

IN CHANCERY OF NEW JERSEY.

To His Honor, A. O. ZABRISKIE,
CHANCELLOR OF THE STATE OF NEW JERSEY. 10

Humbly complaining, show unto your Honor your orators, William S. Wheeler, of the city of Brooklyn and State of New York, and Duff Green, of Vicksburg, Mississippi.

That, prior to and subsequent to the first day of March, eighteen hundred and sixty-four, George Kirtland and John Kirtland were in partnership as brokers and bankers, doing business as such, under the firm name of Kirtland & Co., in the said City of New York. 20

That your orators made, from time to time, from the first day of December, eighteen hundred and sixty-three, up to the tenth day of November, eighteen hundred and sixty-four, large cash deposits with them as such bankers and brokers, drawing the same as occasion required, amounting, in all, to upwards of a million of dollars.

That the said Kirtland & Co. were doing a very large business as such bankers and brokers, and continued so to do until they failed and stopped payment in the month of November, eighteen hundred and sixty-four. 30

That at the time they stopped payment, as aforesaid, they were indebted to your orators for money deposited with them to a very large amount, upwards of forty thousand dollars.

That your orators brought suit against them in the Supreme Court of the State of New York, and on the twenty-eighth day of September, eighteen hundred and sixty-seven recovered judgment against them for the sum of fifty-nine thousand and thirty-nine dollars and forty-one cents, or thereabouts; but the said George and John, 40

or either of them, having no property in the State of New York out of which the said debt could be satisfied, your orators commenced suit in the Supreme Court of the State of New Jersey, upon the said judgment so recovered in the State of New York, and, on the sixteenth day of December, eighteen hundred and sixty-nine, recovered
 10 judgment in the Supreme Court of the State of New Jersey, including costs, for the sum of sixty-eight thousand two hundred and forty-six dollars and nine cents, and caused an execution to be issued upon the same, and placed in the hands of the sheriff of the county of Essex, who, by virtue thereof, levied upon the land and premises situated, lying and being in the township of East Orange, county of Essex, and State of New Jersey : beginning at the northeast corner of land lately of John Munn, jr., on east side of the road leading from Orange to Bloomfield,
 20 and thence running along said Munn's line south fifty degrees, thirty minutes, east sixteen chains, six links to land of David R. Winans, thence along the same, and along land of Anna Baldwin, north forty-five degrees, fifteen minutes, east four chains, sixty-six links to land late of Thomas W. Munn, thence along the same, north fifty-eight degrees, twenty-five minutes, west seventeen chains, twenty-four links to the aforesaid road, thence along the same, south forty-four degrees, forty-five minutes, west two chains, twenty-six and a-half links to the
 30 beginning, containing six acres of land, more or less ; that no goods or chattels, or other property, could be found by the said sheriff out of which to satisfy the said debt, or any part thereof ; and that unless the said land and premises can be subjected to the payment of your orators' said debt, there is no estate, real or personal, belonging to the said debtors, or either of them, or in which they, or either of them, have an interest, out of which the said debt, or any part of it, can be paid.

40 And your orators further show, that, on the twenty-third day of November, one thousand eight hundred and

sixty-four, and for some time prior thereto, the said John Kirtland was seized in fee of his own of the said land and premises, free and clear of all incumbrances; and that the said John Kirtland, on the day and year last aforesaid, by his deed of bargain and sale duly executed, conveyed the said land and premises to George W. Kirtland in trust for Catharine Kirtland, the wife of the said John Kirtland, and Jared T. Kirtland, son of the said John, then a minor, under the age of twenty-one years, which said deed recites as follows:

Whereas, the party of the first part is justly indebted to the said party of the second part as trustee as aforesaid, in the sum of seven thousand five hundred dollars, secured to be paid by his certain bond bearing date with these presents in the penal sum of fifteen thousand dollars, as aforesaid, conditioned for the payment of seven thousand five hundred dollars in five years from date hereof, the same being due to Mrs. Catharine Kirtland and to said Jared T. Kirtland, with interest, payable on the first day of December in each and every year, till the principal is paid.

And your orators show and charge, that the said deed was voluntary and without consideration, and was made and executed for the sole purpose of placing the said land and premises beyond the reach of the creditors of the said John Kirtland, and the creditors of the said firm of Kirtland & Co., and of your orators as such creditors; that at the time of the said conveyance, as aforesaid, the said John Kirtland was insolvent, and, at that time, the said John, and also the said firm of Kirtland & Co., owed upwards of a million of dollars, and were indebted to your orators upwards of fifty thousand dollars, and were not able to pay ten cents on the dollar; that at the time of the said conveyance the said John knew that he was insolvent, and that the said firm was insolvent, and from the largeness of the indebtedness and the character and situation of their business, the said

John well knew such insolvency was irretrievable, and that there could be no reasonable hope of extricating himself or the firm from his or their said pecuniary embarrassment.

10 And your orators further show, that the title to the said property has been kept in the name of the said trustee ever since the date of the said deed, and is still in his name, for the fraudulent intent and purpose of protecting it from the creditors of the said John Kirtland, and from the creditors of the firm of Kirtland & Co., and from your orators as such creditors.

20 That at the time of the said conveyance, as aforesaid, the said John Kirtland was in possession of the said property, and had been for a number of years prior thereto, and he has remained in the actual possession of the property ever since, and is now in possession.

30 Your orators further show, that, some days prior to the time of the said conveyance, the said firm and the said John Kirtland stopped payment, and their paper was under protest, and they declared to their creditors that they were insolvent and unable to pay their debts, and they abandoned their business, and on or about the tenth day of November prior to the date of the said deed, their property was seized upon, under some legal process, by the sheriff, and that since then the said John Kirtland or George Kirtland has neither of them carried on any business in his own name or in the name of the said firm.

40 And your orators further show and charge, that, at the time of the said conveyance, the said trustee and the said Catharine knew of the said insolvency of the said firm, and of the said John Kirtland and George Kirtland, and that the said conveyance was contrived and intended, by all the parties to it, as a scheme and device to protect the property from the creditors of the said firm, and of the said John Kirtland.

And your orators further show, that the said property

is worth now more than thirty thousand dollars, and that if the said George W. Kirtland, as such trustee, has any claim upon the said property as a security for the money, or any part of it, mentioned in the said deed, which your orators deny, whatever the property is worth beyond said sum, your orators are entitled to have applied to the payment of their said judgment and execution,¹⁰ and, for that purpose, to have the property sold; and your orators insist that they are entitled to an account as to what is due, if anything, on the said pretended security, and they tender themselves ready to pay whatever may, on such accounting, be found to be due.

And your orators well hoped that the said John Kirtland, George Kirtland, George W. Kirtland, Catharine Kirtland and Jared T. Kirtland, or some of them, would have paid your orators said debt, or that they, or some²⁰ of them, would have conveyed the said property to your orators in part payment of their debt, which, in justice and equity they ought to have done; but now so it is, may it please your Honor, that the said defendants, combining and confederating together, and with divers other persons at present unknown to your orators, but whose names, when discovered, your orators pray may be inserted in this their Bill of Complaint, with apt and proper words to charge them, as defendants thereto, to injure and aggrieve your orators in the premises, not only re-³⁰ fuse to pay your orators' said debt, or to subject the said lands to your orators' said judgment and execution, or in any other manner to comply with your orators' said requests, but, under various pretences, refuse so to do; all which actings, doings and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators; in tender consideration whereof, and forasmuch as your orators are without remedy by the strict rules of the common law, and without the aid of this Court, and the legal title to the said land being in the said George W.⁴⁰ Kirtland, as trustee in trust for the said John Kirtland.

To the end, therefore, that the said defendants and their confederates, when discovered, may, upon their several and respective oaths or affirmations, full, true, perfect and direct answers make to all and singular the matters aforesaid, as fully as if the same were here re-
 10 peated, and they thereunto particularly interrogated, paragraph by paragraph, and that the said defendants, or some of them, may be decreed to pay the debt of your orators, and, on failure so to do, that the said debt may be decreed to be a lien on the said lands and premises, the title of which remains in the name of the said George W. Kirtland, trustee as hereinbefore particulary set forth, and to be paid out of the same, and that the said deed or mortgage to the said George W. Kirtland may be decreed fraudulent as against your orators, and sub-
 20 ject to the debt of your orators, and the said land and premises may be sold, free and clear of all incumbrances and trusts, to pay your orators' said debt, interest and costs, and that your orators may have such further and other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience: May it please your Honor, the premises considered, to grant unto your orators a writ or writs of subpœna of the State of New Jersey, directed to the said John Kirtland, George Kirtland, George W. Kirtland, trustee, Catharine Kirtland and Jared T. Kirtland, com-
 30 manding them, and each of them, at a certain day, and under a certain penalty therein to be expressed, personally to be and appear before your Honor, in this honorable Court, then and there to answer the premises, and stand to, abide and perform such decree as to your Honor shall seem meet; and your orators, as in duty bound, will ever pray, &c.

B. WILLIAMSON & SON, *Solicitor of Complainants.*

B. WILLIAMSON, *of Counsel.*

40 A true copy,

B. GUMMERE, *Clerk.*

IN CHANCERY OF NEW JERSEY.

The joint and several Answers of John Kirtland, George Kirtland and George W. Kirtland, trustee, and Catharine Kirtland, wife of the said John Kirtland, to the Bill of Complaint of William S. Wheeler and Duff Green.

These defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of¹⁰ benefit and advantage of errors, uncertainties and insufficiencies in the complainants' said Bill of Complaint contained for answer thereto, or under so much and such parts thereof as they are advised is material to make answer unto, jointly and severally answering, say :

That they admit it to be true, only said John Kirtland speaking of his knowledge, that the said complainants did, from time to time, from the first day of December, eighteen hundred and sixty-three, up to the tenth day of November, eighteen hundred and sixty-four, make large cash deposits with the said John Kirtland and George Kirtland, doing business under the firm name of²⁰ Kirtland & Co., in the city of New York, as bankers and brokers, drawing the same as occasion required, and that such deposits, in all, amounted to a large sum of money.

That in the month of November, in the year last aforesaid, the said firm stopped payment.

That at that time they were indebted to said complainants in some such amount as that named in said bill.

That suit was brought for such indebtedness in the Supreme Court of New York, and afterwards upon a judgment therein obtained in the Supreme Court of New Jersey; and that, on the sixteenth day of December, eighteen hundred and sixty-nine, the said complainants recovered a judgment in the Supreme Court of New Jersey for³⁰

the sum mentioned in the said bill, and caused an execution to be issued thereon and placed in the hands of the sheriff of the county of Essex, who levied upon the interest of the said defendant, John Kirtland, in the lands and premises described and set forth in the said bill.

And these defendants say, that the said execution remains unsatisfied and undisposed of, and no sale has been had thereon ; and they submit that it was the duty of the said complainants to sell the said interest of the said defendant, John Kirtland, in said property, according to the command of said writ, before bringing their said Bill of Complaint, and that by law and the rules of this Court they cannot sustain the same until the said interest has been sold under said execution and the same exhausted ; and they pray that they may have all benefit of this defence, which they could have if the same were
20 made by way of demurrer.

And these defendants further answering say, that they admit it to be true, that, on the twenty-third day of November, eighteen hundred and sixty-four, the said John Kirtland was then seized in fee of the said lands and premises ; but they deny that the same was then free and clear of all incumbrances as in the said Bill of Complaint is stated.

And these defendants further answering say, that it is true that on the said day and year last aforesaid
30 the said John Kirtland, by his deed duly executed, did convey the said property to the said George W. Kirtland in trust for the said Catharine Kirtland, who is wife of the said John Kirtland, and Jared T. Kirtland, who is the son of said John Kirtland, then and now a minor, under the age of twenty-one years, and that said deed made recitation of indebtedness on the part of the said John Kirtland as stated and set forth in the said Bill of Complaint.

And these defendants further answering, deny that the
40 said deed was without consideration, or made or executed for the sole purpose of placing the said lands and prem-

ises beyond the reach of the creditors of the said John Kirtland, and of the said firm of Kirtland & Co., or of the said complainants as such creditors; and, although they admit it to be true, that at the time of the said conveyance the said John Kirtland was insolvent, and that he and the said firm then owed a very large amount of money, and was indebted to the complainants in an amount of upwards of fifty thousand dollars, and that they were not able to pay one tenth of their indebtedness, and that at the time of the said conveyance the said John Kirtland knew he was insolvent, and that he was in despair of extricating himself from his embarrassments, yet these defendants say that the said conveyance was made in good faith to secure the indebtedness set forth therein; and that the same is valid at law and equity against the said complainants, and any other creditors of the said John, except the mortgage herein-
20 alter mentioned, to George W. Kirtland, and his said firm.

And these defendants further answering say, that one Jared T. Kirtland, now deceased, formerly of Orange, in the County of Essex and State of New Jersey, and brother of these defendants, John and George W. Kirtland, did on the second day of March, eighteen hundred and sixty-one, make and publish his last will and testament, and on the eleventh day of May then following, did make a codicil thereto, being then a citizen of the
30 State of Minnesota, where said will and codicil were made, and that by the said last will and codicil thereto, among other legacies, there was given to the said Jared T. Kirtland mentioned in said deed, and son of said John, the sum of one thousand dollars, and to the said Catharine Kirtland the sum of four thousand and nine hundred dollars.

That the said Jared T. Kirtland, the testator, died shortly before the eighth day of July, in the year eighteen hundred and sixty-one, and on said date the said will and codicil
40 were duly proved before and letters testamentary thereon

were granted unto Anna T. E. Kirtland by the Probate Court, at the city of St. Paul, in and for the county of Ramsey, and for the State of Minnesota, where the deceased died, and where he resided immediately previous to said decease.

10 And these defendants say, that said moneys thus due to his said wife and son, ^{were} ~~were~~ by the said John Kirtland received from the estate of the said Jared T. Kirtland shortly after his death, and were due from him to his said wife and to his said son, and the same were loaned to said firm, and on or about the day of the execution of the said conveyance to the said George W. Kirtland, in the said bill of complaint contained, there was due for
 20 principal and interest thereon to his said wife, the sum of six thousand dollars, and to his said son the sum of fifteen hundred dollars, making together the sum of seven thousand five hundred dollars.

And these defendants John Kirtland and George Kirtland further say, that being so indebted and anxious to secure the sum of money which was thus due, they the said John Kirtland and George Kirtland made their bond in the penal sum of fifteen thousand dollars, to secure the sum of seven thousand five hundred dollars, with interest, bearing date the twenty-third day of November, eighteen hundred and sixty-four, unto said
 30 George W. Kirtland, who is a brother of the said John Kirtland, as trustee for the benefit of the said wife of said John and child, the said George W. Kirtland agreeing to be such trustee; and in order further to secure the payment of said money, he did further make and execute a conveyance of the said property to the said George W. Kirtland, as such trustee to secure the payment of the said bond, which is the same conveyance set forth and described in the said Bill.

And these defendants insist that the said conveyance or
 40 mortgage of the said premises for the said sum of seven thousand five hundred dollars, is good and valid at law

and in equity, and ought to be supported and confirmed by this Honorable Court.

And these defendants further answering say, that the said bond and mortgage were delivered to the said George W. Kirtland, and were duly acknowledged and recorded in the office of the Register of the County of Essex, shortly after the date thereof, and they insist that the same ought not to be set aside at the instance of the complainants, or of any other creditors of the said John Kirtland or of his said firm. ¹⁰

And this defendant, George W. Kirtland, further answering says, that no part of the money secured by said bond and mortgage has been paid to him, although he has several times endeavored to collect the interest thereof, and that, if the said complainants have any claim to the use of the said property, or to sell the same for the satisfaction of their debt, such claim is subject to said mortgage. ²⁰

And this defendant, the said George W. Kirtland, further answering for himself saith, that the said John Kirtland and George Kirtland being indebted to him, the said George W. Kirtland in a large sum of money at the time of their said failure, he the said George W. Kirtland, by the judgment of the Circuit Court of Essex County, did on the thirteenth day of February, eighteen hundred and sixty-five, by the confession of the said John Kirtland and George Kirtland, recovered against the said John Kirtland and George Kirtland, partners in trade under the said firm name of Kirtland & Co., the sum of sixteen thousand six hundred and ninety-five ¹¹/₁₀₀ dollars, besides costs, which judgment still remains of record and unsatisfied; and that immediately afterwards, execution was issued thereon, and was levied upon the premises set forth in said bill; and that he the said George W. Kirtland hath thereby a lien or claim upon the said premises prior to any lien or claim which the said complainants may have by virtue of their said judgment. ⁴⁰

And the said George W. Kirtland shows that there is now due upon the said judgment all the principal and interest thereof.

And further, the said George W. Kirtland saith, that long before the failure of said John Kirtland, in said bill mentioned, and about the first day of July, one thousand
 10 eight hundred and fifty-six, said John Kirtland was indebted to this defendant in the sum of four thousand dollars, to secure which he gave his promissory note of that date, at four years from date, and also his mortgage of said premises, which was in October, one thousand
 3 of Mortgages for Essex County, page 35, which note, with large arrears of interest, is still due, and said mortgage is a lien on said premises prior to the judgment for complainants.

20 And these defendants further answering, say, that they admit that at the time of the said mortgage to George W. Kirtland, in trust as aforesaid, they knew that the said firm of Kirtland & Co. and the said partners thereof were insolvent; but they deny that it is true that the said mortgage was contrived or intended, by any of the parties to it, as a scheme or device to keep and protect the property from the creditors of the said firm, or of the said John Kirtland, or any of them, or that the same was intended for any other purpose than to secure the payment
 30 of the said moneys devised by said will to said Catharine and Jared T. Kirtland, which said John Kirtland received on behalf of said firm of Kirtland & Co., and which were used by said firm in carrying on its business, and were due from it, and which said John Kirtland felt bound in morals and honor to pay, and, if he could not then pay, secure in preference to other indebtedness.

And these defendants further answering, say, that all and each of the liens and incumbrances in this answer mentioned and set forth as existing upon said property,
 40 are just and honest debts due to the parties respectively holding the same, and that any lien possessed by said

complainants by virtue of their judgment mentioned in the Bill of Complaint, is subject to the same and each of them.

And these defendants jointly and severally deny all and all manner of combination and conspiracy where-with they are by said bill charged, and humbly pray to be hence dismissed, with their reasonable costs in the ¹⁰ behalf most wrongfully sustained.

PARKER & KEASBY,
Solicitors and of Counsel with Defendants.

ESSEX COUNTY, ss. .

John Kirtland, George Kirtland and Catharine Kirtland, defendants in the above Answer named, being each ²⁰ duly sworn, say, that the matters and things in said Answer contained, so far as they relate to their own acts and deeds respectively, are true, and so far as they relate to the acts and deeds of other persons, they believe them to be true.

