctly that the balance was not struck between the parties

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And the amounts of \$3193.47 and \$1071.43 and \$2123.04 found, until after fixing the valuation on the property in question.
(Above question objected to by Complainant's Solicitor)

Answer I recollect distinctly there was a good deal of difficulty in settling the items of account between Stone and Atwood - and whether this was before or after the fixing the valuation of the property. I do not recollect.

(Adjourned by consent to January 24th instant at 2 o'clock P.M.)

January 24. Adjourned by consent to Jan'y 31st 1861.

January 31. 1861. Parties met.

30 In the account appears among the items allowed to Atwood, Cash \$662.74 and Bond \$266.69. Do you remember how these amounts were fixed upon?

(Above question objected to by Complainant's Solicitor)

Answer I don't remember any thing about it.

31. Do you remember any thing about the rejection of the items of four dollars for Miss Gayer's board and \$3²⁵ for sawing and splitting wood. in Nov. date of Jan. any 8th and 15th respectively and why these items were rejected and at what time relatively, to the time of fixing the valuation on the property in question. if Gen. State.

(Above question objected to by Complainant's Solicitor)

Answer I recollect these items were claimed by J. Miller for Atwood, but whether they were admitted or rejected. I do not recollect. And I have no distinct recollection as to the matter any further.

32. In your answer to direct interrogatory 20 you state that Court was to use some of the stone certificates if we could in paying certain debts of Atwood? What debts did you refer to?

Answer The debts were due to Bowen Brothers A. R. & G. H. Miller & Charles Fisher.

33. At the time of the carrying into effect of the award was there a chattel mortgage

on the property in question by Atwood to any one. If so to whom.

(Above question objected to by Complainant's Solicitor)

Answer There was a Chattel Mortgage on some of the property. I think not all. made by Atwood to Stern. It was a Chattel Mortgage and a Bill of Sale together.

34. Was there any other Chattel Mortgage on said property, at the time referred to, if so to whom.

(Above question objected to by Complainant's Solicitor)

Answer I think there was a Chattel Mortgage made by Atwood to Covert alone or Covert and others. There was also another to one Morgan.

35. Was any thing done with the mortgage to Covert or to Covert and others of which you have just spoken, at the time the carrying into effect the said Arrang. if yes what?

(Above question objected to by Complainant's Solicitor)

Answer
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There was something done. Atwood had agreed with me, during the arbitration and also Mr Fuller, that they would furnish this property if we took it. Free and clear of incumbrances. And the mortgages each of them. The one to Covert & others, and the one to Morgan, now cancelled or released in some way. I don't recollect how.

36. Do you not recollect that the mortgage to Covert and others was assigned by Covert R. M. Keough and Chapin to Stow, at the time referred to?

(Above question objected to by Complainant's Solicitor)

Answer I do recollect now I requested that the mortgage should be assigned instead of cancelled. To prevent the possibility of Atwood's creditors intervening between the lien created by the mortgage from Atwood to Covert & others, and the transfer of the property to Stow, and it was so done.

37. Were there suits pending between Atwood & Stow, at the time the award was made if you what was done with them.
(Above question objected to by Complainant's Solicitor)

Answer There were suits pending between Atwood & Stone - they were settled by the award, and dismissed afterwards.

38. Were stipulations to that effect entered into at the time the award was carried into effect?

Answer. I think there were.

39. Was Exhibit here handed to you marked Exhibit A. Executed by you. and if so? when?

(Above question objected to by Complainant's Solicitor/
Exhibit marked A. referred to here handed to Witness)

Answer. It was Executed by me at the time of carrying into effect the award & spoken of.

40. You have somewhere spoken of your direct examination of the Executing of the award "as far as it was executed", wherein was it not executed.

(Above question objected to by Complainant's Solicitor)

Answer. Stone did not deliver all the notes which he was to do. in and by the award. Atwood did not pay the debts mentioned neither did he or could he give Stone the amount of furniture which he found.

41 Did you not offer to Mr Fuller before the amount was made, on the night of the 21st of May 1857, at the Orient House, in Chicago, on behalf of Stone, to allow the sum of \$1300.00 to be allowed over and above the balance between the parties, whatever that might be, and the value of the property in question?

(Above question objected to by Complainant's Solicitor)

Answer. I have no recollection of making such an offer or any other offer outside of the figures of the accounts between the parties and the furniture.

42 Did you make any such offer based upon the figures and the furniture?

(Above question objected to by Complainant's Solicitor)

Answer. I have no recollection of making any such offer.

43 Do you not recollect that such an offer was made by you and accepted by Mr Fuller and that there the accounts between the parties were put together and allowed, that the final balance to be paid by Stone, should be about \$1300.00.

(Above question objected to by Complainants Solicitor)

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Answer I have no such recollection - The accounts
were made up of items between the parties.
None of them were fictitious. nor allowed without
proper vouchers.

44 There were items allowed and disallowed in order
to bring the final balance, as it was found, to make
\$1299.76.

(Above question objected to by Complainants Solicitor)

Answer Items were allowed and disallowed and altered
in the accounts, but for no such purpose - and
none were allowed that were not by me thought
to be just.

45 Did you not say when the Arbitrators ad-
journed on the night of the 20th of May 1839.
After the award was made at the Orient House
in Chicago. to Mr Fuller. That we (meaning the
Arbitrators) must not let the parties know, and
we had not and feared this thing, or were to
that effect?

(Above question objected to by Complainants Solicitor)

Answer I have no recollection of making that remark.

13 1/2

And if I said anything of that nature, it relates simply to some of the items in the accounts between the parties and the amounts paid upon them.

46 In your answer to Cross interrogatory 6th. You say that "Mr Fuller claimed the argument was to estimate the value of the property before any deductions were made, at its cost value at the time it was purchased" Did you or did you not in the month of May 1859. and about the time of the execution of the articles of submission under which the Arbitrators proceeded in the office of Carr & Fuller in Chicago and in the presence of Samuel K. Carr. and Seth M. Hill or of said Carr alone, agree with Mr Fuller, who was also present, that the property in question should be valued by the Arbitrators at the cost price thereof. To be ascertained by the bills of purchase of the same. and that the deductions to be made, should be for the ordinary wear and tear of property of the same kind in use in a place similar to the Fair West House. and not the actual wear and tear and injury sustained of and by the particular property in question, and that there should be allowed thereby the difference between ordinary wear and tear, and the actual wear and tear of or injuries sustained by this property.

as Damages.

(Above question objected to by Complainant's Solicitor)

Answer There may have been such a talk by and on the basis of a proposition during the negotiation for arbitration. But I distinctly state, there was no such talk or understanding or agreement in the final agreement of submission.

Subscribed and sworn to *E. D. Sherman*
before me this 25th day of
January A.D. 1866.
Wm Scott
Master in Chancery
of the Superior Court of Chicago

Exhibit A. Know all men by these Presents that I
Horatio O. Stone of the City of Chicago, County
of Cook and State of Illinois for and in con-
sideration of the sum of One dollar to me in
hand paid by Abram H. Covert of the same
place (the receipt whereof is truly acknowledged)
and of other good and valuable consideration
to me moving from said Covert. Have here

armed, sold, set over, transferred, assigned &
 conveyed, and by these presents do hereby
 sell, set over, transfer, assign & convey to the
 said Court all my right title interest
 in the following goods & chattels, to wit:
 One Bureau in Room No. 2, and one hundred
 & seventy yards of Dutch Carpet on the second
 and third halls and dining room of the
 "Orient House" corner of State and Van
 Buren Streets, Chicago; forty pairs shute,
 forty pair pillow slips, more or less; one
 picture, three sets Shovel & Tong, two bedsteads
 four Mattresses & bedding in Laundry, said articles
 being in the Orient House corner of State
 and Van Buren Streets, Chicago. Together with
 all other articles of personal property included
 in a certain mortgage from L. L. Atwood to
 said Court. A. Chapin & R. H. Hough, and not
 enumerated in certain schedules attached to a
 certain award made by M. W. Fuller & P. L.
 Sherman of and concerning certain matters in
 difference between L. L. Atwood and said Court.
 and bearing date the 20th day of May A. D. 1859.
 being the right, title & interest derived by me under
 a certain chattel mortgage given by L. L. Atwood to
 said Court. A. P. Chapin & R. H. Hough & assigned
 by said Court Chapin & Hough to me this day.
 To have and to hold the same to the said Court

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forever.

At witness my hand this 2nd day of May
A. D. 1839.

P. L. Sherman
for H. O. Stone

Exhibit 2. A. R. Miller Esq
Dear Sir

Please inform Mr
Fuller & myself how much if any thing should
be deducted from your estimate of the charges
as in Orient House for ordinary work.
May 20. 1839.

Yours Truly
P. L. Sherman
Mr. W. Fuller

To take the stone and pipe as they stand I think
33 1/3 off from my appraisal would be a fair
price.

A. R. Miller

Exhibit 4. Mr Sherman
Dear Sir

I should think that

12 1/2 per cent deduction would cover the damage to the group as far as I could judge

The glass here is as good as over. and some of the cracking. Some of the plates were injured 25 per cent & some of them not one half the amount and taking 12 1/2 on the whole would be fair.

May 21/57.

Yours truly
J. H. P. Bunting

Exhibit 9.

382.91
45.94 92
382.91
336.96 cracking
1346.75
20
2693.50
1346.75
1077.40 furniture by m.
78.75
23.62 50
78.75
55.13

1220.03
2440.06
1221.13
1976.03 Carpets &c.

101.75
75.01
181.00
51.01
358.75
71.3 500
358.75
285.35
68.81
348.66

385.93
128.64
257.29 Stores &c
386.96 Cracking
1077.40 furniture by morgan
58.13 do by S. B. Bunting
1976.03 Carpets &c
3702.81
76.70 Sanaries
3779.51

2972.86
899.43
2073.43
3702.81
1629.38
76.70
1706.08
356.71
1349.37

1629.38
356.71
1272.67
15.61
1257.06
95
1352.06
200
1152.06
207
1353.06
01

Exhibit 6.

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Know all Men by these Presents that whereas certain differences and disputes have arisen and are now existing, and whereas certain suits at Law are now pending, between Lewis L. Atwood of the City of Chicago, County of Cook, and State of Illinois, and Horatio O. Stone of the same place touching and concerning the occupancy by the said Atwood of the "Orient House" (so called) in said City of Chicago, as the tenant of said Stone and certain claims & demands which said Stone has against said Atwood for money loaned, rents of the said Orient House and otherwise and certain claims and demands which the said Atwood has against the said Stone, growing out of the levy of a writ of Warrant by said Stone in the month of January A. D. 1837, upon the furniture in said Orient House, for rent claimed to be due the said Stone, and the seizure thereof at the same time under a chattel Mortgage by said Stone: And whereas the said Atwood has released from the said Stone of the said Orient House, for and during and until the last day of May A. D. 1862: And whereas it is proposed that said Atwood shall sell the furniture in said Orient House to said Stone, and surrender the lease and possession thereof to the said Stone.

And we the said Levi L. Atwood
 and Horatio O. Stone do hereby submit the said
 differences disputes and controversies and suits
 at law aforesaid, to the decision and determin-
 ation of Melville W. Fuller, the Attorney of
 the said Levi L. Atwood, and Perry W. L.
 Sherman, the Attorney of the said Horatio O.
 Stone, to award, adjudge and finally determine
 of and concerning the said differences and
 disputes between us the said Atwood and said
 Stone. And in case the said Fuller and
 Sherman should be unable to agree as to
 the settlement and final determination
 of the matter and things aforesaid, we
 do hereby authorize and empower the said
 Fuller and Sherman to choose and appoint
 some third person to act in concert with them
 as umpire of and concerning the premises
 and to award, adjudge and finally deter-
 mine of and concerning the said differences
 and disputes between the said parties hereto.
 And we the said Levi L. Atwood, and
 Horatio O. Stone do hereby covenant each
 with the other that we will in all things
 faithfully keep, observe, abide by and
 perform on or before the 20th day of May
 A. D. 1839 the decision and award that
 the said Fuller & the said Sherman may

make in writing in the premises under their
 hands on or before the 20th day of May A.D.
 1859. or in case of disagreement between said
 Fuller and Sherman as aforesaid, we do hereby
 farther faithfully covenant and agree that we
 will in all things faithfully keep and perform
 observe and abide by the decision and award
 which said Fuller and said Sherman and such
 third person as they may appoint in person or
 surrog. or a majority of them may make in
 writing under their hands in the premises, on
 or before the 20th day of May A.D. 1859. And
 it is further hereby stipulated and agreed by
 and between the parties hereto as follows for
 the decision of the said Fuller and Sherman
 or themselves and such umpire as they may
 select as heretofore provided that the said
 Fuller and the said Sherman or themselves and
 such umpire as they may select as heretofore
 provided shall make an account of items
 between the parties of their respective claims
 as allowed, and strike the balance between
 them: it being expressly understood and agreed
 that all claims of said Ottorod against
 said Stone for exemplary damages for or
 by reason of the loss of said distress Warrant
 in the month of January A.D. 1859. by said
 Stone upon the furniture of the Brick House

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let him before the levy of the distress Warrant
aforesaid, and that said Stone is to take
said furniture at said valuation, of said Atwood
and in payment therefor shall be credited
with whatever amount shall be found to be due
to him from said Atwood, and shall pay the
balance to said Atwood by giving his notes there-
for, payable in twelve months from the date
hereof, to wit, from the date of said Atwood.
And that said Atwood is to surrender the lease
of said Print House and the premises thereof
quietly and peaceably to said Stone, and said
Stone is to receive the same and to release said
Atwood from all liability on said lease.

And it is further covenanted and
agreed by and between the parties hereto,
that in case the said Fuller and Sherman
or such umpire as they may select as herein-
before provided, or a majority of them
shall fail to make a final award herein on
or before the 20th day of May A.D. 1859, then
these Covenants shall be held null and void,
and the parties hereto restored to their original rights
as before the execution hereof. And in case the
said Stone shall fail to comply with and per-
form whatever and may be made herein on
or before the said 20th day of May A.D. 1859,
he shall become liable upon a certain bond of

now date herewith assented by said Stone and running to said Atwood and conditioned on said Stone's performance of whatever award may be made herein. And in case said Atwood shall on or before the said 20th day of May A.D. 1859. fail to comply with and perform whatever award may be made herein on or before the said 20th day of May A.D. 1859. he shall become liable upon a certain bond of now date herewith running to said Stone and conditioned on said Atwood's performance of whatever award may be made herein. And it is further agreed that in case of the non performance by either party of whatever award may be made herein, this agreement and instrument in writing shall not affect any lien and rights which said Stone may now have upon any property of said Atwood or which he may hereafter have, or prevent or interfere with the enforcement of them. And that this agreement and instrument in writing shall not affect any rights or claims for damages exemplary or otherwise which the said Atwood may now have or may hereafter acquire against said Stone - it being the true intent and meaning hereof that in case of such non performance of the award by either party, each of the said parties shall have a-

against the party refusing to perform, all the original rights possessed by such party together with the additional security of the bond given as aforesaid.

Witness the hands of the said parties respectively this 17 May 1854

L. L. Atwood

[Signature]

Norris O. Stone

[Signature]

Superior Court of Chicago
In Chancery
Norris O. Stone

vs
L. L. Atwood
and Abram H. Covert

State of Illinois
Cook County, ss.

I, Jas Scott Master in Chancery of the Superior Court of Chicago, do hereby certify, that the foregoing and the depositions of witnesses produced, sworn and examined before me, on the part of the Complainant, in the above entitled cause, and taken by the consent and agreement of the solicitors of the respective parties therein

That previous to the examination of the witnesses whose names are subscribed to the foregoing Depositions, they were each duly sworn by me according to Law. and that the examination of said witnesses was taken upon verbal interrogatories, propounded to them by the Solicitors of the respective parties.

Dated May 17th 1860.

Edw Scott
Master in Chancery of the
Superior Court of Chicago

Copy Award
and Schedules annexed thereto.

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To whomsoever these presents may come Greeting.

Whereas we the undersigned Melville W. Fuller and James L. Sherman of Chicago in the County of Cook and State of Illinois were by agreement in writing bearing date the 17th day of May A.D. 1859 executed by and between one Lewis L. Atwood and Strawn B. Stone of the City of Chicago made and appointed Arbitrators for and on behalf of the said Atwood and Stone to hear award adjust and finally determine the matters of disputes therein and thereby submitted And whereas we the said Fuller and the said Sherman have heard the said matters of difference do award adjust and finally determine and do make this our award as follows, that is to say, That there is due to the said Stone from said Atwood for money loaned, and interest on the same the sum of \$1699.39

For rent of Orient House the sum of \$1133.32
 For money advanced to pay Gas Bill 122.90
 For money paid on Reprieve Writ 2.25
 For printing Barry & Cushing Bill 20.86
 For repairing doors & blinds at Orient House 14.75
 For repairs on Orient House 200.00
 \$3193.47

And that there is due to said Atwood from the said Stone - For Cash paid to said Stone \$132.74
 For Board the sum of 26.04

For damage to said Atwood for breaking up
 business at Great House five days \$20 \$ 120 " 00
 For money paid to repair broken furniture 15 " 00
 For rent of rooms 18 & 19 3 weeks 36 " 00
\$1040 " 43

And that the balance due the said Store from
 the said Atwood is the sum of \$ 2123 " 04
 We do further award a decree finally determine that there is
 due from the said Atwood to Brown Brothers the sum of \$97 " 50
 To W. B. & H. J. Miller the sum of \$
 To Charles Tobey the sum of \$

and we set aside for payment of the debts due the said Brown
 Brothers, W. B. & H. J. Miller and Charles Tobey to be appropriated
 by the said Atwood in payment thereof the following articles of
 property and furniture to wit

One French Bedstead with Springs \$30 " 00
 One Sofa valued at \$16 " 00
 One Stand Table valued at \$ 3 " 00
 One Upholstered Rocker valued at \$ 9 " 00
 One Bureau \$25 " 00
 Two Canvas Seat Chairs \$ 3 " 00
 One Wood Rocker \$ 2 " 50
 One Hair Stand valued at \$ 4 " 50
 One Looking Glass \$ 8 " 75
 Two Centre tables Marble tops \$50 " 00
 One Sofa \$25 " 00
 Two Parlor Chairs \$30 " 00
 One easy Chair \$25 " 00

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42³/₄ yards Brussels Carpets \$ 48.09
 One Moss Matrap \$ 10.00
 One large Pew Grass Matrap \$ 4.00
 One pair feather Pillows \$ 4.20
 One large Comforter \$ 2.50
 One table Quilt \$ 3.00
 One pair double Sheets \$ 2.00

Which said articles and property are in rooms Nos 11, 12 & 13 of
 Orient House - Also 1 Antre table at \$ 10.00
 in room No 11.

One Tris in Nos 12 & 13 valued at \$ 75.00

One Secretary in Room No 18 \$ 50.00

Also further we do estimate and value the balance of furniture
 not appropriated in payment of debts as before mentioned to be
 of the value of \$ 3422.80

according to accompanying Schedules made by L. Morgan.

A. B. Miller, - Hollister - L. Tobey, C. L. Burley & the undersigned

and we do award and adjudge that the said Store shall take

the said furniture according to the said Schedules at the

valuation as aforesaid and that the said Store shall be credited

with the sum of Two thousand one hundred and twenty three

dollars and four Cents (\$2123.04) being the amount found to

be due the said Store from the said Atwood and upon the

delivery thereof to said Store by the said Store shall execute

and deliver to said Atwood his Promissory Notes for the sum

of \$1299.76 Twelve hundred and ninety nine dollars & seventy

six Cents payable Twelve Months from date of this award to wit

the 20th day of May. And that said Atwood shall surrender to

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Said Stone the lease and possession of said Orient House which he holds - quietly & peaceably to said Stone and the premises & all rights which the said Atwood holds under and by virtue of said Lease and that the said Stone shall accept & receive the same and release the said Atwood from all liability thereon.

In witness whereof we have hereunto set our hands & seals respectively this 20th day of May 1859.

M. W. Fuller

(Seal)

P. C. Sherman

(Seal)

"Exhibit 1"

"Chicago, May 19th 1859.

"Bought of C. R. & J. H. Miller

No 237 State Street - Cr: Jackson.

Office	1. 18 inch Star of North Stove	45	00
	22" Russia Pipe	20	40
	1 Elbow	1/2	10
	1 Collar	2/2	25
Back dining Room	1 Chapel Parlor Wood Stove	7	00
	1 Sliding door Franklin Gas Stove	10	00
	1 Cottage Parlor Stove	6	50
	1 # 3 Air light Stove	12	00
	1/8" Russia Pipe	20	13
	8 Elbows	1/2	10
	1 Zinc Board	1	75
	12" Zinc	1/2	50
	1 large Elbow	25	
	3 Lead Pipes	100	300
			560

Room No 15	1 Chamber Pot		8 " 00	
15-7	17" Russia Pipe	20	3 " 40	
	2 Elbows	1/1	25	
	1 collar	1/1	25	
	5" Zinc	1/1	13	12 " 53
Party	1 Air light Stove		11 " 00	
	38" Pipe	10	3 " 80	
	2 Elbows	1/1	25	
	1 Zinc Board	14/1	1 " 75	
	1 Boiler & Stove		7 " 00	
	1 Copper Chafing Dish with lamps & Covers		29 " 25	58 " 05
Room No 25	1 - 11 in Dwarf Stove		4 " 00	
	18" Pipe		1 " 80	
	1 Elbow		13	
	4 1/2" Zinc		56	
	Poker	2/1	25	1 " 74
Room No 41	1 No 2 Air light Stove		10 " 00	
	13" Russia Pipe	20	2 " 60	
	2 Elbows	1/1	25	
	1 Zinc Board		1 " 75	
	1 Stove		2/0	11 " 80
Room 32	1 - 9 in Dwarf Stove		9 " 00	
	7 1/2" Russia Pipe	20	1 " 50	
	5" Common Pipe	10	" 50	
	1 Elbow	1/1	13	
	5" Zinc	1/1	13	
	Poker		10	
	Brigs		50	12 " 36

155	Rom 34	1 Sliding door Coal Stove		10.00	
		14" Pipe	10	1.40	
		1 Elbow 60 1/2 x 2 1/2		38	
		1 Zinc Board	12	1.50	13.28
Rom 35		1 8 in Dwarf Stove		6.00	
		21" Pipe	10	2.10	
		1 Elbow	1/2	13	
		1 Zinc Board	12	1.50	9.73
Kitchen		1 Black Diamond Cook Stove with Turnings		21.00	
		5" Zinc	1/2	63	
		20" Pipe	10	2.00	
		2 Elbows	1/2	25	
		1 Zinc Board	10	1.25	
		1 Coffee Boiler		4.50	
		1 Boiler & Steamer		5.00	
		1 Cream Freezer		6.00	
		Brass Kettle		3.50	
		2 Dish Pans		1.00	
		2 Drip Pans		40	
		5 " "		1.88	
		3 - 10 Qt Pans		90	
		4 - 1 " "		80	
		4 Stew Pans		3.00	
		2 Tin Pails		50	
		1 Spice Boxes		1.50	
		1 Lucia Pan - 100 lbs capacity & Co. Pot		65	
		3 Basins 1/2 & Dippers 1/2		87	
		1 T. Pot 10/- & 1/2 8/6		2.25	

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Springs - Forks &c	12/	1 " 50	
1 Set Scales		3 " 00	1,5 " 38
1 Copier		1 " 50	
2 - 10 Dr Pails	11/	1 " 50	
4 Chley Cars	1/2	13	
1 " Moulds	8/	1 " 00	
21 " "	5/	28 " 50	
3/4 doz Chley Moulds	10/-	96	
3 Tin Scoops	4/	1 " 50	
3 doz. Muffin rings	3/-	1 " 13	
3 " Bake Pans	3/	1 " 13	
1 Chopping Knife	4/	50	
2 Ash Pails	12/	3 " 00	
1 No 5 Patent Bake Oven		50 " 00	
			\$ 359 " 60

Summary

1 Stove	12 " 00	
1 Boiler	7 " 00	
30" Pipe	10	3 " 00
1 Screw 1/2 1 T. Pipe	2/	38
1 Fund	1/-	75
1 Set Mergins Bar Nuts	20	1 " 20
2 Coal Stoves	8/	2 " 00
		26 " 33
		\$ 385 " 93

(Mullers Estimate for present worth 33 1/3 (we end less) 257.30

Exhibit 8.	82 Gall. Stone Ware	1/-	\$ 10 " 25
157	1 1/2 dozen Cans	14/-	2 " 62 1/2
	10 Cans & Basons large size	14/-	12 " 50
	3 " " Small "		3 " 00
	15 Chambers	8/-	15 " 00
	5 Potts Shop Paris		25 " 00
	3 Clocks		10 " 00
	1 Kitchen Cupboard		6 " 00
			\$ 114 " 37 1/2
	(Burecy)	less	30 " 00
			\$ 84 " 37 1/2

Exhibit 7.

1 Office Chair	3 " 00
2 Cane " "	5 " 00
1 Marble Table	10 " 00
1 Six leg Leaf Table	7 " 00
1 - 8 ft. Table	1 " 00
1 Bench	1 " 50
1 Stool	50
1 Ice Chest	8 " 00
1 " "	10 " 00
1 Walnut Table 6 ft.	1 " 00
1 Kitchen "	10 " 00
2 Ironing Boards	10 " 00
2 Clothes frames	3 " 00
1 Corn: Chair	50
2 Benches	1 " 00
2 Wash boards	50

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2 Large Wash Tubs - 1 small	2 " 75-
3 Clothes baskets - 2 small	3 " 00
1 doz. Flat Irons 9 (3 short)	9 " 00
	<u>\$ 48 " 75</u>

(Joleys Estimate of present worth was 30 per cent less). 55.13

"Exhibit 5"

Room No 14.	1 Sofa	23 " 00
	2 Cottage Beds: 5 1/2	11 " 00
	1 Centre Table	9 " 00
	2 Basin Stands: 8.	11 " 00
	1 Dress Bureau	30 " 00
	6 Office Chairs	16 " 50
		<u>\$ 105 " 50</u>

Room No 16.	1 Cottage Bedstead	\$ 5 " 00
Room No 18.	1 Secretary and Bookcase	50 " 00
	1 Small Table	5 " 00
	3 Lane Seat Chairs	12/ 4 " 50
	1 Nurse Rocker	2 " 50
		<u>\$ 62 " 00</u>

Room No 24.	2 Lane Seat Chairs	12/ 3 " 00
	1 Breakfast Table Cottage Bedstead	5 " 50
	1 Lounge Washstand	1 " 75
		<u>\$ 10 " 25</u>

Room No 25.	3 Lane Seat Chairs	12/ 11 " 50
	1 Breakfast Table	3 " 00
	1 Lounge	8 " 00
	1 Coffee Table	2 " 50
		<u>\$ 18 " 00</u>

Room No 26.	1 Cottage Bedstead	5. 50
159	1 Bassin Stance Marble top	14. 00
	2 Lane Seat Chairs	12/ 4. 00
	1 Coffee Table	2. 00
	1 Looking Glass	2. 50
		<u>\$ 28. 00</u>

Room No 34	1 Cottage Bedstead & Springs	10. 50
	1 Bassin Stance	4. 50
		<u>\$ 15. 00</u>
		<u>\$ 44. 05</u>

Room No 35.	1 Cottage Bedstead	5. 50
	3 Lane Seat Chairs	12/ 4. 50
	1 Nurses Rocker	2. 50
	1 Work Stance	3. 00
	1 Dress Bureau	30. 00
		<u>\$ 45. 50</u>

Room No 38	1 Cottage Bedstead - Spring Mattress	7. 00
	1 Bassin Stance	4. 50
	4 Lane Seat Chairs	12/ 6. 00
	1 Looking Glass	2. 50
	1 Coffee Table	2. 25
		<u>\$ 22. 25</u>

Room No 39.	1 Cottage Bedstead	5. 50
	1 Bassin Stance	10. 00
	1 Bureau	10. 00
	1 Work Table	3. 50
	1 Nurses Rocker	2. 50
	3. Lane Seat Chairs \$14.50 - 1 Looking Glass \$5.00	9. 50
		<u>\$ 40. 50</u>

Room No 31.	1 Bureau and Glass	307.00
160	1 Basin Stand Whole	3.50
	1 Cottage Bedstead	5.50
	2 " Chairs	20 5.00
	2 Nurse Rockers	20 5.00
	2 Stand Tables	10 4.00
		<u>\$ 55.00</u>

Room No 42	2 Bedsteads 5 1/2	11.00
	3 Chairs 17	4.50
	1 Basin Stand	4.50
	1 Small Table	3.00
	1 Looking Glass	0.50
		<u>\$ 25.50</u>

Room No 41	4 Chair Cane Seats 12/-	6.00
	1 Nurse Rocker 20/- 1 Large Rocker 36/-	4.00
	1 Coffee Table	2.00
	1 Cottage Bedstead	5.50
	1 Basin Stand	5.00
	1 Looking Glass	0.50
	1 Wash Pot	4.50
	1 Lounger	8.00
		<u>\$ 40.50</u>

Room No 40.	1 Cottage Bedstead	5.50
	1 Basin Stand	5.00
	1 Looking Glass	0.50
	1 Stand Table	8.00
	2 Lane Seat Chairs 12/-	3.00
	1 Nurse Rocker 24/- One for Stand 12/-	3.75
		<u>\$ 24.75</u>