JOHN KIRTLAND,
GEORGE KIRTLAND,
CATHARINE KIRTLAND.

Sworn and subscribed, this 22d }
day of March, A.D. 1870, } 30
before me, }

WILBERFORCE FREEMAN,
Commissioner of Deeds.

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.:

George W. Kirtland, one of the above defendants, being duly sworn, saith, that the matters and things in said Answer contained, so far as they relate to his own acts and deeds, are true; and so far as they relate to the 10 acts and deeds of other persons, he believes them to be true.

GEORGE W. KIRTLAND.

Sworn and subscribed, this 22d day of March, 1870, before me, a Commissioner for New Jersey, to take acknowledgments, &c., as witness my hand and official seal.

[L S.]

BENJAMIN L. JOHNSON,

20

Commissioner in New York for New Jersey.

A true copy,

B. GUMMERE, *Clerk.*

[*Here follows Ordinary Replication.*]

In Chancery of New Jersey.

Between

WILLIAM S. WHEELER AND DUFF
GREEN,

Complainants

and

GEORGE KIRTLAND, EMILY G.
KIRTLAND, JOHN KIRTLAND,
ENOS J. HALSTED, GEORGE W.
BOWERS & CHARLES WILEY,
Exc'rs of M. O. HALSTED, Dec'd,

Defendants.

*On Bill, Answer &
Replication.*

EXAMINATION OF WITNESSES FOR COMPLAINANTS.

Examination of Witnesses, &c., in the above entitled
cause on the part of the complainants taken before me
Isaac Romaine, a Master and Examiner in said Court, at
my office, No. 7 Exchange Place, Jersey City, N. J., on
Tuesday, July 19th, 1870, at ten o'clock in the forenoon,
in the presence of Benjamin Williamson, Solicitor for
complainants, and George Kirtland, for himself and R.
Wayne Parker, on behalf of Messrs. Parker and Keasby,
counsel for the Defendants. 10

B. Williamson produced before me a notice acknowledged by Mr. Parker, which is offered in evidence on the part of the complainants, and marked *Exhibit C 1*, on part of complainants.

Mr. Parker requested an adjournment on account of the absence and engagements of Mr. Cortlandt Parker, and by consent this examination is adjourned to Friday, 20

July 22d, 1870, at ten o'clock in the forenoon, at the same place, at which time and place the examination was further adjourned to Wednesday, July 27, 1870, at ten o'clock, a. m., before Abraham S. Jackson, Master and Examiner, at which time and place the examination was continued, in the presence of the counsel of the respective parties.

10 GEORGE KIRTLAND, a witness produced on the part of the complainants; being duly sworn, deposes and says:

I am one of the defendants in this suit, I am thirty-three years of age; I was a Banker and Broker in New York City prior to March 1st, 1864, as member of the firm of Kirtland & Co. The members then were George Kirtland and John Kirtland; I can't tell exactly when the partnership commenced without looking at the books, whether it was January 1st, 1864, or January 1st, 1863; I do not know that the partnership has been dissolved; they have
20 done no business since the attachment was made, November, 1864; I can't tell whether we had been in partnership one or two years before the attachment was put on, without reference.

I think the partnership was from January, 1863; but I am not sure. The business of the firm was that of bankers and brokers. Prior to the formation of partnership I was in the business of banker and broker, as a member of a firm. George Kirtland & Catherine Kirtland constituted that firm. By George Kirtland, I mean myself.

30 The name of that firm was Kirtland & Co.; that firm commenced January, 1861, I believe. Catharine Kirtland was a mother of mine; that partnership may have commenced in 1862; it was not until after my uncle Jerrold died; he died in July, 1861, and therefore this firm must have commenced in January, 1862.

I don't recollect whether my mother, Catharine, was in partnership with me one or two years; my mother and myself dissolved partnership; the dissolution was advertised;
40 my mother and myself did not settle the accounts of our partnership.

The partnership with my father commenced as soon as the partnership with my mother was dissolved.

Prior to the partnership of myself and mother, there was a partnership of Kirtland & Co., bankers and brokers, in the City of New York. Jared T. Kirtland & Hunloke W. Palmer, constituted that firm; this firm was one year in existence and was dissolved in consequence of the death 10 of Jared, who was my uncle.

There was a firm of Kirtland & Co. prior to that last mentioned. Jared T. Kirtland, Hunloke W. Palmer & Peter M. Meyers, constituted that firm.

I was a clerk in the banking house of Kirtland & Co., in 1852 and 1853.

I was not in business for myself until I went into partnership with my mother; my father was residing with my mother at the time I went into partnership with her.

The reason why I went into partnership with my 20 mother instead of my father was, that my father was in other business; that was the only reason; my father was settling up the old affairs of Kirtland, North & Platt; they had made an assignment.

John Kirtland, my father, was a partner of that last firm.

When I went into partnership with my mother I put in \$247.50; my mother did not put in anything.

When the firm of my mother and myself dissolved, there was no settlement made between me and my 30 mother.

Q. Has there been any settlement between you and your mother since the dissolution of your firm?

A. No.

We did not divide any profits at the dissolution of the firm; we were equal partners in the concern; at the dissolution of the firm between my mother and myself and father went in, we continued the books of the old firm, I believe; the accounts were always balanced at the first of every month; I can't say whether the books will show 40 whether the accounts were closed on the dissolution of the

partnership with my mother or not ; I mean by balancing the books, that the balances of debit and credit were always brought down the first of every month.

I couldn't say now what were the amounts of the profits when my mother left the concern ; there was a profit.

This was ascertained by the books ; I do not recollect
10 what was the profit ; I couldn't say whether it was a thousand dollars, or not.

Q. Are you willing to say that the profits were more than a thousand dollars ?

A. I can't say how much they are, but I think they were more than a thousand dollars.

My mother did not take out any profits when she went ; she has not received anything from the profits since she went out, that I know of.

When my father went in, I don't think that he put any
20 capital in.

I can't state the day when the attachment was put upon the firm of Kirtland & Co., it was in November, 1864, at our office, in Wall Street, New York.

My father came in as a partner with me, on equal shares ; my father was not insolvent at the time he went into the concern ; he had been one of the firm of Kirtland North & Platt ; they made a settlement, and got a receipt for all they owed.

I do not mean to say that they paid their creditors in
30 full ; they compromised. The firm compromised before my father went into partnership with me ; I couldn't state how long ; I think some time before ; it was not a reason why my father did not go into the firm when my mother did, that he was involved ; I did not want him in then ; I mean to say, that he was in business for himself then, and I did not want him in at that time.

Nobody suggested my mother being a member of the firm ; her name was not used without her consent ; I first solicited her to go in partnership with me ; I wanted her
40 to go in, because I wanted to use the firm name of Kirtland & Co.

I thought that I could not use the partnership name of Kirtland & Co., unless I got some one to go in with me; It was only the use of my mothers name that I then wanted; I think I told her so at the time.

After I had agreed with my mother about going in, I had a conversation with my father about it.

Q. What reason did you give your mother at the time¹⁰ you solicited her, why you desired her to go in partnership with you?

(Objected to as irrelevant.)

A. Well, I told her I wanted to use the firm name of Kirtland & Co.

I presume that I told her another reason; I told her that the name was well known, the old firm dissolved and we would probably get a good deal of business; that²⁰ is all I recollect now.

The name of Kirtland & Co. was valuable to me, because it was an old name; it had been a good house; it never was a wealthy house by my idea; I mean by my idea, that a house worth \$500,000 00 is a wealthy house; I couldn't say whether the house of Kirtland & Co. was reported to be a very wealthy house; I do not know that an attempt was made by Mr. Palmer, to keep me from using that name; I heard that Mr. Palmer had objected to it. 30

I never knew the reason; I never heard that he tried to get an injunction;

Q. Did the fact of your father being in other business constitute any objection to your using his name for the firm, the same as you used the name of your mother?

A. It did.

Q. How?

A. He was settling up the partnership business to Kirtland, North and Platt, and I did not want his business to interfere with mine or mine with his. 40

My mother did help me somewhat; she did not give

any attention to the business ; she helped me by putting in some money ; can't tell the date ; I can't tell how soon after we formed the partnership ; she put in near \$6,000, I believe ; I am wrong there, near \$5,000, maybe more, maybe less ; this is the way she helped me as a partner ; I put in the money that I did put in and my knowledge
10 of the business ; the amount of that was \$247 50.

Q. Do you mean to say that you put in \$247 50 and your knowledge of the business against your mother's \$5,000 ?

A. I do.

Q. Did your mother ever put in one dollar of capital in that business ?

A. She did.

Q. How much ?

A. I think \$5,000, maybe more, maybe less.

20 Q. Where did your mother get that money from ?

A. A legacy from Jared T. Kirtland, her husband's brother.

I mean to say that she put that into the firm ; I can't say whether that was all that was put into the firm by her ; I think that she put in a few hundred dollars besides ; not positive ; think so from recollection ; I think that there was more than \$5,000 ; I don't know where it came from ; it was put in at different times ; I don't recollect whether she paid me the money or how she put it
30 in.

I don't recollect what was the largest amount she put in the firm at any one time ; I can tell by reference ; it was put in at different times ; as to the \$5,000 I don't recollect about that.

I have a brother, Jared ; there was a legacy left him by his uncle of \$1,000 or \$1,500 ; I believe that money was paid into the firm ; I couldn't say by whom ; it was not paid in by my brother.