Room No 37	1 Cottage Bedstead	5 ⁰⁰ 50
161	1 Broom Stair	4 ⁰⁰ 50
	1 Lane Table	5 ⁰⁰ 00
	4 Lane Seat Chairs 12 ¹	4 ⁰⁰ 00
	1 Looking Glass	2 ⁰⁰ 50
		<u>\$ 23⁰⁰ 50</u>

Room No 36	2 Chairs Lane Seats 12 ¹	\$ 3 ⁰⁰ 00
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Room No 30	1 Cottage Bedstead	\$ 5 ⁰⁰ 50
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Room No 24	2 Cottage Bedstead 4 ¹ / ₂	9 ⁰⁰ 00
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	1 Cottage Bedstead (brok) & Springs	10 ⁰⁰ 00
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\$ 19⁰⁰ 00

Room No 11	1 French Bedstead with Springs	30 ⁰⁰ 00
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	1 Sofa	16 ⁰⁰ 00
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	1 Stand Table	3 ⁰⁰ 00
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	1 Upholstered Rocker	9 ⁰⁰ 00
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	1 Bureau	25 ⁰⁰ 00
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	2 Lane Seat Chairs 12 ¹	3 ⁰⁰ 00
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	1 Nurse Rocker	2 ⁰⁰ 50
--	----------------	--------------------

	1 Broom Stair	4 ⁰⁰ 50
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	1 Look Glass 6 ¹ / ₂ - One large do \$8 ⁰⁰ 00	8 ⁰⁰ 75
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\$ 101⁰⁰ 75

Room No	2 Centre Tables Marble Tops \$25-	50 ⁰⁰ 00
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13 P 12	1 Sofa	25 ⁰⁰ 00
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	6 Parlor Chairs \$5.	30 ⁰⁰ 00
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	1 Easy "	25 ⁰⁰ 00
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\$ 130⁰⁰ 00

Room No 14	2 Cottage Beds	5 1/2 ea:	11.00
162	1 Dress Bureau & Glaz		35.00
	2 Lane Seat Chairs	1 1/2	3.00
			<u>\$ 49.00</u>

Room No 15	1 Sofa		23.00
	1 Mahogany Chair	3 1/2	14.00
	1 " Rocker		12.00
	1 Lane Table		10.00
	1 Mirror Rocker		2.50
	1 Corner Wood Not		5.00
			<u>\$ 66.50</u>

Room No 20	1 Dressing 1/2 French		9.00
	1 Large Wardrobe		18.00
	1 Barn Stand		4.50
	1 Slinger		12.00
			<u>\$ 43.50</u>

Dining Room	Has Ruch		8.00
	50 Dining Chairs	20¢	125.00
	5 Table Chairs	6¢	3.75
	88 feet Dining Table	8¢	88.00
	1 Breakfast Table		4.00
	1 Kitchen Table		2.50
			<u>\$ 231.25</u>

Office Furniture	1 Sofa & Mattress		5.00
	1 Bed Lounger		8.00
	12 Best Band Office Chairs	16¢	24.00
	1 Extension Dining Table		22.00
	1 Office desk		12.00
	2 Office Chairs \$3. - \$6. 1 Office Clock \$11.00		17.00
			<u>\$ 88.00</u>

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Aggregate

Room No. 11	101.75	Amount from other District	
" " 13.12	130.00	as per footing	823.25
" " 14	49.00	Room Nos 41.	40.50
" " 15	116.50	" " 40	27.75
" " 20	43.00	" " 37	23.50
" " 17	105.50	" " 36	3.00
" " 16	5.50	" " 30	5.50
" " 18	120.00	" " 27	19.00
" " 24	10.25		\$942.50
" " 25	18.00	During Room	231.25
" " 26	28.00	Office Rent:	88.00
" " 34	15.00		\$1261.75
" " 35	45.50	Charles Top Table	10.00
" " 38	22.25	Trip	75.00
" " 32	40.50		\$1346.75
" " 31	55.00	B. Morgans Estimate for present	
" " 22	25.50	Value is 20 per Cent less.	1077.40
	<u>\$ 823.25</u>		

Exhibit 3.

1 Water Cooler				1.50
6 Spoons	² 10/-	² 8/-	² 33c	5.15
Kitchen: 2 Pictures	3/-			75
19 Plates	¹⁰ 10/-	⁷ 7/-	² 6/-	1.60
1 Bowl 1/-	2 Yeb Cakes	Pans	3/-	88
Slow Burner worth 1/-	per Gate:			
Footling glass 5/-	Wastebowl			12

Dining Room

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4 1/4	Doz Coffee	2.25					9.56
5/12	" Sauers	1.12	1/4				34
2	Doz. Bakers	6 ⁱⁿ	2.00				4.00
3 2/3	" Dishes	12 ⁱⁿ	2.00	1 2/3			6.33
	Plates	Fluted	3/4 doz.	1 1/2			1.41
	"	Plain	3 1/4 doz.	3 3/4	4 1/2	5 2/3	14.07
4 1/6	Doz deep bread Sauers			6 1/2			2.10
	Pitchers	58¢.	75¢.	37 1/2	25.		1.49
3 2/3	Doz. Soup Plates		1.25				4.58
9	Glass Dishes	5¢	3/6	3/4	2¢		3.88
6	Syrups	75¢					4.50
8	Bowls	1/2	10 1/4				85
2	Gravy Purees	No lads	6 1/2				1.50
2	bowls Dishes		6 1/2				1.50
4	Butter Dishes		5¢				4.37
	Red Lamp	@ \$1.75	per Doz.				
4	Glass Dishes	75¢	1.00				3.50
6	Radish Dishes		1/2				75
1	Glass Dish		2/6				31
2 1/3	Doz Fluted Coffee		11¢				92
6	Spout Dishes	50¢	5 1/2				3.37
3	Butter	"	3 1/2				1.88
4	Cake Stand		7 1/2	12¢			4.12
6	Pickles		1/6				1.13
2	Pitchers		2/6				1.2
1	Doz Preserved Cars		3.00				3.00
3	Round Wash Plates		2.25				6.75

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4	Chasing Dishes	1.00		4.00
1	Plated Soup Tureen Complete			7.00
1	Silver Lamp			1.50
1	Coffee Urn			12.00
1	Tea "			9.00
1	French Coffee Pot			3.50
1	Clery Glasses	75¢		4.50
1	Oct But. Salt	50¢		3.00
4 1/2 doz	Small Salt, or if cut	\$1.25		5.12 1/2
3 1/2 doz	Goblets	2.50		8.96
3	" Champagne	2.25		6.75
3	Broom Brushes	51¢		1.53
1	White Guiton	75¢		.75
8	Round Waiter	1.00		8.00
2	Common "	75¢		1.50
4 1/2 doz	Box Table Spoons	7.00		31.50
5 1/3	" Tea "	2.25	3.50	15.33
5 1/2	" Dessert "	5.50		22.28
5 1/4	" Forks	5.50		28.88
50	Butter Knives	50¢		25.50
2 1/6 doz	Knives	6.00		13.00
3 1/4	" "	9.00		11.75
1 1/4	" "	5.00		6.25
	" Dessert Knives	1 1/4 doz. 4.50	1 doz 5.00	1 1/2 doz. 4.50
2	" Knives & Forks	3.50		7.00
4	Barbers	10.00	3.50	33.50
1	Pair Wares	3.00		3.00
	Has Glasses	57	57	24.75

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Gas Globes $5\frac{22}{-}$ $8\frac{12}{-}$

25.75

382.91

Stone Ware work $1\frac{1}{2}$ per doz: gallonBeer: Tanks " $14\frac{1}{2}$ per doz:Burley Estimate was 12 per Cent off. 336.97"Exhibit 5"Orient House.

Room 12 + 13	96 Yds Velvet Carpet	12/-	144.00
	Mats to "	$1\frac{1}{2}$	12.00
	1 Rug		1.00
1 st to Stables	53 $\frac{1}{2}$ Yds Hook Dutch Carpet	$9\frac{1}{2}$	10.00
"	Mats. lay:		1.17
"	16 $\frac{2}{3}$ Yds Oil Cloth	6/-	12.56
	lay: do	6/-	1.00
Room 14 + 15	31 $\frac{1}{2}$ Yds Brussels Carpet	9/-	35.44
"	Mats: lay:	$1\frac{1}{2}$	3.96
"	16 $\frac{3}{4}$ Yds Ang: Carpet	85/-	14.24
"	Mats "	10/-	1.17
"	2 Yds Oil Cloth	$1\frac{1}{2}$	1.50
	1 Hair Mats 42 lbs	45/-	18.90
	1 Sew Grass "		3.00
	1 Single Mats Mats		1.00
	1 Single Sew Grass "		2.50
	3 Lancaster Quilts	$9\frac{1}{2}$	2.25
	1 Single Carpet		1.50
	1 double do		2.00
	1 " Lancaster Quilt		2.00

	3 Feather Pillows	11 lbs	60¢	6 " 60
167	1 Mosquito Net			1 " 50
Living Room	30 1/2 Yds Oil Cloth	5 1/2		19 " 06
Room 18	1 Moss Mattress \$8.00	1 Spruce do \$3-		11 " 00
	1 Pair Pillows	6 1/2 lb	60¢	3 " 90
19	1 Lancaster Quilt			2 " 50
	1 Comfort			2 " 00
Room 11.	42 3/4 Yds Brussels Carpet	9/-		148 " 09
	Matt. lay	1/2		5 " 34
	1 Moss Mattress			10 " 00
	1 large Sew Spruce Mattress			4 " 00
	1 Pair Feather Pillows	7 lbs	@ 60¢	4 " 20
	1 Large Comfort			2 " 50
	1 Toilet Quilt			3 " 00
	1 Pair double sheets			2 " 00
Room 16	56 1/4 Yds Brussels Carpet @	9/-		13 " 28
	Matt. lay	1/2		7 " 03
	Danette Curtains			19.50
	1 Pair Feather Pillows	7 lbs	60¢	4 " 20
Room 17	57 1/2 Yds Brussels Carpet	9/-		14 " 69
	Matt. lay	1/2		7 " 15
	2 Set Curtains			28 " 00
	2 Comforters	16/-		4 " 00
	1 Bot Spruce Mattress			6 " 00
	1 Sew Spruce "			3 " 00
	1 Moss Mattress			8 " 00
	1 Sew Spruce "			3 " 00
	4 Feather Pillows	12 lb	60¢	7 " 20

	2 Counterpane	16.	4 " 00
Room 20	21 Yds. Cng. Carpet	85-	17 " 85-
168	Matb "	10	2 " 10
	1 Sew Green Mattress		3 " 00
	1 Quilt		2 " 00
	1 Counterpane		2 " 00
	1 Pair Feather Pillows 6 1/2 lbs @ 60¢		3 " 90
Rooms 24 & 25	26 Yds. Cng. Carpet	80	20 " 80
	Matb: lay.	10	2 " 60
	1 Sew Green Mattress		3 " 00
	1 Matb Mattress		3 " 50
	1 Comforter		2 " 00
	1 Marseilles Quilt		4 " 00
	2 Feather Pillows 6 1/2 lbs @ 60¢		3 " 90
Room 26	8 1/2 Yds. Cng. Carpet	85-	7 " 23
	1 Single bot Mattress		6 " 00
	1 do do do		5 " 00
	2 Single Comforts	12/-	3 " 00
	1 Feather Pillow 3 1/2	60	2 " 10
Room 27	4 Comforters	14/-	7 " 00
	4 do large	16/-	8 " 00
	2 Sew Green Mattresses	24/-	6 " 00
Room 31	23 1/4 Yds. Cng. Carpet	85-	19 " 76
	Matb. lay:	10	2 " 33
	1 Hair Mattress 31 "	40	12 " 40
	1 Straw "		2 " 50
	1 Comforter	16/-	2 " 00
	1 Quilt	16/-	2 " 00

	2 Feather Pillows	4 lbs.	60¢	4. 20
Room 32	21 Yds Eng Carpet		80	16. 80
	Matt: lay:		10	2. 10
	1 Straw Mattress		20/-	2. 50
	1 Feather Bed	32 lbs	60	19. 20
	1 Quilt			2. 00
	1 Comfort			2. 00
	1 Pair Feather Pillows	6 lbs	60	3. 60
Room 34	6 2/3 Yds Carpet		850	5. 70
	Matt: lay.		10	66
	1 Single Mattress		18/-	2. 25
	1 Single Quilt		9/-	1. 13
Room 35	21 1/2 Yds Eng. Carpet		60	12. 90
	Matt: lay:		10	2. 15
	1 Moss Mattress			8. 00
	1 Straw do			2. 50
	1 Comfort			2. 00
	1 do			1. 50
	2 Feather Pillows	4 lbs	60	4. 20
	1 Straw Bolster		6/-	75
Room 37	15 1/2 Yds Eng. Carpet		70	10. 85
	Matt: lay:		10	1. 55
	1 Spring Mattress			20. 00
	1 Comforter			2. 00
	1 Quilt			2. 00
	2 Feather Pillows	4 lbs	60	4. 20
Room 38	16' Yds Brussels Carpet		8/-	16. 25
	Matt. lay.		1/-	2. 04

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Room 39

2 Sea Green Mattresses	24/2	11.00
1 Quilt		2.00
1 Feather Pillow 6 1/2 lb	1.00	3.90
10 3/4 Yds. Ang. Carpet	85	10.83
Matb: lay.	10	1.27
1 Feather Bed 34 lbs	1.00	14.40
1 " Pillow	1.00	

~~\$21.66~~"Exhibit 4" Continuation of foregoing exhibit =

Room 40

19 1/3 Yds Brues: Carpet	9/2	21.66
Matb: lay.	1/2	2.42
1 Hair Mattress 31 lbs	35¢	10.85
1 Husk "		4.00
1 Comforter		1.75
1 Streaker		2.00
1 Dr. Feather Pillows 6"	1.00	3.60

Room 41

21 Yds Ang: Carpet	80	16.80
Matb: lay: do	10	2.10
9 1/3 Ang: Carpet	1.00	5.60
1 double comforter		2.00
1 do do		1.75
1 Straw Mattress		2.50
1 Quilt		2.00
1 Dr. Feather Pillows 7 lb	1.00	4.20
3 Straw Mattresses	20¢	7.50
2 Quilts		3.50
1 Feather Pillow 3 lb	1.00	1.50

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	1 Pair Moss Pillows	8/-	1 " 00
9130	1 Moss Mattress		8 " 00
	2 Comforters	16/-	4 " 00
	1 Quilt		2 " 00
	1 Coat; large Comfort	20/-	2 " 50
	3 Feather Pillows 9 lb	60	5 " 40
Office	9 1/4 Yds Air Cloth	8/-	9 " 81
	1 Auto Mask	8/-	1 " 00
	1 Coesoo "	12/-	1 " 50
	10 Office Shades		10 " 00
	33 Yds Table Linen	6/-	24 " 75
	5 Arg: Napkins	14	4 " 25
	1 " Towels		16 " 50

Quitting

121 " 03

\$1220.03

Illustration Estimate for present stock was 20 Per Cent less 5 1/2 %

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And afterwards to wit on the thirteenth day of November A. D. Eighteen hundred and sixty three was filed in the Office of the Clerk of said Court certain depositions on the part of said defendants: Which depositions are in the words and figures as follows to wit:

"State of Illinois
Cook County . . . } Superior Court of Chancery Chicago
Horatio A. Stone
vs
Levi L. Atwood and
Abraham H. Bonest . . . } In Chancery.

Depositions of witnesses produced sworn and examined in the above Entitled cause on the part of the defendants before me John T. Foster one of the Masters in Chancery of said Court - at my Office in the City of Chicago on the first day of March A. D. 1860 and taken by the consent and agreement of the Solicitors of the respective parties, at which time and place the said parties appeared by their respective Solicitors.

Melville W. Fuller a witness produced sworn & examined on the part of the Defendants deposes and says

I reside in Chicago - My name is M. W. Fuller -
am an attorney at law and am a full and legal age

1st Q. Do you know the parties Complainant and defendants in this suit, or either and which of them and how long have you known them respectively?

Answer. I am acquainted with the parties Complainant & Defendant

have known them since about the fall of 1858.

Qnd

Do you know of the Defendants Atwood and the Complainant entering into a Submission for Arbitration of certain matters in difference between them in the year 1859 - If yes, as you know in what manner taken? if yes, state and your means of knowledge.

Answer

I do know that the said Atwood and Complainant entered into a Submission for arbitration in May 1859 - the agreement annexed to Mr Sherman's deposition and marked "Exhibit C" is the one under which Submission was made - My means of knowledge are that I was Mr Atwood's Attorney - before the agreement was entered into - and also acted as one of the Arbitrators under the Exhibit referred to.

Qnd

Was there any agreement or arrangement between the parties or their Attorneys touching the mode of procedure by the arbitrators under the Articles of agreement last mentioned before the same were executed, if yes, what?

Answer question objected to by Complainant's Solicitor.

Answer

There was - the agreement was between the Complainant's Attorney, Mr Sherman and myself - I communicated it to my Client Mr Atwood before the execution of the Articles of agreement in question - But I did not see the Complainant at the time - This agreement was that in fixing the valuation of the furniture in the Orust House, the arbitrators were to take the cost price of the furniture &c in paid lower at the time it was purchased to be established by the Bills of purchase, as far as they would go - from that valuation the actual valuation of the furniture &c

was to be taken - The ordinary wear & tear of furniture of a like character in houses of the same description as the Orient House - for the length of time which that furniture had been in use was to be ascertained by the Evidence of Boardinghouses and Hotel Keepers upon that point -

The difference between the ordinary wear and tear of such furniture and the actual wear and tear, which the furniture in question had sustained - which would be made to appear by subtracting the value of the furniture in May 1859 from the cost price thereof - was to be allowed to Mr Atwood as damages for the, seizure of the same in January 1859 by Complainant - over and above the damage which Mr Atwood should show he had sustained by actual loss of articles of furniture and otherwise - In other words the valuation of said furniture was to be what Mr Atwood gave for it, less the ordinary wear and tear of like furniture in a like place - But not the actual wear and tear which this furniture had sustained - It was upon being informed of this understanding and agreement - that Mr Atwood agreed to execute and did execute the articles of Submission - My recollection is that I proposed to Mr Sherman to put this agreement into the Articles of Submission But he thought it would only tend to lengthen the articles to no purpose and that it was just as well - if understood between ourselves - as we were to be the arbitrators - Mr Sherman particularly mentioned that we were to take the Bills of particulars to ascertain the cost of the articles of furniture &c mentioned therein. So far as the Bills would go - This agreement covered the hardware - upholstery - furniture &c and all the articles which were to be made over to Mr Stone and which I have called furniture &c in the foregoing answer.

'Above answer objected to by Complainant's Solicitor

4th Did the arbitrators do anything under said Articles of Submission marked 'Exhibit B', if yes, what, when & where?

Answer The arbitrators made an award hearing date the 20th of May, 1859 at the Orient House at the South East corner of New River and State Streets.

5th How did said arbitrators proceed in arriving at and making said award?

Above question objected to by Complainant's Solicitor.

Answer On the morning of the 20th of May A.D. 1859 - Mr P. L. Sherman and M. H. Fuller (myself) met at the aforesaid Orient House to act as Arbitrators, while proceeding down Town to get a Plumber to examine the Water works of the Orient House on Mr Sherman's suggestion - Mr Sherman proposed to call in Mr Morgan Mr Burley and others. I will not be positive as to the names - but furniture, hardware dealers &c - to estimate the price of the furniture in the Orient House, if purchased new that day. I called Mr Sherman's attention to the agreement as to the valuation alluded to in my answer to the third Interrogatory, and said that I relied upon that - It is due to Mr Sherman to say, that he then insisted and I believe has ever since persisted in stating that he understood the agreement to be that we were to take the best price of the furniture if purchased new then. I did not object to his understanding of the agreement - But I told him that he could proceed in his way and after he got through I would proceed in my way, and perhaps we could then agree. Messrs Burley, Morgan Holister, Miller & Tobey were accordingly called in - and made estimates

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of the value of the furniture if purchased new - It is very little interest in the operations or estimates of these men as I considered the modus operandi was contrary to the agreement and intended to call in other witnesses after they got through - I examined the furniture however myself - These men were occupied pretty much all day and into the evening - It is possible we commenced the day before the 20th but I think not - I know that these gentlemen did not get in their Schedules until the evening of the day the award bears date - It was so late, that I believed we should arrive at no conclusion inasmuch as I had not called on any witnesses - and the award must have been finished and made on the 20th May, according to the articles of Submission - Mr Sherman after he got the last Schedules from those gentlemen put the amount of the valuation of the furniture at \$3779.57

I had myself on a different basis and upon information integral to the articles which I knew about before, as I had been a boarder in the Orient House for some months and knew about the whole transaction - made a calculation which brought the furniture over \$3700.00 besides the ordinary wear and tear - After agreeing to the amount of \$3779.59 Mr. Sherman figured on the accounts between the parties - We had been talking during the day backwards and forwards about the amounts due one to the other, and had agreed on certain of the items, but had struck no balance between the parties, before the valuation was put upon the furniture - Mr Sherman states that he found, that the amount to be paid to Mr Atwood was quite large - He finally offered me \$1300.00 to be paid to Mr Atwood over and above every thing - And after a good deal of hesitation and figuring, I agreed to take that

sum - The then figures for a considerable time allowing items to Mr Stone and cutting off items from Atwood - so that the amount due to Stone from Atwood when subtracted from the furniture to go to Stone from Atwood would leave a balance to be paid by Stone of about \$1300⁰⁰ - Mr Sherman finally hit it, so that the balance made \$1299.76 - This was not done without considerable difficulty - Before doing this we had from the \$3779.⁵⁷ subtracted furniture that we estimated at \$356.²¹, the proceeds of which last mentioned furniture were to go to pay certain accounts of Tobey - Bouens Brothers and O. B. & G. N. Miller - Mr Sherman then made out the award and we signed it and received.

Answer answered objected to by Complainant's Solicitor
 16th. Answer to said award are certain Schedules referred to by J. E. Sherman in his testimony in behalf of Complainant - By whom were they made, and for what, and for what reason were they annexed to the award?

Answer question objected to by Complainant's Solicitor.

(Agreed by consent to February 29, 1860 at the same hour and place.)

1860, February 29th the parties met as before.

Answer Those Schedules were made by the gentlemen referred to by Mr Sherman with the exception of a small one - of some articles that were not in the other Schedules which was made by the Arbitrators - They were made in accordance with Mr Sherman

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views of the mode of procedure - they were annexed to the award for the purpose of the taking possession by the Complainant of the articles mentioned therein and for no other purpose whatever.

Albino Answer objected to by Complainant's Solicitor.

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Did you or not assent to the correctness of those Schedules, or the manner in which the same were made out, or the deductions therefrom, spoken of by Mr. Sherman in his testimony and if not why?

Albino Question objected to by Complainant's Solicitor.

Answer.

I did not assent to the correctness of the Schedules, made by Burley - Morgan - Tobey - Miller & Hollister - The last Schedule was a mere Memorandum of Articles handed in at the last moment, and the opinion of nobody was asked in regard to it - I did not assent to the manner in which the Schedules were made out; because they were made on a totally different basis from that which I considered the correct one, and the one in accordance with the agreement I have previously mentioned - the deductions were made to get the actual value of the furniture and represent the actual wear and tear thereof when they should have represented the ordinary wear and tear as I contended, and therefore I did not assent to the deductions.

Albino Answer objected to by Complainant's Solicitor.

8th

In his answer to Interrogatory 9th in his deposition Mr. Sherman has spoken of and attached to his deposition, a paper in which he asserts the figures as originally made at the time of

the finding of the value of the property embraced in said Schedules and of the making of the award. Do you know anything about those figures, if yes, what?

Answer question objected to by Complainant's Solicitor.

Answer I do not know anything about them. They are not my figures and were not at any time gone over by me. I have no doubt that they are Mr. Sherman's figures from information given the filing of this Bill. But I had nothing to do with them in the slightest degree, either at the time of the award or at any time before or since.

Answer answer objected to by Complainant's Solicitor.

Qth Have you in your possession any of the original figures made at the time of the finding of the award, if yes, state where made by whom and when and under the name as a part of your answer to this Interrogatory.

Answer question objected to by Complainant's Solicitor.

Answer I have in my possession some of the original figures made by me at the time. I do not know that Mr. Sherman had anything to do with these figures, any more than I had with his. But they form a part of the original figuring at the time. I herewith produce the same marked Exhibits B, C and D. These figures on Exhibits B, C and D. were made by me on the night of the 20th of May A.D. 1859 in said Court House in the presence of Mr. Sherman.

Answer answer objected to by Complainant's Solicitor.

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Explain the figures on the Exhibit last referred to.

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(Answer question objected to by Complainant's Solicitor)

Answer

The majority of the figures on Exhibit B. was made after I had accepted the offer of Mr Sherman of \$1300⁰⁰. The upper figures on Exhibit B. amounting to \$3193⁴¹ represent the amount allowed as due to Stone. The \$1070⁴³ represents the amount allowed as due to Atwood - on the left hand corner of Exhibit B. on the figures of a portion of the amount allowed to be due to Atwood. Being \$306⁶⁴ Cash \$326¹⁰ Cash - making \$632⁷⁴ Cash - which is the amount as appears in the award. There is also \$266⁶⁹ Board & allowed making \$899⁴³ to which is added above those figures \$171⁰⁰ making \$1070⁴³. On the right hand side of this Exhibit appears \$3779⁵⁷ the amount allowed by Mr Sherman for furniture from which \$356⁷¹ is taken, which last amount is the Estimate of the furniture set apart to Atwood & Mary, John, Bonner Brothers and the Miller Brothers. At the bottom is \$3422⁸⁰ being the furniture less \$356⁷¹ and from that is taken \$2123⁰⁴ leaving \$1299⁷⁶ this amount finally to be paid Atwood by Stone. On the back of this Exhibit are various figures - to arrive at the estimate of the furniture set apart to Atwood. Which I made in the first place \$248⁷¹, which when the various deductions were performed left the amount to be paid Atwood by Stone, as appears on the back of the Exhibit \$1307⁷⁶ being \$7⁷⁶ in excess of the amount I had agreed to take.

Exhibit B. presents some of the figuring to get the amount due Stone by Atwood - and to Atwood from Stone. It shows on the right hand the figuring of the amount due to Stone \$200

for repairs is put into the Column, after the other amounts have been put down. The feet also looks in this figuring \$100 of the amount afterwards agreed upon. At the left at the bottom are some figures of damage allowed to Atwood, consisting of \$100 - \$15. \$36, making \$151. - The \$100 is allowed to \$120 The Cash and Board also appears on the same page as previously stated. The amount allowed shown on the right is \$3093.47. From that \$899.43 for Cash and Board allowed to Atwood is taken leaving as stated in the Exhibit \$2193.04 - on the back of this Exhibit the \$2193.04 appears, and \$151 damage allowed to Atwood in the first place before the \$20 was added in leaving \$2042.04 as the amount due to Stone. - on the right of the back of this Exhibit appears \$3779.57 from which \$356.75 is taken leaving \$3422.76 as the value of the furniture, deducting therefrom the amount set apart to Atwood, from this the \$2042.04 appears subtracted leaving \$1380.72 as the amount to be paid to Atwood by Stone finally. Which was \$80.72 in excess of the amount I agreed to take.

Exhibit D shows on the right - the \$3779.57 on the left - \$2972.86 to which \$15.11 is added making \$2988.47 as due to Stone. From that \$899.43 Cash and Board is taken leaving \$2089.04 - To this \$200 is added for repairs allowed to Stone making \$2289.04 - This \$2289.04 is then taken from \$3779.57 leaving \$1490.47 - to this is added \$151 allowed for damage making \$1641.47 from this \$356.71 is taken leaving \$1284.76 to which \$20 more damage is added making \$1304.76 being \$4.76 in excess of the amount I have agreed to take.

These figures represent a part of the cutting and plating

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gone through with after the valuation was put upon the furniture to make the final balance to be paid by Stone, come out \$1300.⁰⁰

Above answer objected to by Complainant's Solicitor.

11th

Do you or do you not know at what time relatively to the fixing the valuation on the furniture the balance was struck between Stone and Atwood and fixed at \$2123.⁰⁴ and under what circumstances the said balance was determined, if yes, state.

Above question objected to by Complainant's Solicitor.

Answer

I know perfectly well the balance was struck and fixed as aforesaid after the valuation of the furniture - After the valuation of the furniture I agreed to take \$1300 as I have paid and we then figured the balance of accounts between the parties so as to bring the amount due Stone to such a sum that if subtracted from the furniture to be paid over to Stone the final balance to be paid to Atwood would be \$1300.⁰⁰ as near to that as might be. We have had talk backwards and forwards, about the items of account between the parties; but there were a number not agreed upon at the time of the valuation of the furniture, and there were some items which were agreed upon, which were afterwards changed and repeated, after the furniture valuation and to bring out the final amount as I have stated.

Above Answer objected to by Complainant's Solicitor.

12th

Can you name any instances of items allowed or disallowed in the accounts between Stone & Atwood to bring the final amount to be paid by Stone as it was brought? If yes, what.

Below question objected to by Complainant's Solicitor.