40 Anna T. E. Kirtland was the executrix of the will of Jared, her husband ; that money was not paid into the firm by her ; it was probably put in by my father, John Kirtland,

while my mother was a member of the firm, I think ; it was probably put to the credit of J. T. Kirtland ; I couldn't state whether it was there when my mother went out of the firm or not ; by J. T. Kirtland I mean my brother, Jared T. Kirtland ; he was a minor at that time ; I think there was an account opened with him—stop, I am mistaken about that all the way through ; the account was opened, I think, in the name of John Kirtland, in trust. 10

While my father was a member of the firm he did draw out money from of the firm ; I couldn't say how much ; I have no idea how much he did draw out ; he drew out living expenses ; I drew out my living expenses ; I couldn't state how much they were while I and my father were partners.

Q. Did the complainants have any business transactions with your firm while your mother was a member of 20 it, and while your father was a member of it ?

V. They had business transactions ; I can't tell when they commenced.

The character of the business was, they made deposits with us, and drew upon us for them ; we received the money and paid their checks ; I couldn't say what was the amount of deposits made with us by them between December 10, 1863 and November 10, 1864, without reference ; I don't recollect what I stated in my answer ; I swore to my answer ; I couldn't say whether I stated in 30 my answer that the complainants, between December 10, 1863 and November 10, 1864, deposited with us upwards of a million of dollars ; I presume likely that they did deposit upwards of a million of dollars during that time ; we use the money deposited with us in business—in the brokers' business ; some of it, perhaps, we used in speculating in stocks ; we did not speculate very largely, during that period, in stocks ; I did buy and sell stocks on my own account ; my mother, while she was a member, did not speculate in stocks ; the books don't show it. 40

We did not speculate very largely in gold during that

time; I did speculate on my own account some in stocks and gold; my father, John, did also.

The cause of our failure was losses on margins.

Q. What do you mean by losses on margins.

A. When a man's bonus runs out leaving his stock on the broker's hands.

10 I couldn't tell the amount of the business done by us when my mother and father were partners; it was very large; the complainants were not our largest depositors; I think there were two, or perhaps three, larger; Jackson Insurance Company, Quigley, Morton & Co. there were some others, I don't recollect now.

I. B. Kirtland was the President of the Jackson Insurance Company; he was an uncle of mine; we did owe the Jackson Insurance Co. at the time the attachment was put upon us; it was more than \$100,000.

20 The books of these firms of ours I suppose are in charge of I. B. Kirtland, the assignee of Kirtland & Co.; I saw part of the books last week; I examined some of the accounts then; I did not examine any particular account; I ran through the books; I mean by running through the books, I looked over the whole thing, the ledger; my object was, that my father wanted to see the books and I went along with him and looked through them; I and my father looked over them together; the reason my father gave for wanting to look at the books was to see
30 how things stood.

Q. What things?

A. Accounts.

I did not examine any particular accounts with my father. We examined all the accounts; not particularly; looked at them all; I did not make any memorandum of the accounts; I don't know whether my father did or not; I didn't notice that he did; I didn't want to find out anything in particular, my father asked me to go along and look over the books with him; we were examining the
40 books about an hour; we looked at the ledger account of the complaints.

The purpose was, father wanted to see how the account stood, and we looked at it the same as the others.

It is true, as stated in my answer, that on the 24th of November, 1864, I borrowed \$14,000.00; it was borrowed of M. O. Halsted; I paid my debts with some of it; I can't say exactly how much of it I used to pay my debts; it was \$13,000.00; it may be more; it may be less. To J. L. 10
Brownell & Co., I think about \$2,600.00; I am not sure; may be \$2,100.00. I paid to L. H. Simpson & Co. \$950.00; I gave Mr. Halsted \$10,000 in bonds—U. S. bonds; I gave Mr. Halsted for the loan of \$14,000.00 a mortgage.

I had some bonds which belonged to Mr. Halsted, which I was obliged to give him back. I do not mean that I gave Mr. Halsted the identical bonds which I got from him.

Mr. Halsted had loaned me \$10,000.00 in bonds previously; I could'nt tell how long previously—4 or 5 20
months; I did not give anything as security, when I borrowed those bonds; I used them same as I did my own; I got the money from Mr. Halsted with which to return the bonds, by loan on mortgage. This loan was not a year after my failure—it was only a few days after the failure that I gave the mortgage to Mr. Halsted.

The \$10,000.00 of bonds borrowed of Mr. Halsted, I used to pay the firm debts; I had no debts of my own; I don't mean that I used the \$10,000.00 of bonds got of Mr. Halsted to pay the firm debts or anybody's else debts; I 30
mean that we would use them as collateral security to raise money on, just as if they belonged to us. Then the firm owed Mr. Halsted \$10,000.00 in bonds.

On the 4th day of November, 1865, I borrowed for the benefit of the firm, of M. O. Halsted, \$6,000.00; with this money I gave the executrix of Saffaran's \$18,000.00 in Tennessee bonds. I will explain—we had a loan of \$6.000.00 on \$18,000.00 of Tennessee bonds belonging to Saffaran's estate, which we paid up and returned them the 40
bonds.

Settled

This was done long after the attachment was laid upon us ; I couldn't state now who had the Tennessee bonds when we paid the loan ; I paid the loan myself—my father, I presume, knew all about the transaction at the time.

J. L. Brownell is a broker, formerly President of the Board of Brokers ; we owed him the \$26 00. for difference in stocks ; we owed Simpson on this account, viz. : I owed Mr. Halsted \$950, and I was at that time agent for the U. S. Petroleum Co. ; Mr. Halsted wanted some of the stock ; I gave him 200 shares for \$5.00 a share, making \$1,000, by which I paid Simpson about \$950 ; Mr. Halsted took the stock for the debt I owed him.

I really paid Mr. Halsted \$10,950 out of the \$14,000 I borrowed of him ; that's what it all comes to.

I can't tell, without reference, to whom I paid the loan on the Tennessee bonds ; I can't tell whether it was a broker or commission merchant.

I was to pay Mr. Halsted for the property, which he was to convey to my wife \$20,000.

Q. Were you not to pay him \$25,000 ?

A. I was to pay him \$20,000, and he was to charge my wife, his daughter, \$5,000.

Q. The consideration in the deed is \$20,000. How do you explain that ?

A. I know no reason.

30 This was part of the homestead of Mr. Halsted, in Orange ; It included the house he lived in on the property ; he lived there at the time he gave the deed ; he lived there a year or more after the deed was given, then he died there, two years after the deed was given, I think ; I and my wife lived with him at the date of the deed, and afterwards ; I went to live with him in September, 1863, when I was married.

40 Mr. Halsted kept the house until he sold the property ; and then I and my wife. From the time the deed was given to the time he died, Mr. and Mrs. Halsted, my wife and myself constituted the family permanently ; Mr. and

Mrs. Halsted boarded with us; they paid my wife board.

I don't know what the agreement was; my wife told me they paid board; Mr. Halsted had offered this property for sale, before he conveyed it to my wife; it had been in market for some time at \$25,000, I believe.

I bargained with Mr. Halsted for the property.

10

Q. What was the bargain?

A. He offered the property for \$25,000; I told him that it was too much; I told him I would give \$20,000; then he agreed to paint it inside and out, paper it, fix up the grounds and fences, put it all in good order, every way, shape and manner, and sell it for \$25,000; I was to pay him \$20,000, and he was to charge \$5,000 to my wife, to come out of her share of the estate.

He charged her the \$5,000; the estate has been settled

20

When I paid \$20,000, myself and my father, John Kirtland, composed the firm.

Q. You say in your answer, that at the time of deed to your wife you owed the complainants the sum of \$20,443. How did you get that exact amount?

A. From the books of the firm.

This amount which we owed them was the balance on deposits which they had made with us; I cannot tell the largest amount which the complainants made with us at any one time; one of their deposits at a single time may have amounted to more than \$100,000.

I don't recollect what my wife got from the Halsted estate; it was as much as \$10,000; it was not as much as \$20,000, I think; it was in bonds and stocks.

When I was looking at the books the other day, I did look at the account of my mother.

Q. Do not the books show two accounts in her name, one as a member of the firm, and one as a special account, as an individual doing business with the firm? And do not these accounts show that she speculated in stocks on her own account?

Settle

A. I don't recollect about that, whether there are two accounts or not.

Q. From the date you refused to pay the first draft from the complainants, November 10, 1864, what did you do with the funds received for their credit?

A. I couldn't state.

10 Q. From the time you refused to pay said first draft, did you receive any funds or credits from the complainants which you did not transfer to P. M. Meyers & Co.?

A. I don't recollect.

Q. Did you keep any of them for the use of Kirtland & Co.?

A. I don't recollect.

Q. From the day of your refusal to pay said draft, did you pay any other draft upon you?

A. I don't know: I had very little to do with paying 20 drafts.

The cashier paid the drafts; his name is Richard Mumford.

When I was looking at the accounts with my father the other day, I looked at the account of I. B. Kirtland, president.

Q. What was the balance due I. B. Kirtland, president, November 10, 1864, when you refused the complainants' draft?

A. I couldn't state.

30 Q. What was the average monthly balance due him during the year previous to that?

A. If I was going to state it short, it was in the neighborhood of \$150,000.

Q. Did he not check that down to about \$1,500 on or before November 10, 1864?

A. I can't say that he did or not; I don't think he did as low as that.

Q. When looking at the books with your father, did 40 you look at the account of your brother, John C. Kirtland?

A. I presume that I did, but I don't recollect looking at it.

Q. Was not the balance due John C. Kirtland, on the 10th of November, 1864, \$18,904 50? and did you not subsequently, November 12, pay him \$31,000?