Answer.
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I can very readily obtain and furnish handed to the Master a paper marked Exhibit E showing the account claimed by Atwood for Board and Cash paid on account of rent - The Board including washing and some expenses for dances, and the whole amount for Cash and board to being \$1100.00 - This was also allowed by Mr Sherman before the valuation on the furniture - The Cash in the Bill amounts to \$326.06 and is composed of two items at the foot of the bill - of \$126.06 & \$200 - The Board &c in the Bill amounts to \$273.94 after the valuation was fixed on the furniture and in order to get the balance as it was brought, to please Mr Stone - two items of the Board &c part of the Bill - one of \$4 a week board for Miss Gayer, under date of Jan 4th - and a item of \$3.21 for half cord of Wood, felled and split - which item immediately appears in the Exhibit. The Cash item under date of February 1st were disallowed, which subtracted from the \$273.94 left \$266.69 which was allowed Mr Atwood as appears by the award for Board &c.

The Cash in the Bill as Atwood paid amounted to \$326.06 But as Mr Atwood paid Feb, 1st \$126.10 instead of \$126.06 as shown by his Bill which \$126.10 appeared in Mr Stone's own account, we allowed the Cash on account of rent - at \$326.10 - The three items \$326.10. Cash - \$266.69 Board and \$7.25 being the \$4, and the \$3.25 of which Atwood taken. being added together makes \$1100.04 being four Cents in excess of the amount shown by Exhibit E. But the reason of the discrepancy is that Mr Atwood had paid \$326.10 on account -

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of rent instead of \$326.04 as shown by Receipts &c. in the award the Cash allowed Mr Atwood is \$132.74, but this consists of the \$326.10 for rent and another item of \$306.64 paid by Atwood on account of Notes held by Stone & also allowed. These items of \$4.00 and \$3.25 were deducted afterwards, and sometime after the valuation fixed upon the furniture and to bring the balance as aforesaid in part. In addition to this Mr Atwood claimed for furniture destroyed or so broken as to be no longer of any account - for broken crockery - and for Cash which he was obliged to pay out, at the time this furniture &c was seized by Mr Stone in January 1859 &c some \$750. actual damage - so to be more correct I thought his claim looked up \$749.13 - Before the valuation was fixed on the furniture Mr. Sherman offered to allow on that Bill \$250. & offered to sign on the Bill \$250. after the valuation was fixed on the furniture and after I had agreed to take \$1300. to finally settle the thing. He allowed first \$151 for these damages and afterwards added \$20 to that for the purpose of making the final amount come out as near \$1300 as might be - My recollection is that this \$171.00 did not cover the Cash which Mr Atwood alleged he had been obliged to pay out - at the time and in consequence of the seizure of his furniture by Mr Stone as aforesaid. In Mr Stone's account appears in the award allowed to him \$200 for repairs on Orient House - this was towards painting said House, and was never thought of for a moment by me as proper to be allowed until after I had agreed to take the \$1300.00 - I consented to it - then solely for the purpose of bringing the final balance out as near to \$1300.00

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as possible - I always violently disputed on that \$200 and did not understand Mr Sherman to contend for it, until after the valuation was fixed on the furniture - He did call in a Painter to ask him what the Green House could be painted for, but I protested against it at the time, and would not have any thing to do with it as uncalled for and un contemplated according to the Articles of Submission and the understanding between the parties - After I had agreed to take the \$1300, I consented to the putting this item in, in order to bring out the final balance in that way - There were two other items in Mr Stone's Bill as allowed - One of \$20.81 and of \$14.75 which I considered open to the greatest objection but allowed according to my best recollection in order to settle the amount of Mr Stone's Bill - There was the amount also of \$133.32 in the rent allowed Mr Stone which I was very unwilling to allow & which my recollection is I did not allow until after I had agreed to a sum certain - There may have been other items which I do not recollect - But the above are some of those which were agreed upon on the basis of my finally taking the \$1300.00

Abraham answer objected to by Complainant's Solicitor.

1314

Do you know Abraham H. Bowers - one of the defendants in this suit, if yes, do you or do you not know whether he was present during any part of the time the arbitrators were making up the said award and whether he knew of the Arbitration in question? if yes, state and your means of knowledge.

Alvord questioned objected to by Complainant's Solicitor.

Answer.

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I know Mr Court he was at the Orient House at the time - He was not present to my recollection at any time during the making of the award. He was at the Orient House to dinner on the 20th May I think, and I believe he was to be - But further than that I have no recollection of his knowing anything about the making of the award until the next day when it was carried into effect. He knew of the Arbitration very well - My means of knowledge are, that Court signed Alvord's arbitration Bond and to my knowledge kept pushing Alvord to agree to an Arbitration - He claimed that Alvord owed him and kept at me to get Alvord to go into the submission.

Alvord's answer objected to by Complainant's Solicitor.

14th

In your answer to the last interrogatory you state that Court signed Alvord's arbitration Bond - to whom was that Bond given and where is it now?

Answer.

The Bond was handed to Mr Sherman I think for Mr Store and was retained upon the performance of the award, by Alvord and Court. I have the Bond and herewith produce the same marked Exhibit "F."

15th

Do you or do you not know whether the Complainant at the time of the presentation of the award made out any and what notes? if yes, what was the number of said notes and describe them?

Answer

The award was carried into effect on the 21st day of May 1859 - Mr Store was at the Orient House. But I did not see

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him make out any notes. Mr Sherman had however eleven, I am sure notes purporting to be signed by Stone and I should think thirteen, were it not that Mr. Sherman's impression is the other way. The eleven for \$100. each and payable one year after date. There were also 10 for two months, if there were not of, one of \$100 each and of \$99.76 making \$1299.76.

16th Do you know or do you not know what was done with these notes?

Answer I do know what was done with ten of them - they were handed to Court or to Atwood and by him to Court - the eleven was retained by Mr Sherman for the time being - one of the ten was passed by Mr Court to Charles Tobey, in settlement of his account against Atwood or against Stone & Atwood - to enable Atwood to pay which, with the other claims, certain furniture had been set apart as previously stated.

17th The award shows and it has been stated by you that Mr Sherman that certain furniture was set apart to pay certain accounts of Tobey - Bowers Brothers & A.R. H. J. Miller. Pending the performance of the award was any other agreement made in relation thereto? If yes, state said agreement.

Answer question objected to by Complainant's Solicitor.

Answer. There was on the 21st day of May 1859 it was agreed between Court, Atwood and the Arbitrators, or at least in the presence and with the knowledge and consent of the arbitrators that Court should settle those accounts, if he could, for Atwood with some of the notes in his hands, and that he should upon producing the receipts of those notes, that is to say, Tobey, Miller's

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and Bowen & Brothers, receive the balance of the Notes due from Store to wit amounting to \$299.76 in accordance with this agreement Mr. Court settled with Tobey Hens and there - Tobey's Store was only a few steps further down across the Street - by giving one of the Notes, and the receipted Bill was given to Mr. Sherman for Mr. Store - This was in the Evening of the 21st of May, 1859 and which was Saturday, Mr. Court left the City the next day (Sunday) in the Evening and did not return until after this Bill was filed. After the Settlement with Tobey Saturday Night - Mr. Sherman gave Mr. Court a Memorandum in writing for the delivery to Court of the Notes for \$299.76 upon the Settlement of the Bills of Miller & Bowen Brothers, which said Memorandum I now produce marked Exhibit "E".

Adjourned by consent to March 3, 1860 at same hour and place.

1860 - March 3^d Parties met pursuant to adjournment,
Examination Continued

There were some Articles of Carpentry shops &c which had not been taken into account in the furniture & valuation which were made over to Court - Mr. Sherman for Mr. Store executed a Bill of Sale of these things to Court, to cut off any claims, which he Store had or might suppose he had under a Mortgage which he had held on the property or a part of the property - This Bill of Sale is the Exhibit marked U Mr. Sherman's deposition marked A. It do not mean to be understood that Tobey or O. B. H. H. Miller or Bowen Brothers have anything to do with this agreement of which I speak, about settling with them with

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The Notes - Nor did they have anything to do with the furniture which was set apart to Atwood to pay them with - the furniture was set apart to Atwood to give him the means to pay these Gentlemen's Bills and after this subsequent agreement that furniture was left to Atwood's disposal as he saw fit - the Articles conveyed to Court were estimated to be worth about \$125⁰⁰ or somewhere in that vicinity.

Answer objected to by Complainant's Solicitor.

18th

Do you or do you not know why these claims of Bowen Brothers, A. B. & Co., H. Miller and Tobey were specified in the articles of Submission and in the Award, and what their amount was? If yes, state.

Answer question objected to by Complainant's Solicitor.

Answer,

I know why the debts were specified and pretty nearly their amount - they were specified as I understood it, because these Gentlemen claimed that they held Mr. Stone responsible for the payment of their accounts - the amount of their Bills in all was about \$350⁰⁰.

Answer Answer objected to by Complainant's Solicitor.

19th

Were there any mortgages upon the furniture &c in question? If so, what?

Answer question objected to by Complainant's Solicitor

Answer,

There was a mortgage upon some of the property from Atwood to Stone which he foreclosed or claimed to have foreclosed in January 1859 - there was also one or two articles of furniture I think

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to our Mortgage - which was discharged on the 21st of May - there was also another from Atwood to R. M. Hough, Newton Chapin and Abram H. Covert -

Below answer objected to by Complainant's Solicitor

20th What was done with the Mortgage to Hough, Chapin & Covert at the time of the performance of the award?

Below question objected to by Complainant's Solicitor.

Answer It was assigned by those gentlemen to Mr Store and delivered to him or to Mr Sherman for him.

Below answer objected to by Complainant's Solicitor.

21st What was the consideration of the assignment of that Mortgage to Store by Hough, Chapin & Covert?

Below question objected to by Complainant's Solicitor.

Answer The Mortgage was given to secure Hough Covert & Chapin from liability on a promissory Bond which they signed for and with Atwood in a suit instituted by him about the 10th of January 1859 against Store for the getting back the property seized by him under his Mortgage - and a distress Warrant January 5th 1859 in so - threats and also for the payment of certain money advanced by them to some of them to Atwood - there were other gentlemen on the Bond; but these were considered and were the principal obligors and when they were secured the others considered themselves secured as far as the Bond went, at the time of the performance of the award it was stipulated between the attorneys of the parties - that payment should

he entered in the previous suit in which this Bond was given in favor of the Plaintiff, although he was to pay the cost, without damages, except nominal. And this disposed of the liability on the Bond - and the possession of the Notes by Court or after the subsequent agreement concerning the settlement with Brown Brothers, Tobey & O.B. & H. H. Miller, the possession by Court of all the balances of the Notes and the articles of compounding sheets &c before mentioned - Covered Alwood's indebtedness which this Mortgage was given to secure - Though, Court & Chapin proposed to satisfy the Mortgage, but at the request of Mr Stone or of Mr. Sherman acting for Mr Stone it was agreed by them directly to Stone - the consideration to these gentlemen for the assignment of the Mortgage money between Alwood and them, But instead of satisfying the Mortgage the other course was taken at Mr. Sherman or Mr Stone's request.

Alwood answered objected to my Complainant's Solicitor generally - and as not responsive to the question.

Q. What was the consideration of the Stone Notes and their delivery to Court as between Stone, Alwood and Court?

Alwood questioned objected to my Complainant's Solicitor Answered, The Notes were made as has been stated in accordance with the award for the amount to be paid by Stone thereunder. The consideration of their delivery to Court was between Alwood & Court as representing himself - or himself through Chapin. - The consideration between Alwood & Court I have already stated in my answer to the last interrogatory, that is to pay, it was to secure to or in liquidation of the indebtedness of Alwood to Court - or Court - through Chapin, I knew or had always understood that Alwood owed them and Court the most. But which he owed and how much I did

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not know until I came to draw the answers. I mean to say when I say that I did not know which that through I knew or so understood it, that Atwood owed Court and had heard long before the Arbitration and at the time the Mortgage was made, that there was some indebtedness to Chapin. Still I had taken no pains to inform myself the exact amount that was due to each, or whether there was any due to Atwood at all for money borrowed.

Answer answer objected to by Complainant's Solicitor.

Q3.

Was it deemed important by both parties, or either of them that the award should be carried out on the day it was announced? If yes, why?

Answer question objected to by Complainant's Solicitor

Answer

I understood it to be considered of particular importance to Mr Stone to have the award carried into effect on the 21st day of May, 1859 because his Mortgage which he contended was still good & am quite confident matured on that day, or one of the Notes given under it did - that was the reason why the Articles of Submission were fixed the 20th of May for the completion of the labors of the arbitrators for the fixing of the award.

Answer answer objected to by the Complainant's Solicitor generally and as not responsive.

Q4

In his answer to Cross Interrogatory ten, Mr Sherman speaks of Stones saying that "Atwood's haste was his suspicion" or something to that effect. Is it true that there was any more haste on the part of Atwood than on the part of everybody else?

Answer question objected to by Complainant's Solicitor.

Answer,

Not at all - the award was made - The parties had given Bonds to secure its performance - it was understood by Mr Atwood

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as well as myself that Stone considered, that if performed at all, it must be done on the 21st day of May - so by that time, and I presume all parties looked at it in the same way. I think I may say most confidently that the Arbitrators were extremely anxious to get rid of the subject.

Answer Answer objected to by Complainants Solicitor.

25 What was done after the award was announced by the parties, Stone and Atwood?

Answer. The award was carried into effect on the 21st day of May, 1859 Stone gave up to Atwood certain evidences of indebtedness he held against him - the Lease between Stone and Atwood was surrendered and cancelled which Lease Herewith produced marked "Exhibit A" to be annexed to my deposition. Mr Stone took possession of the Great House on the same day - Mr Atwood was allowed to remain in the house a few days until his warder could obtain other accommodations But Mr Stone took possession on & kept it from the 21st of May, 1859. Mr Stone also took possession of all the furniture named in the Schedules, except that set apart for Atwood on said 21st day of May, 1859, unless it may be a flat iron or some such article which I think came up missing - this was all the Complaint that was made I think in regard to the absence of the articles named in the Schedules. The arbitration Bonds of the respective parties were surrendered and cancelled The Mortgage was satisfied and the Notes for One thousand dollars were delivered to Court and the Hough, Court and Chapin Mortgage assigned to Stone stipulations were exchanged between the Attorneys of the parties as to the disposition of various suits in Court - The Masters Suit in favor of

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Award against Stone was stipulated to be dismissed at Plaintiffs Costs, this was in the Circuit Court, judgment was allowed to go against the Defendant in the Replevin suit against Stone, and the District Warrant suit of Stone against Atwood in the Common Pleas was stipulated to be dismissed at Plaintiffs Costs.

The agreement of which I have spoken in regard to the settlement of the accounts of Tobey, Miller & Bonner Brothers was also made. Tobey was settled with, a Bill of Sale to Court of the real articles of furniture was executed and the Memorandum was given to Mr. Court by Mr. Sherman for the delivery of the balance of the notes upon the settlement of the accounts of Miller and Bonner - the whole award in short was carried out and performed.

Atwood's Ex. amount to March 15, 1860.