A. I have no recollection of it; I don't recollect whether the books show it. 10

I don't know what were the assets of the firm at the time of the failure; about a million of dollars; I don't know that \$15,000 has been collected.

I have felt an interest in collecting the assets, but have not been allowed to; but I believe that \$15,000 have been collected.

GEO. KIRTLAND.

And thereupon the examination was further adjourned to Thursday, July 28, 1870, at 10 o'clock, A. M., at the same place. 20

At which time and place the examination was resumed in the presence of the counsel of the respective parties.

I never was bookkeeper in the house of Kirtland & Co. before I became partner; I was collection clerk and correspondent in that house; I did not keep any books of that house except the Collection Register and Collection Ledger; in my own firm, in partnership with my mother, the books were kept by me for a while, I should think for a year; during that period, my brother, John C. Kirtland, was a clerk, also Richard Mumford; we may have had E. H. Hall, also Wm. Harney, also Wm. H. Johnson. 30

After I ceased keeping the books, Richard Mumford, for a time, was the principal bookkeeper; my mother's account, as it appears in the ledger, the first part of it is in my own handwriting, at least I believe so; I saw that account the other day, when I and my father examined the books.

I couldn't say what portion of it is in my handwriting 40
During the time my father was a partner, Richard

Mumford and E. H. Hall were the bookkeepers ; I very seldom, if ever, made any entries in the day-books ; my practice was to examine the balance sheets once or twice a week ; I examined the books only to see about special accounts.

The \$10,000 in bonds received from Mr. Halsted, were
10 given by him for the firm.

Q. Did you borrow them of Mr. Halsted for the firm ?

A. I did.

I did not make application to him to lend me those bonds ; Nobody did make application for those bonds ; I mean to say that no one made application to Mr. Halsted to loan those bonds to the firm.

Q. Will you explain how, then, these bonds were borrowed of Mr. Halsted, and how they came into your possession ?

20 A. I had bought these bonds for Mr. Halsted and delivered them to him ; he said that we might take them and use them and return them to him whenever he would call for them.

We bought these bonds of the United States Government ; Mr. Halsted furnished me with the money to purchase them ; I handed these bonds to Mr. Halsted myself, and he kept them over night ; he gave them to me the next day, or a few days afterwards ; I think it was the next day.

30 It was at our house at Orange that I gave him bonds.

Q. Did he not deliver those bonds to you for safe keeping ?

A. Not exactly.

Q. How near to it ?

A. He said that I could use them as if they were our own ; that he wanted them returned when he called for them, and that he was going to give them to his wife.

I can't recollect the time when he said this.

I could'nt state how soon I used those bonds after I re-
40 ceived them ; I couldn't state whether it was within a week,

He never asked, but once, to return the bonds; then it was that I borrowed the \$14,000, as mentioned yesterday, for the purpose of purchasing bonds to re-place these.

When I borrowed the \$14,000 of Mr. Halsted, he did not give me a check for it; he gave me some stock; Delaware & Hudson Coal, for something; I can't recollect anything else; I allowed him above par for the Delaware 10 & Hudson Coal Stock: the market price; I don't recollect for how much I sold it, or whether I gave Mr. Halsted as much as for what I sold it.

If the \$10,000 of bonds were a loan there would be an entry to that effect on one of the books of the firm; it would be either on memorandum of collections or on the memorandum of bills payable.

If there was no entry on the books of these bonds I should draw the inference that I was mistaken in regard to these transactions, and that the loan was not made for 20 the firm.

When I looked at the books the other day, I did not look to find such entry; I have seen such entry on the books on the day the bonds were received; I don't recollect in whose handwriting the entry was made on the books; I can't tell in which book it was; it was either in memorandum of collections or bills payable.

The character of the entry was "\$10,000 U. S. Bonds belonging to M. O. Halsted." 30

I could'nt tell where the mortgage of Charles R. Day for \$9,000 is; it is paid; it was paid to my wife, it was paid after this suit was commenced; it was paid to her in money or its equivalent; she has got the cash.

That mortgage was left with the Orange Bank as a security for a loan; the amount of the loan was \$25 00.; the loan was for my wife's benefit; I mean to say that she signed a note for \$25 00. which was discounted by the Orange Bank, and this mortgage was left as collateral security. 40

The \$2,500 was not borrowed for my benefit; some of

Settled

Settled

it she used ; some of it she gave to me ; I could'nt state how much she gave to me ; it may have been my note endorsed by her.

My father, John and myself confessed a judgment for \$16,000 or thereabouts to George W. Kirtland, my uncle ; the amount is on the books.

10 I think this was in 1865, the first part of the year ; George W. Kirtland has never made any effort to collect the judgment ; George W. Kirtland was one of the preferred creditors in the assignment made by myself and father.

The confessed judgment was for money that we owed him ; he loaned us \$5,000 at one time ; the balance was his deposits with us, left there to his credit ; the \$5,000 was put in when my mother and myself were in partnership ; the balance was put in and drawn out as he wanted
20 to use the money ; the \$5,000 were not put in when my mother and myself commenced business. I couldn't tell how soon after, some months ; I don't think that is the first entry made in the books ; I think so, because I think we were doing some business before he came into the office ; I couldn't state that that was the first credit that we had in our books ; I gave our note for this loan of \$5,000 at the time it was made ; that is my present recollection ; I couldn't state whether that note was out-
30 standing when the judgment was confessed ; I don't recollect of its having been taken up ; this \$5,000 was cash ; it was put there as a loan, as I understood it, and not at the risk of the business.

It was not understood that said \$5,000 should remain there at the risk of the business ; from the time that \$5,000 was loaned up to the time the judgment was confessed, my uncle did not demand that money from me ; I did not ask him to loan the money ; I couldn't state of my own knowledge who did ask him ; I believe my father did.

40 There was no specified time, that I know of, how long the loan was to remain ; my uncle asked me to pay interest

on it, every six months, I believe ; we paid the interest on it ; the firm paid the interest ; I mean both firms—first, that of myself and mother, and second, that of myself and father ; he did not demand the principal, or any part of it, that I know of—not till after we failed, any way.

I don't recollect much about the object of confessing judgment to him. 10

Q. What was your object in confessing judgment to him ?

A. I can't state now ; I had so many things to think about.

I don't recollect whether he or my father asked me to confess the judgment ; I did not have any property in New Jersey at that time ; I don't recollect that my uncle ever asked me to confess judgment to him ; there was no understanding with me, that I know of, about the judgment that was confessed. 20

I do not remember on what day we suspended payment ; I don't recollect whether it was November 10, 1864 or not ; I don't recollect, whether after the failure, there was a large credit given to I. B. Kirtland, president ; he obtained a large judgment in New York for a large amount, for upwards of \$100,000, I don't recollect the amount ; I presume that this judgment was for deposits made with the firm.

I do not remember of I. B. Kirtland drawing his deposits down from \$100,000 to \$1,000 or \$2,000, just before our failure ; I have no recollection of his drawing his deposits down. 30

I have done some business for I. B. Kirtland, assignee ; I have collected two debts for him, part of two debts ; I could'nt state how much the assignee collected ; I believe he has collected more than I did for him ; he told me he had.

This Jackson Ins. Co. of which he is president, is located at Memphis, Tenn. I settled one claim for \$2,000 for my uncle ; the claim was against Northrup for \$3,300 ; 40

the other claim I got either \$4,800 and odd, or \$6,000 and odd; this was a payment on the claim; don't recollect the amount of the claim; I have tried to collect some others; I have not succeeded; I couldn't state whether my uncle has been able to collect \$15,000; he has never consulted with me about the collections unless I went to him.

The last I went to him was about a year ago; that is the last, I think, that I have seen him.

Cross-examined by Mr. KEASBEY;

Q. You said, that if there was no entry of the \$10,000 in bonds of Mr. Halsted on the books, you would infer that you had not had the bonds, and that you were mistaken about the bonds. Did you mean to suggest any doubt as to whether you had the bonds or not?

A. I certainly did not; I know that I had the bonds; I mean that our firm had them.

Q. If you should be unable to find the entry on the books, would that change your conviction about having the bonds?

A. No, it would not.

Our losses were sudden and large; at the time the property in Orange was conveyed to my wife I was not insolvent; I had not then the slightest expectation of insolvency.

Q. What was your opinion as to your financial condition then?

A. We considered ourselves perfectly solvent, and had considerable means over all we owed to anybody, amounting to some \$70,000.

We were in fact solvent then; our losses and disasters occurred after that time; at the time the deed was made, we did not owe to the complainants any of their present claim; at that time we owed the complainants \$20,443.40 23; this was afterwards paid; there was a time after that and before our failure that they owed us; I am still liv-

ing in the house that my wife bought of her father; I have one child.

Re-direct-examination by Mr. WILLIAMSON:

The papers I looked at, when questioned by my counsel, were the account of the balances as they stood on the 8th day of March, 1864; I made out those balances; I can't state when; some three months ago I should judge; I had access to the books for the purpose, in the City of New York. 10

Those papers do not show the deposits made by the complainants during the time they were doing business with us.

It was either 1st of July or 1st of August, 1864, the complainants owed us.

I couldn't state that the books show, that on the 2d day of July, 1864, we received from the complainants \$11,000 on deposit; I couldn't state that the books show that they made an additional deposit of \$9,000; nor on the 11th July, \$15,000; nor on the 18th, \$20,000. 20

I do not know that in the month of June their deposits with us amounted to upwards of \$100,000; I have looked at their accounts to see how they stood at the date of that deed; I have looked since this thing commenced.

I didn't notice how their account stood just before and after that deed; I do not remember the largest deposit they ever made with us; I did look to see what was the amount of their deposit the 1st of July, 1864; I don't recollect of looking to see what it was a few days before that date; I don't recollect of looking to see how their account stood on the 2d day of July, 1864; they were in the habit of making these deposits by sending on drafts from the South. 30

I couldn't state that their account was overdrawn at the time I mentioned, in consequence of the drafts which they had sent us not having reached us by due course of mail. 40

Settled

Q. At the time you examined the books for the purpose of ascertaining whether the complainants' account was not overdrawn after the date of the deed—did you not see by the books how their accounts stood at any time, except on the 1st of July, 1864?

A. I did.

10 I couldn't tell what was the average of their credits during the months of June, July, and August of that year; their account was a good one.

Q. Will you look at the paper which you call account of balances—is the name of S. M. Anderson in that list?

A. It is.

I couldn't state how much we lost by him; I couldn't tell; it was in the neighborhood of that amount—\$300,000; he never paid any of that amount to me or to any one else to my knowledge.

20 Anderson was a speculator in Wall street; he was a speculator in stocks and gold; I did not speculate with him; I had no connection with him in business, except as broker to customer.

The name of J. H. Van Antwerp is on my list; he was broker and speculator both; he had failed in business before; he owed us about \$100,000 when we failed.

The name of J. D. North is on my list; he was in some mercantile business, glove business, I think; he was a speculator to some extent; his place of business was near
30 the Park; I don't think that he owed us \$100,000; I don't recollect whether it was as much as \$20,000.

The name of E. Washburn is on my list; he was an operator in stocks; I couldn't tell how much he owed us when we failed; I don't recollect whether it was as much as \$50,000.

Witness being shown a paper, purporting to be a balance sheet, is asked, whether it is in his handwriting?

40 A. I think it is.

From looking at this paper, our loss by J. D. North is

put down at \$35,387 10; that is not correct; I don't think that the account was not balanced; that is my recollection of it.

This paper was made to show how the accounts stood that day; this may have been made the 20th of November, ten days after the failure; it was made, at any rate, after the failure. 10

This account was made out for Mr. Wheeler, one of the complainants in this suit; it may have been, I presume likely it was.

That statement was correct as near as we could come at it at the time.

Said statement is offered in evidence, and marked *Exhibit C 2*, on part of complainants.

Re-cross-examination. 20

I was mistaken as to the indebtedness of Van Anwerpt I see by this account, that Van Antwerp's indebtedness was \$48,623 98, and Washburn's \$25,156 25.

GEO. KIRTLAND.

Taken and subscribed before me, July 28, 1870, at Jersey City.

A. S. JACKSON,
Master in Chancery, N. J. 30

JOHN KIRTLAND, a witness produced on the part of the complainants, being duly sworn, deposes and says:—

I am sixty-four years of age; I am the father of George Kirtland; I was a member of the firm of Kirtland, North & Platt; that house failed; it stopped payment 1st of May or 1st April, 1861; the affairs of that house were settled at fifty cents on the dolloar.

It was my wife that went into partnership with my son, under the name of Kirtland & Co.; she went in with my consent; the object of her going in the concern was to 40

make it a company more than anything; she went in the concern because I had not got through with the settlement of Kirtland, North & Platt.

Q. Was it the understanding that you were to take her place as soon as you were relieved from your embarrassments?

10 A. I don't think that there was any understanding about it, when the concern started; I don't think there was.

I can't recollect whether such was my expectation; I can't say whether such matter was talked over among us; I have no recollection of it now; it is so long ago that I can't recollect whether it was my expectation to take my wife's place when I should get relieved from my embarrassments.

20 There was no understanding as to how long my wife should remain a member of the firm; about the time I took her place, January 1, 1864, it might have been talked of before, possibly in the fall, previous; I probably first proposed it to her.

Before my wife went in the firm it was talked over among us, how the firm was to be managed and conducted; she put in about \$5,200 of capital; it was understood that she was to put that in the concern as a partner. George was to put in what he had, he had but little.

30 I arranged with George W. to borrow of him \$5,000 to put in the concern; they didn't expect to do a large business; the amount of their business exceeded their expectations; my wife went into partnership with my son, January, 1862, and continued to January, 1864, when I took her place; I mean to say that my wife put in \$5,000 as capital, when she went into that concern.

This money was left to her by the will of her brother Jared; it was a legacy in the will; Mrs. Jared Kirtland was the executrix of the will; she paid the legacy to my
40 wife in the Fall of 1861, I think.

I am not very familiar with the books of the concern

while my wife was in, and while I was in; it was not a part of my business.

I assisted in the partnership matters while my wife was a member; I never did speculate on her account, but I did on my own before I was a partner.

Our failure was a bad one, it turned out to be so; we found that out shortly after the failure; I do not know 10 what has been collected out of the assets; I have not taken any interest in the collection for the past year; about a year ago I inquired of my brother about the collection, and I found that the amount collected was much smaller than I hoped it was.

We made our losses by allowing customers to go too far on the margins which they had; we made our losses by Anderson, by allowing him to buy and sell too largely; I mean, for instance, a man buys any amount, ten twenty, thirty or forty thousand shares of stock, then when the 20 stocks come in they are charged to it, the amount paid for them; then they will sell short, any amount of stock which they haven't got, that amount is credited to him; so it goes backward and forwards, selling what they have got and what they haven't got.

I should think that this was the kind of operation by which we lost \$300,000 by Anderson; it would take longer or shorter for Anderson to become indebted in that amount; he was dealing two years with us or more.

My son Jared received a legacy from his uncle Jared; 30 the legacy was paid to me in the Fall of 1861; in the first place I invested it in 7-30 U. S. bonds; then I kept in that shape and kind of securities as it would pay best; I collected the coupons as they matured; I kept using it backwards and forwards, until in the Fall of 1864, we found it necessary to use them.

When we failed they went with the other things to pay as far as they would go.

These bonds were not used for the purposes of the firm until very short before we failed, as I believe. 40

We stopped payment on the 10th or 11th November,

1864; we used those bonds before that; at least they were out before that; I don't think that I used them myself for the purposes of the firm; they were put out as collateral on loans which we expected to take up; I can't say who put them on loan; I made few, or none, myself, loans.

10 These bonds were in the safe of Kirtland & Co; their office was my place of business, and I kept those bonds there as a safe place of deposit.

I can't tell when those bonds were first used for the purposes of the firm, but I think that they were not used as collateral until the Fall; the bonds were in the amount of about \$1,400, with a little credit of interest to me as trustee, which had not been invested; that credit was about \$70; I mean to say that the legacy was all invested except the small credit on the books of Kirtland & Co.

20 I first proposed giving the trust deed to my brother George W.; I can't answer whether I did so, either before or after the execution of the deed; I can't give you any information about it, it is so long ago, whether it was before or after the deed was made.

I bought the ground in the trust deed in 1849, and built a house upon it in 1856; I am living there now; I have lived there ever since; the purposes of that trust deed was to secure a debt to my wife and to my son Jared T.

30 My brother George has talked to me once or twice about the interest due on the debt, but he has never made a formal demand of it; that debt to my wife was the legacy left to her by my brother Jared.

At the time of the execution of the trust deed I owed my brother George W.; he had a mortgage on the place for \$4,000.

When the trust deed was given I can't state how much was due on the mortgage, there was back interest I know; that debt was contracted in 1856.

40 This debt was for money lent; I gave my brother a note for this money lent, payable in six months; I can't say positively, however; that was his usual way of taking notes; the mortgage was given to secure that note, when

I don't recollect; I think it was given before the note fell due; I have paid my brother interest on this mortgage; the interest was paid semi-annually punctually, for some time; I should think, at any rate, to January, 1861, perhaps later; it was voluntary on my part to pay the interest punctually; I knew when it was due; no part of the principal was paid.

I can recollect one payment since January, 1861; that was \$100; I have no memorandum of the time; I think it must have been in 1866; it might have been in 1865; the reason why I paid it was, that my brother had asked for some money and I paid \$100. ¹⁰

I don't think that my brother, at that time, told me it was necessary to pay that money in order to keep the note from being outlawed; he gave me a receipt for the \$100; I don't think he had the note with him; I received the \$100 for some commissions on Government bonds which I sold; my brother said that he wanted the \$100, but he did not give any reason why he wanted me to pay it. ²⁰

I can't say but my brother said that he wanted a payment to be made on the note to prevent it from being outlawed, and I can't say as he did.

I don't know that there was any particular object in making that payment on the note; it is so long since; it might have been to keep the note alive, as you say.

I was short of money, and that was the reason why I did not keep paying the interest punctually; at the time the mortgage was given there was no bond given; that is my impression. ³⁰

I don't think that there was anything said about the \$4,000, when I gave my brother the trust deed; I don't recollect on what day of the week the \$100 was paid.

I confessed a judgment to my brother after my last failure; this was to secure \$5,000 borrowed of him, and money deposited by him from time to time; all the profits that he expected from this \$5,000 was the interest; I borrowed that as I would borrow from anybody. ⁴⁰

He was one of the preferred creditors under the N. Y. assignment for the same amount for which judgment was confessed in New Jersey; I think that he has filed a bill in Chancery to foreclose the \$4,000 mortgage since this suit has been commenced.

10 There was an execution issued on the confessed judgment, and the sheriff levied on the real and personal property; there has nothing been paid upon it; there has been no agreement between me and my brother as to the terms on which I should occupy the property.