1860 March 15th Excess Examination.

Atwood Q: Do you or do you not recollecting of preparing & presenting for the signature of the Complainant Stone articles of Submission signed or unsigned by the defendant Atwood, which Complainant Stone would not or did not sign, and which was abandoned altogether or changed into the agreement under which the said award was made?

Answer

I recollect of making out certain Articles of Submission which were not signed, and I knew that they were not used. I do not remember that they were presented to Stone, But I know that whatever they were that Mr. Sherman saw them, and they were altered in various particulars, so much so that they were not used at all.

Q: And

Do you or do you not recollect that the different appraisers mentioned one or all were asked at the time of making the appraisal

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if they found any injury done to the furniture &c which was not-
Ordinary, or which was not the result of ordinary wear and tear.
If yes, state their answer Hereto.

Answer. I do not recollect that they were asked that unless Bivens
may have been asked about the Bookery - and even in that case
I don't recollect that he was asked any such thing, as this question
put to me expresses, I recollect perfectly well that Morgan suggested
a deduction of 20 per cent. to get the value of the things in the
condition they were then in

3rd In your answer to the fifth interrogatory you say you have
been for as long time a broker in the said Orient House and know
all about the transaction between Stone the Complainant & Atwood the
defendant - State from such knowledge or from any other means of
information you have, whether or not the Arbitrators could have as-
certained the special injury, if any such there was to the furniture
&c; by reason of the taking possession by Complainant Stone, under
his said Charles Mortgage, as well from the appraised value of the
furniture &c - if fixed at the time of the appraisal was made, as
from its appraised value fixed at the time it was purchased, and
would the special injury so done have been different in amount?

Answer. I should say that depended on the agreement of the parties
if in the special damage Mr Atwood claimed for furniture
destroyed, which he did in some degree, that special damage
would be increased, if the Arbitrators allowed him the cost price
of such articles as were destroyed instead of what it would cost to
replace such articles at a time when they could be bought for less
in the market - Mr Atwood claimed however damages for money
paid out by him and for the loss for rent of certain rooms in his

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house which Complainant had agreed to occupy at a certain rate and then left. Such damages as there of course did not depend upon the manner in which the appraisal might be taken of the furniture &c. the injury to Alwood however or rather the amount to be allowed for such injury to be ascertained by subtracting the ordinary wear and tear from the actual wear and tear from the appraisal of the furniture would of course vary according as the cost prices varied from the prices six months or a year after the purchase of the furniture &c.

4. I now say in answer to the fifth interrogatory that after obtaining the list of the Schedules before mentioned Mr Sherman put the value of the furniture &c. at \$3779.51. Do you mean by this that Mr Sherman performed the operation of making certain deductions before mentioned for wear and tear from the amounts of the different Schedules and adding these items together, after the deductions so made - found them to amount to the said sum of \$3779.51?

Answer I have no doubt that he did do that. I mean by what I said in answer to the fifth interrogatory, exactly what I there stated. But I presume that Mr. Sherman announced that amount from the calculations he had made.

Q. Did you or did you not take any part in the computation or operation mentioned in the last above Cross interrogatory. If you state what part you took?

Answer, I cannot say that I did. I had nothing whatever to do with Mr. Sherman's figuring and had my own ideas and my own figures all along, of what the amount ought to be - to be allowed for the furniture &c. I may have figured over some of the Schedules

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14. But I took no particular part or interest in them except from curiosity to see how far they corresponded with my own figures. States whether Mr Sherman in making such computations took the Schedules one by one, or how makes the deductions of a certain per centage and gave to you or announced to you the different results thus found by him and simultaneously with him added these items together, state fully what Mr Sherman did in that particular and your connection therewith and whether or not you looked over Mr. Sherman's figuring or any part of it?

Answer. I do not think he did give me off the amounts - whether or not he took the Schedules one by one I can't tell, but I think it probable - a good deal of figuring was done by him when I was not in - if the question relates to the immediate time when the appraisal was arrived at - I presume that Mr Sherman took one Schedule after the other - At that time I may have looked over some of Mr Sherman's figures, But I know that I did not look over or go through this paper which has been introduced here and which shows the mistake which Mr. Sherman states to have been committed in his figuring.

15. In the course of your answer to the fifth direct interrogatory you say Mr Sherman states that he found the amount - to be paid to Mr Atwood for the residue of the furniture taken by him Stone after deducting the balance of the account between Atwood and Stone - which was in his Stone's favor - was quite large - State how, if you know, Mr Sherman knew or had ascertained that amount - and that the same was quite large?

Answer. That I said in answer to the fifth interrogatory will I think explain this in some measure. Mr Sherman had allowed

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amounts which were afterwards disallowed and there were certain items, which were not insisted on by him, which we afterwards allowed to Stone. The balance had not been struck between the parties, but we were approximating to it; before the valuation had been fixed upon the furniture and according to the way the figures stood then as between the parties the final balance would have been much larger in favor of Atwood - the balance due to Stone from Atwood on the account between the parties as shown by the records, is altogether larger than anything we had either of us made before the valuation of the furniture. When Mr Sherman figured after the valuation on the accounts between the parties I presume he discovered that even upon the amount he had agreed to allow, backward and forward, it would make the balance of account such, that when subtracted from the furniture to go to Stone the amount to come to Atwood would be quite large - My own figures would have made it still larger than his.

8th You also say in your answer to the fifth direct interrogatory that Mr Sherman said that he found the amount to be paid to Atwood by Stone was quite large, and that he finally offered you for Atwood \$1300.00 state whether that statement and offer by Mr Sherman was made before or after the operation or process of deducting the two centages spoken of from the Schedule mentioned, have been gone through with by Mr Sherman

Answer The offer was made after the valuation had been fixed upon the furniture of \$3779.57 and as a matter of course if Mr Sherman made the deductions he has testified to - as I have no doubt from his testimony he did, said offer was made after said deductions

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Qth Were the deductions from the Schedules made which have been spoken of and the value of \$3779.57 put upon the furniture, and the balance of account between Atwood and Stone of \$2123.04 struck, at the same sitting, or at different sittings of the arbitrators and was the award made at this sitting or at a different one.

Answer.

I desire to state first that the deductions on the basis of the Schedules annexed to the award I have nothing to do with or with the Schedules, the valuation was agreed upon first in the manner that I have stated - then the offer was made of the \$1300⁰⁰ at the same session. After that we figured the account between the parties so as to bring the amount due to Stone, such that subtracted from the furniture to go to Stone, the final balance would be as near to \$1300⁰⁰ as possible - then the award was made this was all at the same sitting, and at most protracted me, continuing through many hours.

10th

In your figuring upon back of Exhibit B as sworn to by you in your direct examination, did you make a deduction of Twenty per cent from the appraised value of the property set aside to go to Atwood? If yes, state what this twenty per cent represented and upon what this two centage of deduction was based?

Answer.

I did - the amount finally fixed as the value of the furniture set aside was eight dollars in excess of what it would be with twenty per cent deduction. But the Exhibit shows that twenty per cent was deducted. I presume this twenty per cent was given to me by Mr. Sherman as the same that he had deducted from the amount of Morgan's Schedule, and I was very glad to take the twenty per cent off because the greater the deduction the cheaper

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Atwood got the furniture

11th In your answer to 19th direct interrogatory you speak of a Mortgage upon this property or upon some part of it made by a Atwood to Stone - State whether ^{or not} the paper handed to you marked Exhibit C is the said Mortgage, and if it is, whether it is the one under which said Stone took possession or claimed to have taken possession of the Aunt House? and of which taking possession you have heretofore made mention

Answer Yes, I have no doubt - but this is the Mortgage and I recognize my handwriting upon the back of it and Mr. Sherman's.

12th You say in answer to 21st direct Interrogatory that the consideration of the Mortgage from Atwood to Court, Hough and Chapin was signing the Release Bond in suit against Stone for this property, and money advanced to Atwood, State whether you have any actual knowledge of the amount of money so advanced to Atwood and State what actual knowledge you have upon the subject, with your means of knowledge.

Answer. My only knowledge in regard to the fact of the advance of money by these Gentlemen to Mr. Atwood is derived from the statements of the parties at the time the Mortgage was made, and the admissions of Atwood at that time. From the fact that Court kept from ^{me} ^{some} ^{after} the time of the making of the Mortgage to the time that Atwood and Stone agreed to go into the submission about the money due from Atwood to him, and from the fact that Court at no time before the Arbitration employed Doro & Fuller to foreclose the Mortgage that Mr. Chapin & Hough held, but which was not done and from my general understanding of the facts, I think I

have paid, and I will repeat it, that I understood there was \$200 due Chapin - But I have no actual knowledge of the amounts and this \$200 is impressed upon my mind from seeing a note of Wood or some such thing as that, but I do not speak with confidence.

13th Did you or did you not see and examine the different Schedules before mentioned and annexed to the said award as the same were made and come before the said arbitrators.

Answer: I am not confident that I did, or did not - But I think not I may have glanced at some of them, but not all, I am sure.

14th Which did you see, and which did you not see, according to the best of your recollection

Answer: The Hardware Schedule I think I saw, also Mr Burges, I believe, and I guess Tokeys, - Hollisters & Morgan's my impression is I did not see - when I use the word "see" here I mean examine and look at the figures. I would not undertake to say that my eye did not fall upon all of them, but on the contrary I think in that sense I did see them all.

15th Do you recollect which was the last Schedule brought before the Arbitrators or handed to them?

Answer: The little Memorandum of the Arbitrators, was the last thing of those made by the different persons Miller &c - I believe Hollisters was the last one.

16th Do you recollect at what time Hollisters Schedule was first in the possession of the said Arbitrators? If yes, state fully your recollection of the time of its being received by the said Arbitrators.

Answer: I believe it was handed to Mr. Sherman about Eight o'clock in the Evening of the 20th of May 1859.

17th

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In your answer to the 12th Cross Interrogatory, you state among other things that Court kept at you up to the time that Stone and Atwood agreed to go into a submission of Arbitration - about the money due from Atwood to him and also that Court at one time employed Dow & Fisher to foreclose the Mortgage from Atwood to Court, thought that you have also said in the course of your direct examination that Court was to receive and did receive the Notes made by Stone and was to have them in whole or in part on account of indebtedness due him from Atwood. You state also that you were one of the Arbitrators appointed to act on the part and behalf of Atwood. Now as you state that you did not see or examine the said Schedules annexed to the said award and that you did not know the different amounts as footed up in said Schedules, and that you did not know the appraised value of the articles in said Schedules according to the listing therein, and the aggregate amount of the different Schedules as footed up therein previous to and at the time of the fixing of the award:

Answer.

I state as I have said before that I have no recollection of having examined all those Schedules - I regarded them from the first as Mr. Sherman's testimony and Mr. Sherman's side of the case - and I paid more attention to the first of the Schedules, than I did to those that last came in - because I had pretty much given up the idea that we could agree as it had got too late for me to call in witnesses in my view of the question the

only hope I had for an agreement, was by jumping at an amount to be paid to Atwood, and I don't think I knew the amount of the last Schedules and deductions as Mr Sherman figured them at the time he gave the amount \$3700⁰⁰ and read. I took the \$1300⁰⁰ which he offered over and above with great unwillingness. But with the view of getting rid of the whole subject - Court over all - although it was below the minimum of what I thought Atwood ought to have I should have gone over the Schedules and verified the whole thing on Mr Sherman's basis - before putting in my side of the case - had I not have been that his valuation came very near my view of the proper amount - and besides there was no time to put in my defenses, anyhow - and the best I could do if we were to agree at all, was to jump at the thing as I paid before - as the amount that was finally to come to Atwood.

Subscribed and sworn to
before me this 15th day
of March A.D. 1860 . . .

Melville W. Fuller.

Chas Scott

Master in Chancery of the
Superior Court of Chicago.

Adjourned by consent to April 1st 1860.

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"Exhibit B"

Reference to in foregoing Deposition
B.

" 1699. 39

1133. 32

122. 90

2. 25

20. 86

14. 75

200. 00

3188. 47

3192. 47

Salvage furniture
3779. 51

899. 43

171. 00

1070. 43

1070. 43

2123. 04

306. 64

326. 10

632. 714 Cash

266. 19 Board

899. 43

101. 75

50. 00 Secretary

50. 00 Two Centro Tables No 12 & 13

25. 00 Sofa

~~2118. 04~~

~~1661. 47~~

356. 71

1304. 74

3422. 80

2123. 04

1299. 76

101. 75

130. 00

231. 75

50. 00 Secretary

75. 00 Tris

356. 75

79. 13

435. 88

20

87. 1760

348. 71

2. 00

74. 71

14. 20

79. 13

3779. 51

348. 71

3430. 80

3779. 51

348. 97

3430. 80

2123. 04

1307. 76

356. 71

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"Exhibit C"

Due Stones

Mining	1699 " 39
Rent	1033 " 30
Gas	122 " 90
38 Wares	2 " 25
B + L	20 " 86
R. CM	(14 " 75)
Repairs, Painting	200 " 00
	<u>3093 " 47</u>

Assured

Cash & Note	306 " 64
" "	326 " 10
Boards	(266 " 69)
	<u>899 " 43</u>

	(899 " 43)
	<u>2193 " 04</u>

Donays, Brackets
Stinking Stones

Repairs	15 " -
Rent	(36)
	<u>151 " 00</u>
	<u>1050 " 43</u>

	2193 " 04
	(151 " 00)
	<u>2042 " 04</u>

	3779 " 51
	(356 " 75) Assured
	<u>3422 " 76</u>
	<u>2042 " 04</u>
	<u>1380 " 72</u>

"Exhibit D"

	2972 " 86
	(15 " 61)
	2988 " 47 due Stones
	(899 " 43)
	<u>2089 " 04</u>
	(200 " 00) Rep. S.
	<u>2289 " 04</u>

	3779 " 51
	(356 " 75) Assured
	<u>3422 " 76</u>

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3779.. 57	
<u>2289.. 04</u>	1641.. 47
1490.. 47	<u>356.. 71</u>
<u>151</u> ✓ 20	1284.. 76
1641.. 47	<u>20.. 00</u>
	1304.. 76

'Exhibit E'

H. Q. Stone Dr
To Queen's House

Dec 1,	To washing 16 pieces 5¢/pr day,	— " 84
" 7	" One week Board	30 " 00
	Washing 20 pieces	1 " 04
14	One week Board	30 " 00
	Washing 28 pieces	1 " 46
21	One week board	30 " 00
28	One week board	30 " 00
94	One week	21 " 00
28	One week board	30 " 00
	Dances & Supper as per agreement	15 " 00
	Washing 30 pieces	1 " 56
	" 18 "	94
Jan 1 st	Board to date	12 " 85
	9 weeks Board for Mrs. Yager \$4.00	36 " 00
Dec 11 th	Refreshments for Sewing Society	15 " 00
Jan 8 th	One week Board	30 " 00
	One " " Mrs. Yager	4 " 00
" 15 th	One week "	30 " 00
	for Bro. Wood Dances & Supper	3 " 25
Feb. 1,	To Cash	126 " 06
28	" "	200 " 00
		\$600 " 00

"Exhibit F."