I think I executed a mortgage to my brother, Isaac B., in 1861; I don't recollect the date, but I think it was along in that time; it was after the failure of Kirtland, North & Platt that I gave the mortgage; my impression is that the amount of the mortgage was \$5,000; I gave this mortgage to secure him as an endorser of Kirtland, 20 North & Platt; he was on some of our paper; that is my recollection; that mortgage was cancelled before Kirtland & Co. failed, I think it was in December before; I can't give any reason why it was not cancelled before, except it was our carelessness; It was on the same property that the trust deed covers.

I gave a mortgage on the same property to my brother, Jared T., for \$5,000; I think, that was to secure him as an endorser on Kirtland, North & Platt's paper; I did not 30 owe him anything aside from that; I can't say when the mortgage was due; it was canceled, very likely, in March, 1864, I can't recollect the date; it was canceled after my brother Jared's death; I got possession of the mortgage from his widow or her lawyer; the endorsements were taken up for which that mortgage was given to secure.

I don't know any reason why these two mortgages to Jared and Isaac were not canceled until after I went into the firm of Kirtland & Co., except it was carelessness or 40 overlooking.

I have not said that I had made arrangements to live

on the property in Orange rent free as long as I should live.

I did not state to Essex County Road Board, in May, 1870, that I would have my house rent free any how.

I can't say whether anything was drawn out of the firm, while my wife was a member, for the support of the family or not; I was to work then for the concern; there 10 was no understanding what I was to have; I was collecting up the old matters of Kirtland, North & Platt, and got something out of that; I was also then working for Kirtland & Co., and very likely got something out of them; I don't think that there was anything charged to my wife; what was got out of the concern was charged to me.

The place of business of Kirtland & Co., was No. 9 Wall street; I went there about the 1st of June, 1862, just after the concern started; I was there pretty much every day after that; that was my place of business. 20

I was corresponding and overseeing matters generally; there was no understanding as to the particular capacity in which I was then; there was no salary or fixed compensation which I was to receive.

The means of supporting my family I got out of the collections of Kirtland, North & Platt in part, and what I did not get out of them I got out of Kirtland & Co., while my wife was a partner.

I suppose that my brother left the legacy to my wife, instead of to me, because he thought I might fail and the 30 legacy be swept away; he wanted to keep it in the family.

The legacy was to me in the will originally, by a codicil it was given to my wife; I told my brother that Kirtland, North & Platt would probably fail.

I recollect that in 1865 \$6,000 were borrowed, and \$18,000 in Tenn. bonds were redeemed; the \$6,000 was paid to Mr. Halsted, I suppose.

Q. Your son George said in his examination that you 40 knew all about this transaction. State what it was?

A. Well, I can't do it now.

JOHN KIRTLAND.

Sworn and subscribed before me, July 28, 1870, at Jersey City,

10 A. S. JACKSON,
Master in Chancery, N. J.

And thereupon the examination was further adjourned to a time and place to be agreed upon by the counsel of the respective parties,

The eleventh day of August, 1870, having been agreed upon by the counsel of the respective parties, as the time of proceeding with the said examination it was on that day at eleven o'clock in the forenoon, proceeded with
20 before Isaac Romaine, a Master and Examiner of said Court, at his office No. 7 Exchange Place, Jersey City, in the presence of the counsel of the respective parties.

GEORGE W. KIRTLAND, a witness produced on the part of the complainant, being duly sworn on his oath, saith :

I am seventy-five years of age ; John, one of the other defendants is my brother, and George is a nephew.

My brother Jared died, I think, in 1861 ; he was reputed wealthy at the time of his death ; the house of Kirtland & Co. was dissolved in consequence of his death.
30

The reputation of that house throughout the community, was that it stood high as bankers and brokers.

I was told that George's mother went into the house as a partner in the firm of Kirtland & Co. ; I never heard her say so ; I was told so by George.

They assumed the old name of Kirtland & Co. ; I had no knowledge of what George was worth, but I suppose he was worth a mere nothing when he went in the firm.

George's mother had a legacy of \$4,900 or \$5,000 devised her by my brother Jared ; whether or not she held
40 it at that time, I can't say.

I believe it was notorious that the firm of Kirtland, North & Platt had failed in 1861.

In January, 1862, I let the firm of Kirtland & Co. have \$5,000; I suppose George's mother was one of the firm.

I let them have the money at the solicitation of my brother John, George's father.

John seemed very anxious that George should have some money to help him start, and he solicited me to let him have it.

I think I gave the money to George, but I am not absolutely certain whether I gave it to him or my brother, John; I received George's note for it, though; I got a promissory note for the money—a note of Kirtland & Co.; when that note was given me the firm of Kirtland & Co. was composed of George Kirtland and his mother, Catharine, as I understood it; I have that note here in my pocket; I have no objection to showing it. 20

The body of the note, and the signature thereto, is in the handwriting of George; the date of it is January 27, 1862.

The endorsements on it are as follows:

“Received interest to August 1, 1862,

GEO. W. KIRTLAND.”

“Received interest to February 1, 1863.

30

“Interest paid to August 1, 1863, G. W. K.

“Interest paid to February 1, 1864.

“Interest paid to August 1, 1864.”

That is the last interest that has been paid on the note.

George paid the interest to August 1, 1862, at the time of the date of the endorsement; he paid it in cash.

The interest was paid at the time mentioned in the respective endorsements on the note; the three last 40

endorsements are in my handwriting, the first two in the handwriting of George; I can't swear whether I received the interest to August 1, 1864, on that note from George or John; I received it at the office.

I told George's father, when I let George have the money, that I never expected to see it again; I don't
10 know as I repeatedly told his father so after I let him have the money.

I made that remark because I did not think George was competent to manage the concern.

While George and his mother were in the firm of Kirtland & Co., I did not make any deposits with them.

After Catharine retired and John took her place, I made deposits with them.

I did not know when John took Catharine's place in the firm; I suppose it was within a few days after the
20 change was made that I knew it; after Catharine retired, the firm consisted of John and George, as I understood it; I did not make deposits with the firm while George and his mother were in it, because I hadn't confidence in the firm.

I don't recollect whether I objected to them about taking the name of Kirtland & Co., but I did make objections to some of my friends.

The ground of the objection was, that I was afraid they wouldn't sustain the reputation of the old house.

30 The note of \$5,000 has not been out of my possession since I first received it.

I held a mortgage of \$4,000 on John's property, Nov. 10, 1864; the consideration of that mortgage was \$4,000 money that I loaned my brother, John.

I am not sure whether I loaned him the whole of it on the 1st of July, 1856, or whether I loaned him a part at that time and a part before; I don't recollect whether I made the loan in one sum or in different sums at different times; I couldn't say how much of it was loaned July 1,
40 1856; John was in business then.

When I loaned John this money, I took a note and

mortgage ; the amount of the note was \$4,000 ; I have not got that note with me ; Parker & Keasbey have it ; the note was payable in four years ; interest was paid regularly on that note until Kirtland, North & Platt failed, since that time \$100 has been paid.

That \$100 was paid in my brother's office, in Pine street, on the 30th of June, 1866 ; I suggested the pay-10 ment of \$100 on it ; I told my brother I must have payment on the note, as I did not know what the laws of New Jersey were as to outlawry ; shortly after, he paid me \$100, and the money was kept by me and not returned to him.

On November 23d, 1864, a mortgage was made to me as trustee by John, in trust for his wife and son ; I was not consulted about that mortgage until it was brought to me after being recorded ; my brother John handed it to me.

20

I don't remember that there was any particular conversation at the time between us about it ; I felt unpleasantly about taking it, but we did not talk about it.

There has been no interest paid on the trust mortgage, and none on my own mortgage except the \$100 since the trust mortgage was delivered to me.

George and John confessed judgment to me about February 14th, 1865, for \$16,695.11 ; execution was taken out on that judgment, and I suppose a levy made on the real and personal property, but I left the matter with Mr. 30 Parker to do what was necessary.

I am not aware that any sale has ever taken place under that execution ; I never tried to collect the money on the judgment, except that, I supposed the trust mortgage and the \$4,000 mortgage was all the property was worth at that time, and more too.

At the time the judgment was confessed I supposed the property wasn't worth more than the two mortgages with the interest.

My object in taking the confession was that it wouldn't 40 cost much, and I thought the property might advance in

value, and it was to provide against such a contingency that I took the judgment; I did not know that George and John were going to make an assignment for the benefit of their creditors—at least I have no recollection of it.

They made an assignment to my brother; I was mentioned as a creditor to the assignment, but I do not think I was named as assignee.

On the 14th of February, 1865—I am not aware that I accepted an assignment from George and John Kirtland of their property.

Witness is shown a paper for the purpose of refreshing his memory; say, I now recollect of accepting from George and John, with other creditors, an assignment from them of their property, on the 14th of February, 1865.

20 I was made a preferred creditor in that assignment for the same debt for which George and John had confessed a judgment to me in New Jersey.

I took out an attachment in New York against Kirtland & Co. for about \$17,000; they were broken up before I took out the attachment.

The consideration of the confessed judgment in New Jersey was the \$5,000 note and the balance of my deposits with the firm.

When I accepted the assignment in New York, I did not inform the other creditors that I had a confessed judgment in New Jersey for the same debt; My brother John first suggested to me that confession of judgment.

After they failed I asked John to give me some security for my claim, but I said nothing at the time; I don't know what moved him to do it; he did not tell me that he was going to make an assignment, and he wanted to give me the judgment to protect his property in New Jersey.

I don't remember of any conversation in particular that passed between John and me in regard to this confession of judgment.