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"Know all Men by these Presents That we Levi L. Atwood as principal and Abraham Albright as surety of the City of Chicago in the County of Cook and State of Illinois are held and firmly bound unto Jonathan G. Stone of the same place in the sum of Five thousand dollars lawful Money of the United States of America to be paid to the said Jonathan G. Stone his executors administrators or assigns, for which payment well & truly to be made we bind ourselves and each of us our respective heirs executors and administrators each and every of them jointly by these Presents.

Witness our respective hands and seals this 17th day of May A. D. 1859.

The Condition of the above obligation is such that if the above bounden Levi L. Atwood shall well and truly stand to abide by and perform the award & decision and determination of Melville H. Fuller & Perryer S. Sherman this day named selected and chosen as well by and on the part and behalf of the said Atwood as of the said Stone between whom certain differences & disputes exist to hear all the proofs and allegations of the parties of one concerning the same as by articles of Submission bearing date herewith now executed by and between the said Atwood & Stone more fully and at large appears. Also if the said Fuller and the said Sherman fail to agree in the final determination, settlement and award of case concerning the premises, then if the said

Sam^l - L. Atwood his heirs executors administrators for
 and on his and their behalfs do in all things well and
 truly stand to abide by & perform the award & determination
 of themselves said Fuller and Sherman and such other person
 as the said Fuller & Sherman shall appoint as an umpire
 between them or of a majority of them of and concerning
 the premises thus his obligation to be void otherwise to
 remain in full force and effect.

L. L. Atwood (S. seal)

W. H. Stone (S. seal)

(Endorsed) "We hereby certify that the award has been
 performed by the said Atwood & Stone"

P. L. Sherman }

May 21, 1859."

W. H. Fuller & Arbitrators."

"Exhibit A"

"Upon the settlement of the bills of W. B. & J. B.
 Miller and Bunn Brothers & releasing W. H. Stone therefrom
 said Stone is to deliver to W. H. Stone his notes payable
 in Twelve months to the amount of \$299.76 being the
 balance due on the award between Atwood & Stone, said
 notes to be of even date herewith

May 20th 1859.

P. L. Sherman."

"Exhibit B"

"This Indenture made this twentieth day of May in
 the year of our Lord one thousand eight hundred and fifty
 eight Between Horatio A. Stone of the City of Chicago of

The first part and Levi L. Atwood of the second part
 certify that the said party of the first part has and
 in consideration of the Covenants and agreements hereinafter
 mentioned to be kept and performed by the said party of
 the second part his executors administrators and assigns
 has demised and leased to the said party of the second
 part all those premises situate lying and being in the
 City of Chicago in the County of Cook and State of Illinois
 known and described as follows.

The following described portions of the New brick
 building situate on the South East corner of State and
 Van Buren Streets to wit: the whole of the three upper
 stories, the two South Basement Rooms South floor now
 used as Office and Dining Room and Library, those
 Building in the rear, wood sheds, except two, and also
 the Water Closets, except two, To have and to hold the
 said above described premises with the appurtenances unto
 the said party of the second part his executors, administrators
 and assigns from the first day of June in the year of
 our Lord One thousand eight hundred and fifty eight for
 and during and until the last day of May A. D. Eighteen
 hundred and fifty two - the said party of the second
 part to have the use of the yard in common with the
 other tenants of the said building and the private alley
 which the said parties hereby agree shall be kept open
 And the said party of the second part in consideration of
 the leasing of the premises aforesaid by the said party of
 the first part to the said party of the second part does

covenant and agree with the said party of the first part his heirs executors administrators and assigns to pay the said party of the first part as rent for said devised premises the sum of Twelve thousand dollars as follows to wit: One hundred dollars per month for the first five months - three hundred dollars of which he agrees to pay at the end of the first three months and then two hundred dollars at the end of each and every month until the expiration of the said first five months, and he further covenants and agrees to pay for the next five months the sum of Two hundred dollars at the end of each month and for the first six months of the second year Two hundred and fifty dollars at the end of each and every month, for the five months next succeeding the period of Two hundred and seventy five dollars at the end of each and every month, for the Twelve months of the third year of this Lease the sum of Two hundred and eighty seven dollars and fifty cents at the end of each and every month, and for the Twelve months of the fourth year of this Lease the sum of Three hundred dollars at the end of each and every month. It is hereby mutually covenanted by and between the parties hereto that in case any execution, or against the said party of the second part shall be levied or attempted to be levied upon this Leasehold interest hereby created or upon this Lease, or upon any of the furniture or fixtures in the premises hereby devised that then this Lease shall immediately terminate and be at an end at the option of the party of the first part, and the said party,

The first part is hereby fully authorized and empowered to
 take immediate possession of the said premises and the
 said party of the second part hereby covenants and agrees to
 and with the said party of the first part that he will
 keep in good repair the said Buildings, Gas and Plumbing
 fixtures, water pipes, Cellar and Outhouses, that he will
 wash and thoroughly paint the said premises at or before
 the end of the two first years of this Lease - that he will
 keep the range & Boilers in good repair and that at the end
 of the term to which the said premises are let he will
 surrender the said premises and all the Gas and Plumbing
 fixtures now in said premises or hereafter to be put into
 the same by the said party of the first part in as good
 condition as they now are ordinary wear and tear and
 loss by fire excepted. It is hereby further mutually
 covenanted and agreed by and between the parties hereto
 that the said party of the first part shall have the privilege
 of boarding with the said party of the second part with
 his wife and one servant and occupying rooms numbered (18
 and 19) Eighteen and Nineteen at and for the price of thirty
 dollars per week, with privilege of Gas light fire and
 hot and cold water two baths and of having towels and
 bedding for family washed by the party of second part -
 The said party to give the said Atwood thirty days notice
 of the time he wishes to commence boarding and to furnish
 the said Rooms at his own expense. Once it is further
 covenanted and agreed by and between the parties hereto
 that the said party of the second part shall during the

paid here after the completion of the Cab jobs under the Sidewalk in front of said building have the use of forty feet of the same.

Now the said parties to this Agreement mutually covenant and agree that the fixtures furnished to said party of the second part by said party of the first part are the same mentioned in Brewe & Widders Bill to this Agreement annexed and under a part hereof. Now the party of the second part covenants to and with the party of the first part, to return at the termination of said Lease to said party of the first part fixtures of the same kind equally good in quality, ordinary wear and tear and injury by fire excepted.

Now the said party of the second part further covenants and agrees with the said party of the first part that said second party has received said demised premises in good Order and Condition, and that at the expiration of the term in this Lease mentioned he will yield up said premises to ^{the} said party of the first part in as good condition as when the same was leased upon by said party of the second part, less by fire or inevitable accident, or ordinary wear excepted; and also will keep said premises in good repair during this term at his own expense.

Now it is further agreed by the said party of the second part that neither he nor his legal representatives will encumber said premises or any part thereof or assign the same, without the written consent of the said party of the first part, ^{now &} ~~first~~ obtain there. Now the said Levy S.

And his executors administrators and assigns agree
 further to pay (additional to the rents above specified)
 the Gas Bills and all other rents which are charged on
 said premises, for and during the term for which this
 lease is granted, and pay the said premises and said
 parts of the first part-harvests therefrom, and that he
 will keep said premises in a clean and healthy condition
 in accordance with the Ordinances of the City and direction
 of the Sanitary Commissioners. It is expressly understood
 and agreed by and between the parties aforesaid that if
 the rent above reserved or any part thereof shall be
 behind ~~and~~^{or} unpaid on the day of payment when the
 same ought to be paid as aforesaid, or if default shall be
 made in any of the Covenants and Agreements herein containing
 to be kept by the said party of the second part his
 executors administrators and assigns it shall and may be
 lawful for the said party of the first part his heirs
 executors administrators and assigns agent or Attorney at
 his Election to declare said term ended, and into said
 premises or any part thereof, either with or without the
 process of law to enter, and the said party of the
 second part, or any other person or persons occupying in
 or upon the same to expel remove and put out, using
 such force as may be necessary, in so doing and the said
 premises again to possess and Enjoy as in his first and
 former Estate, and to distrain for any rent that may be
 due thereon, upon any property belonging to said party of the
 second part, whether the same be exempt from distress

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and desires by law or act, And the said party of the second part in that case hereby agrees to waive all legal rights which he may have to hold or obtain any such property under any exemption laws now in force in this State or in any other way. Whereby and intending hereby to give the said party of the first part his heirs, executors administrators and assigns a valid and first lien upon any and all goods chattels or other property belonging to the said party of the second part as security for the payment of said debt in manner aforesaid, anything hereinafter ~~to~~ ^{contrary} to the contrary notwithstanding. And if at any time said bond shall be made at such Election of said party of the first part his heirs executors, administrators or assigns as aforesaid, or in any other way, the said party of the second part his executors administrators and assigns do hereby Covenant and agree to Surrender and deliver up said above described premises and property presently to the said party of the first part his heirs executors administrators and assigns, immediately upon the determination of said bond as aforesaid and if he shall remain in possession of the same ten days after notice of such default or after the termination of said Lease in any of the ways above named he shall be deemed guilty of a forcible detainer of said premises under the Statute and shall be subject to all the Conditions and provisions above named and to eviction and removal forcibly, or otherwise with or without process of Law, as above stated. And it is further Covenanted and agreed by and between the parties that the party of

the second part shall pay and discharge all costs and Attorneys fees and expenses that shall arise from enforcing the Covenants of this Indenture by the party of the first part.

Witness the hands and Seals of the parties aforesaid
 In presence of } Horatio C. Stone (Seal)
 Henry S. Warner } Levi S. Atwood (Seal).

"Exhibit I"

"This Indenture was this eighth day of June in the year of our Lord One thousand eight hundred and fifty eight Between Levi S. Atwood of the City of Chicago in the County of Cook in the State of Illinois of the first part and Horatio C. Stone of the same State party of the second part Witnesseth that the said Stone in consideration of the sum of Three thousand dollars to him paid as herein after specified has bargained sold conveyed and delivered unto the said Atwood the Articles and personal property hereinafter specified and set forth with their appurtenances, all of which have been bought by said Atwood for said Stone with Three thousand dollars furnished by said Stone with a view to opening the "Orient Store" owned by said Stone and further Witnesseth that the said party of the first part for and in consideration of the said Sale of Chittels, the receipt whereby is hereby acknowledged does hereby grant, sell, convey and portion unto the

Said party of the second part his heirs and assigns all and singular the following described Goods and Chattels to wit
 The furniture, Carpeting, Cutlery, Crockery now in the
 New Brick Building situated on the South East corner of
 State and Van Buren Street in the Town of South Chicago
 in the said City of Chicago and more particularly described
 as follows, to wit:

Carpets - Velvet Brussels Carpet 96 Yds

" " 75 "

" " 30 "

" " 53 "

Wool " 300 "

2 Carpet Rugs

2 " "

Qts Cloth 60 Yds.

Furniture. One Mahogany Sofa

1 Sofa Bottom Chairs

One Oak Chair 2 Center Tables - One Mahogany

Rockers - 3 doz: Green Glean Chairs - 4 doz.

Sevens Dining do. 3 Mahogany Washstands

2 Toilet Stands - 3 Bureaus Walnut - 6 - 13 Hk.

B. H. Stands - 8 Walnut. H. Stands. One Secretary

One Office Desk - 4 Lounges. 10 Beds - 7 do.

Mattresses & Bedding for 10 Beds

" " " " "

6 Dining Tables - 1 Table Marble top.

1 Parlor " 2 " 2 doz: Green Chairs

8 Mirrors for Servants. 1 do. Mah. frame

3 " " - 1 Refrigerator - Kitchen furniture - 2 Dining
 Chairs - 1 Kitchen Cupboard - 5 doz. Dining Chairs - 5
 doz Tea do. - 4 doz. Table Spoons - 4 doz Tea do
 4 Sets of Carving Knives & Forks - 1 Coffee Urn - 1 Tea do
 Crockery - 2 baskets - 1 do. - 1 New Box, 6 Chafing
 Dishes.

Table Linen - 120 Yds. J. Cloth & 100 Yds Muslin.

Together with all and singular the appurtenances there
 unto belonging or in anywise appertaining - To have and
 to hold the same unto the said John his heirs executors
 administrators and assigns to his and their sole use forever.

Provided nevertheless that if the said Atwood his heirs
 executors administrators or assigns shall well and truly pay
 or cause to be paid unto the said John his heirs executors
 administrators or assigns the sum of Three thousand dollars
 according to the tenor and effect of his (Atwood's) Promises
 all dated the Eighth of June A. D. 1858 drawn for One
 thousand dollars each and payable respectively, the first on
 the twenty first day of May A. D. 1859, the second three
 years after date and the third, four years after the date
 thereof - the price of said Chattels as aforesaid sold then and
 from thenceforth these presents and everything therein contained
 shall cease and be null and void.

And provided also that it shall be lawful for the
 said Atwood his heirs executors and administrators to retain
 possession of said granted property until the maturity of said
 Notes and for so long a time hereafter within the term of
 two years from this date as said John shall elect the said

Atwood at his own expense to keep and to use and enjoy
 the same until said Atwood his heirs executors adminis-
 trators or assigns shall make default in payment of said
 sum of money above specified either in principal or interest
 at the time or times and in the manner heretofore contained
 or unless the said Stone shall have diminution per movable
 waste for want of proper care, or if the said party of
 the first part shall sell or assign or attempt to sell or assign
 said Goods and Chattels, or any part thereof, or if any writ
 issued from any Court shall be levied on any part of
 the above described goods & chattels, that then, and in any
 of the aforesaid cases, all of said Notes, both principal &
 interest shall become due and payable and the said party
 of the second part his heirs executors administrators or
 assigns, agents or attorneys, or any of them may then,
 thereupon take possession of the said property and for
 that purpose may pursue the same or any part thereof
 wherever it may be found. And also may enter any of the
 premises of the said party of the first part with or without
 force or the process of law wherever the said goods or chattels
 may be, or be supposed to be, and search for the same
 and if found to take possession and remove and sell and
 dispose of said property, or any part thereof at public auction
 to the highest bidder after giving ten days notice of the time
 place and terms of sale together with a description of the
 property to be sold either by publication in some Newspaper
 in the City of Chicago or by similar notice posted up in
 three public places in the vicinity of such sale or at

Private Sale with or without Notice for Cash or on Credit as the said Store his heirs executors administrators or assigns Agents, Attorneys or any of them may Elect, and out of the money arising from such Sale, to retain first all costs and charges for pursuing searching taking possession, keeping, storing advertising and selling of such Property Goods Chattels and Effects and all prior liens, together with the amount due & unpaid upon said Notes, or any of them, either in principal or interest-rendering the surplus of the money arising from such Sale, (if any there shall be) unto the said L. L. Atwood or his legal representatives.

Witness our hands and Seals the day and year first above written.

In presence of

Levi L. Atwood (Seal)
Horatio G. Store (Seal)

" State of Illinois }
County of Cook } S.

I Calvin D. Wolf a Justice of the Peace in and for said County Do hereby Certify that this Mortgage was duly acknowledged before me by the above named L. L. Atwood this 9th day of June A D 1858 and that the foregoing Bill of Sale and Mortgage were signed and sealed respectively by said Store and said Atwood at the time of this acknowledgment.

Calvin D. Wolf (Seal)

Justice of the Peace.

(Endorsed) " I hereby Certify that the within Mortgage & Notes previously thereon have been superseded and cancelled

by award of arbitrators made May 20th 1859 between Levi
S. Atwood and Horatio B. Stone.

May 21, 1859.

P. L. Sherman
for H. B. Stone { Arbitrators }

"1860. April 4th"

Samuel K. Dow a witness produced sworn & examined
on the part and behalf of the Defendant-deposes and says
My name is S. K. Dow - my occupation an Attorney - I am
29 years of age - I reside in the City of Chicago - I don't know
Complainant personally - I know Defendant Atwood & Court

1st Q Do you or do you not know of the Complainant and
Defendant Atwood entering into a submission of arbitration
at any time. If yes, when & at what time and who were
the Arbitrators?

Answer I do to this extent - I know that Atwood signed the
Articles of Submission and that an Arbitration was had that
Stone & also did I have no doubt - It was talked a
great deal of by Mr Fuller my law partner & Mr Sherman
who acted as one of Stone's Attorneys. I did not see Stone
sign the Articles of Submission and don't know his hand
writing - Melville W. Fuller was one of the Arbitrators and
Mr Sherman of the firm of Sherman & Sales was the other
The submission of Arbitration was entered into about May
or June 1859 to my best recollection.

2nd Q In your answer to the last interrogatory, you state
that you know that Atwood signed the Articles of Submission.
Do you or do you not know by whom, when and where

the said Articles were prepared - If yes, state?

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Above question objected to by Complainant's Solicitor

Answer

I think I know who prepared the Articles of Submission. I think they were prepared by Mr Fuller in our Office in conjunction with Mr. Sherman - It was just before the Articles were signed - the precise time I cannot state.

3rd

Now state in your answer to interrogatory the first that Mr Sherman & M. W. Fuller were the Arbitrators in the Submission of the Question - Do you or do you not know, whether any agreement was made between the said Sherman & Fuller as to their mode of procedure, while acting as Arbitrators under the Articles referred to? If yes, state what, when & where, and all the particulars relating thereto, and at what time relatively to the execution of the Articles of Submission by Attorney such agreement was made and your means of knowledge?

Above question objected to by Complainant's Solicitor.

Answer

I do, while during the time they were preparing the Articles of Submission, Mr Sherman was in our Office and he and Mr. Fuller in my presence were discussing what should be put into the Articles of Submission, they were then partly drawn - there was something said by Mr Fuller about embodying in the Articles of Submission, the manner in which they should arrive at the damage done to the furniture, its wear & tear, and also how they should get at its then present value. It was then agreed by Mr.

I then with Mr. Sherman that Atwood should produce his
 Original bills of purchase of the furniture - that those original
 bills should be taken as evidence of the value of the furniture
 when new - that they should take the opinion of some persons
 who were acquainted with the ordinary wear & tear of
 furniture in a Hotel like the Great Hotel as to the
 actual wear & tear on the furniture - Then they should by
 competent persons take the actual damage that had been
 done to the same furniture and the difference between the
 ordinary wear and tear and the actual wear and tear
 should be considered the real damage to the furniture -
 Mr. Fuller said something about putting that into the Articles
 of Submission - proposed to do it - Mr. Sherman said as that
 was the method or manner of coming at it that he did
 not consider it necessary to put it into the Articles of Submission.
 He thought it better to leave it out, in other words he intended
 that as it was understood between him & Mr. Fuller as to
 the manner of getting at the value of the furniture, and
 that it ought not to be put into the Articles of Submission.
 This agreement was made while they were preparing the
 Articles of Submission - I think they were nearly completed.
 I do not remember how much time intervened between this
 and the signing of the Articles by Atwood - for the reason
 that he was extremely anxious to bring the matter to a
 termination and was constantly pressing Mr. Fuller to hasten
 this matter of Submission or arbitration as fast as he could.
 The language I have used above is not the exact language
 used, but it embodies the agreement in substance.

Answer answered objections to by Complainant's
Solicitor.

4. Do you know any other matter or thing touching or concerning the matters in controversy in this suit which might tend to the benefit or advantage of the defendants herein? If yes, state the same as fully & particularly as if thereto particularly interrogated.

Answer I recollect that at this same time it was also talked over and agreed between Mr Fuller & Mr Sherman that no claim should be allowed against Stone in favor of Atwood on account of Stone's picking Atwood out of the Great Stone for which there was a suit in progress pending in favor of Atwood against Stone - as for an injury or exemplary damages - Atwood claimed in his suit a very large amount of damages for injuries which he had received in being broken up in his business, and to his feelings and harming all of his business he answers turned out doors and matters of that kind. I know that they had a great deal of difficulty running through some three or four months which was to be settled by this Arbitration.

Answer answered objections to by Complainant's
Solicitor

Gross Examination

12th X

Do you or do you not recollect of seeing Mr Sherman in the office of Dow & Fuller & spoken of by you in your direct examination in reference to the business of arbitration between Stone & Atwood, more than the one time mentioned

in your examination? If yes, state the number of times - and when they occurred - with reference to the time mentioned by you in detailing the conversation you have spoken of or repeated.

Answer. It is my impression that he was in there several times before this time - whether he was in after that I don't remember.

2^x How many times do you recollect of seeing Atwood in said Office with reference to the same business, before the time of the conversation detailed by you.

3. It would be impossible for me to state - he used to come night & noon & morning & sit there - until finally Mr Fuller gave up all other business to attend to him.

4. About how many days before the final submission of the matter to said Fulm P Sherman as Arbitrator do you recollect seeing Mr Sherman in and about your Office engaged with Mr Fuller in this business.

Answer. I can't tell with very much accuracy - it was quite a long time - It may have been two months and it may have been three - I know there was a good deal of talk extending over a good deal of time, about this submission.

5. Do you or do you not in detailing the conversation alluded to by you between Mr Fuller & Mr. Sherman which you have called an agreement, get your knowledge exclusively from your recollection of the conversation of that one time and in that particular Office and place?

Answer. Everything which is specified in that answer touching the agreement, my present knowledge is from recollecting the conversation.

224 11. Have you or have you not been and read the Articles of Submission in said arbitration since the commencement of this suit in Chancery? If yes, when and where?

Answered I have not seen them, and have not heard them read. I have not read them or seen or heard read Copies thereof.

12. Do you know the contents of said Articles of Submission or any part thereof? If yes, state what part.

Answered I do not. I can't state anything they contain only generally. I think I heard them read about the time they were prepared. I have not had any knowledge of them or their contents since just before the Arbitrators met. I think I only heard them read once.

13. Did you hear and were you were present at all of the conversation of said Fuller & Sherman about the subject of arbitration between Stone & Atwood?

Answered I think I did, at the time that I have mentioned in my direct examination.

14. Did you hear and were you present at all of the other interviews between said Fuller & Sherman, touching the agreement to submit the Stone & Atwood matters during the two or three months you have mentioned?

Answered I don't know how many interviews they had. I don't suppose that I was present at every interview.

15. On your answer to fourth direct interrogatory you state as being of benefit or advantage to the Defendants certain matters contained in your prior answer. Will you now upon looking at your answer or refreshing your recollection, if the same in any other way or by any other means state

of what benefit or advantage according to the best of your knowledge or belief said masters are to the defendants?

Said above question objected to by —
Defendants Solicitors

Answer. I don't know that it is of much advantage or benefit to the Defendants — the reason why I stated that was — because it was a part of the same conversation Mr. Sherman was very strenuous to have that into the submission, so that there should be no claim for exemplary damages.

Subscribed and sworn to before
me this 7th day of April A.D. 1880 } Samuel B. Dora.
Clerk Court

Master in Chancery of the
Superior Court of Chicago."

"Honorable G. Stone
vs Superior Court of Chicago
Lewi S. Atwood and
Chancery.
Abraham H. Brown

State of Illinois
Cook County } ss.

I, Lew Scott Master in Chancery of the Superior Court of Chicago, do hereby certify that the foregoing are the Depositions of witnesses produced sworn & examined before me on the part of the Defendants in the above entitled cause and taken for the consent of the Solicitors of the respective parties. That previous to the examination of the witnesses whose names are subscribed to the foregoing depositions, they

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were each duly sworn by me according to law and that
the examination of said witnesses was taken up on verbal
interrogatories propounded to them by the Solicitors of the
petitioner parties.

Dated May 18th 1860.

Geo Scott

Master in Chancery of the
Superior Court of Chicago."

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And afterwards to wit on the fourteenth day of February
(being one of the days of the February Term of said Court)
A. D. Eighteen hundred and sixty one the following
proceedings were had in said Court and entered of record
in said Court to wit:

" Iteratio. Q. Erro
re

Levi S. Aswood and Bilo
Abraham H. Brown

And now again come the said parties
by their respective Solicitors and this cause now coming on
to be heard upon the Bill, Answers, Replications and proofs
filed herein and arguments of Counsel being heard and the
Court now being fully advised in the premises after due
deliberation, find as want of Equity on the face of the said
Bill of Complaint and it is therefore Ordered that the said
Bill of Complaint be and is hereby dismissed at the Cost
of said Complainant.

And therefore said Complainant prays an Appeal
herein to the Supreme Court of this State, which is
allowed upon filing Bond with security to be approved by
the Court and Bill of Exceptions within twenty days from
this date.

And afterwards to wit on the sixth day of March
(being one of the days of the March Term of said Court)
A. D. Eighteen hundred and sixty one the following further

Proceedings were had in said Court, and entered of record in said Court, to wit.

"Horatio O. Stone

vs

Levi S. Atwood and Bill

Abraham H. Bennett

This day again comes the said Complainant by Sherman & Kales his Solicitors and on their Motion no objection being thereto made it is ordered that nine days further time be allowed said Complainant in which to file his Bond and Bill of Exceptions in this cause.

And afterwards to wit on the fifteenth day of March (being 1st of the said March term of said Court) A.D. Eighteen hundred and sixty one the following further proceedings were had in said Court and entered of record in said Court, to wit.

"Horatio O. Stone

vs

Levi S. Atwood and Bill

Abraham H. Bennett

This day again comes the said Complainant by T. H. Kales his Solicitor & files herein his Appraised Bond in the sum of Two thousand dollars with Horatio O. Stone as surety, which said Bond being read is on Motion ordered to be approved by the Court.

And afterwards, to wit on the 15th day of March A. D. 1861. the said H. O. Stone files in the Office of the Clerk of said Court. his certain Appeal Bond, in the words of figures following, to wit:

Know all Men by these Presents that the Horatio O. Stone and William H. Stone are jointly and severally firmly held and bound by these presents unto Levi L. Atwood and Abram H. Corbet their heirs and assigns in the several sums of Five Thousand Dollars lawful money of the United States which we find ourselves and our respective heirs and legal representatives to pay to them -

Witness our hands and seals this 15th day of March A. D. 1861.

The Condition of the foregoing obligation is such that whereas the said Horatio O. Stone hereoford commenced a certain suit in Chancery in the Superior Court of Chicago against the said Atwood and Corbet, which has been decided adversely to him said Stone by the said Court: from which decision and therein said Stone hath prayed an appeal to the Supreme Court of the State of Illinois.

Now therefore if the said Stone shall prosecute his said Appeal with effect and diligence

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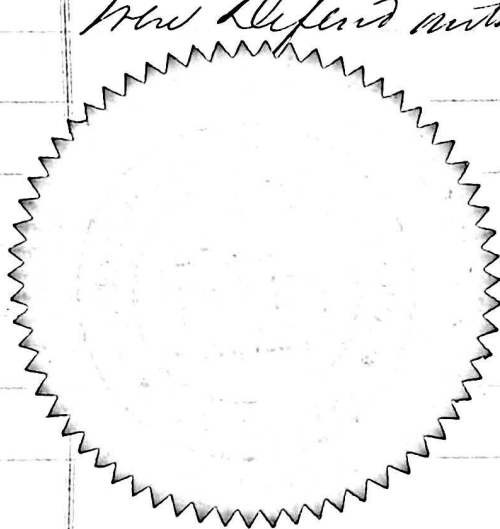
and abide by and perform the judgment and
decrees of the Supreme Court therein and
pay all costs which shall be adjudged against
them - then the above obligation shall be void.
otherwise to remain whole in full force and
virtue.

W. O. Stone *W. O. Stone*
W. H. Stone *W. H. Stone*

Approved

State of Illinois
Cook County of.

I Walter Kimball Clerk
of the Superior Court of Chicago within and
for the County of Cook and State of Illinois
do hereby certify the foregoing to be a full, true
and complete transcript of all the papers on file
in my office and all proceedings entered of record
in said Court to-wit: with the Appeal Bond in
a certain cause wherein Horatio O. Stone was
Complainant and Levi L. Atwood et al
were Defendants.



Witness my hand and the seal
of said Court at the City
of Chicago in said County.
this 17th day of April A.D.
1861. Walter Kimball Clerk

State of Illinois

And the said plaintiff in Error Heratio O. Shaw by J. B. Beates his counsel comes & says that in the Record and proceedings, & in the rendition of judgment in this cause in the court below manifest error hath intervened in this to wit

1 /

The court admitted their own evidence to vary, contradict, & explain a written award.

2 The court dismissed the plaintiff's bill, and refused to give him the relief prayed for, and to correct the Award.

3. The court rendered a judgment for the defendants, and against the plaintiffs.

Wherefore for these, & other ~~errors~~ errors apparent upon the record he prays that the judgment be reversed, annulled, & for nothing esteemed, and that he may be restored to all his rights, & that he may recover

his reasonable costs.

Scate, McAllister & Jewett
of Counsel for Appellant

Supreme Court of Illinois

Third Grand Division

Horatio D. Stone

April 5. 1861

Appellant
L. L. Atwood

A. H. Leonard
Oppeller

And now come the said L. L. Atwood &
A. H. Leonard, Oppeller by M. W. Fuller
their Counsel & say that in the records
proceedings & in the rendition of judgment
in this cause in the Court below, there
is no error wherefore they pray that said
judgment may be in all things affirmed

M. W. Fuller
Counsel for Oppeller
Atwood Leonard

258 161
Hattie C. Stone

vs
Lewie C. Atwood
Albion H. Cowart
~~~~~  
Record

Filed April 16. 1861  
A. C. C. C. C.  
C. C. C.

Fees \$60.00. Paid by Pff  
W. H. H. H. H.