Since this suit has commenced I have filed a bill to foreclose the mortgage for \$4,000.

I didn't commence the suit before because I thought the property wasn't worth enough to pay me much, if anything, on my judgment; I had hoped that I would get something from the assignment, as it covered a large amount of property, and I hoped that more would be realized out of it than would pay my brother's debt. 10

I don't know how much was realized from the assignment; my brother has told me that nothing of any amount was realized.

I didn't collect the \$4,000 mortgage, because I knew it was perfectly safe, and I knew my brother could not pay it, so I let it lie to help him along a little.

In making my return of income for 1864, I returned the amount of the confessed judgment as a bad debt; I considered it so then. 20

The personal property was worth very little; it was worn out, and was a mere bagatelle.

For a year or more last past I considered that something would be realized on the judgment out of the real estate.

My brother had a cow; I think he had a horse and wagon; I am not sure of that, however.

I never have considered the real estate a sufficient security for the whole judgment debt.

I never made any return of this debt in my income return because I got no return from it. 30

I never made any return of it in my income return, except as a total loss.

The commencement of this suit hastened me in bringing my suit for the foreclosure.

I called on my brother John once or twice for the interest on that trust mortgage; I did not get any.

I have never attempted to enforce that trust mortgage by suit.

I thought and cared about this trust mortgage before this present suit was brought, because I applied to my 40

brother for a payment on it ; I had no personal interest in it.

In making my income return for the year 1865, I do not remember whether I made any deduction as loss on money loaned.

I do not remember of having any conversation with 10 my brother John about the trust mortgage, except asking him for the interest, as I have before stated.

I think I should have taken some steps to collect my judgment and the mortgage debt if this suit had not been commenced.

I did not know anything about John making a mortgage to my brother Jared on this same property until after this suit was commenced.

I did not know that my brother Isaac had a mortgage on this same property until after this suit was commenced. 20 \$1,500 was put in the mortgage for the minor, I think.

Since the trust mortgage was made I have always had it in my possession until this suit was brought.

I did not put that \$5,000 in the firm of Kirtland & Co. with the understanding that I was to have some part of the profits.

G. W. KIRTLAND.

Taken, sworn to and subscribed this 11th day of August, 3) A. D. 1870, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery.

And thereupon the examination was further adjourned to a time and place to be agreed upon by the counsel of the respective parties.

40 Sept. 26, 1870. On this day, the parties, by their respective counsel, appeared before me and continued the examination.

The complainants offer in evidence the following books of the defendants (Kirtland & Co.) which had been produced on notice :

Cash Book, No. 1, marked *Exhibit C 3* on part of complainants.

Cash Book, No. 2, marked *Exhibit C 4* on part of complainants.

10

Cash Book, No. 3, marked *Exhibit C 5* on part of complainants.

Ledger, No. 1, marked *Exhibit C 6* on part of complainants.

Ledger, No. 2, marked *Exhibit C 7* on part of complainants.

CHARLES T. JUNG, a witness produced on the part of the complainants, being duly sworn, deposes and says :

I reside at No. 359 Gates avenue, Brooklyn ; I am an accountant ; I am disengaged at present ; I am familiar with book-keeping ; I have been an accountant for 18 years last past, with Lyons & Co., New York City ; I. Howard Wainwright, of New York City ; Marquand, Hill & Co., New York City ; and several others.

30

The keeping of books of account, during that period, has been the principal part of my business, except when I was in the brokerage business a short time, and then I kept my own books.

I have examined the books of account of Kirtland & Co. which have been offered in evidence in this case ; Mr. Whitney, on behalf of the complainants, employed me to make the examination some time last month ; I made a thorough examination of those books of accounts for the purpose of being examined as a witness, respecting those 40 books.

I went through the books of account carefully, and do not find an entry of a credit of \$10,000 to M. O. Halsted; neither did I find a credit of any amount to Jared T. Kirtland, or to Jared T. Kirtland, Jr.

I found an account of *John Kirtland in trust*; it is found on page 5 of Exhibit C 6.

10 This is carried from page 5 of Exhibit C 6 to page 503 of Exhibit C 7; the amount of the credit is \$91 73.

I examined the books of account for the purpose of ascertaining whether the firm was insolvent on March 8, 1864, and I found that there was an indebtedness of \$249,000 against a net credit of less than \$40,000.

(All this evidence is here objected to by Mr. Kirtland.)

I have made up a statement from the books, I can
20 hardly call it a calculation, for the purpose of showing how I have reached that result; and this paper, which I now produce, is that statement.

(Statement offered in evidence, and marked Exhibit C 8, on part of complainants.)

This exhibit is explained by reference to Exhibit C 6, pages 178, 3, 2, 7, 367, 21, 235, 126, 313, 264, 345, 269, 211, 414, 440.

30 I did also examine these books of account for the purpose of ascertaining the solvency of the firm, January 1, 1764, and I found a deficiency of \$181,000 against a net credit of less than \$45,000.

I have a statement showing how I reached this result.

(Statement offered in evidence, and marked Exhibit C 9, on part of complainants.)

(This statement is made from Exhibit C 6, pages 177, 3,
40 2, 367, 21, 235, 246, 193, 313, 200, 257, 345 and 211.)

I did also examine the accounts for the purpose of ascertaining how the firm stood on October 1, 1863, and I found there was a deficiency of \$50,000 against a credit of less than \$41,000.

I have a statement showing how I arrived at this result.

(This statement is offered in evidence, and marked Exhibit C 10, on part of complainants. ¹⁰

(This statement is explained by Exhibit C 6, in pages 313, 235, 259, 345, 367, 21, 88 and 3.)

In examining the accounts I came to the conclusion that the margins were very soon lost.

S. M. Anderson's account, on September 1, 1863, shows a loss of \$2,600; I refer to Exhibit C 6, page 258; the same account shows a loss, on October 1, 1863, of \$7,300; January 1, 1864, the same account shows a loss of \$33,000; March 8, 1864, the same account shows a loss of \$171,000. ²⁰

Exhibit C 2 does not show the loss on S. M. Anderson's account; it shows his indebtedness to be \$311,325 74.

The account of W. S. Wheeler was opened with Kirtland & Co., on December 10, 1863, as appears from Exhibit C 6, page 172, by a deposit of \$18,000.

The average balance of Wheeler's account from that date to November 10, 1864, was about \$40,000; his credit balance at times was over \$100,000 ³⁰

From these books I learn that the principal business of this firm was the buying and selling stocks and gold, and doing, besides, a banking business.

I should judge that the business of the firm was not conducted in a careful manner as regards margins.

CHAS. T. JUNG.

Taken, sworn and subscribed before me, September 26, 1870, at Jersey City.

A. S. JACKSON, 40
Master in Chancery, N. J.

And thereupon the examination was further adjourned to a time to be agreed upon by the counsel of the respective parties.

The fifteenth day of October, 1870, having been agreed upon by the counsel of the respective parties as the time 10 of proceeding with the said examination, it was on that day, at ten o'clock in the forenoon, proceeded with before Isaac Romaine, a Master and Examiner of said Court, at his office, No. 7 Exchange Place, Jersey City, in the presence of the Counsel of the Complainants, and George Kirtland in behalf of the defendants.

THOMAS R. WILLIAMS, a witness produced on the part of the complainants, being duly sworn, on his oath says:

20 I live in Newark; I am sixty years of age; I was one of the appraisers appointed by the Court to appraise the damages for Park Avenue; that avenue extends from Llewellyn Park to the line of the City of Orange; that is as far as we were to appraise damages; it ran through part of John Kirtland's property in Orange, and took a little more than two acres out of the six acres; I think it was \$15,000 we awarded John Kirtland; I value the whole six acres at, I suppose, with the buildings, from \$60,000 to \$65,000; in December, 1868, I suppose this 30 property would sell for more than it would now; in 1865, I suppose it would probably have brought from \$30,000 to \$40,000.

And being cross-examined by GEORGE KIRTLAND, he says:

In my estimate of the value of the property at \$60,000 to \$65,000, I include the land to be taken for the avenue; I estimate land there to be worth double now what it was in 1865; I think that property would now sell for at 40 least \$60,000, perhaps \$65,000.

THOMAS R. WILLIAMS.

Taken, sworn to and subscribed this 15th day of Oct.
A. D., 1870, at Jersey City, before me,

ISAAC ROMAINE,
Master in Chancery.

STEPHEN W. WHITNEY, a witness produced on the part 10
of the complainants, being duly sworn on his oath, saith :

Witness being shown a paper purporting to be a no-
tice for taking testimony in this cause on this day, says,
I left a copy of this paper at the office of Parker & Keas-
bey, and sevices thereof was acknowledged by a Clerk in
their office.

Said paper is offered in evidence and marked Exhibit
C 11 on part of complainants. 20

STEPHEN W. WHITNEY.

Taken, sworn to and subscribed this 15th day of Octo-
ber, A. D. 1870, at Jersey City, before me,

ISAAC ROMAINE,
Master in Chancery.

WILLIAM S. WHEELER, a witness produced on the part
of the complainants, being duly sworn on his oath, saith : 30

I am one of the complainants in this suit ; I made de-
posits with Kirtland & Co., from December, 1863, to No-
vember, 1864.

We were engaged in the banking business at Vicks-
burg, Miss. ; we bought bills for our credit and sent them
to New York to the house of Kirtland & Co., and check-
ed on them—sometimes we sent money by express ; the
house of Kirtland & Co. were our bankers in New York ;
all the business we transacted with them was depositing 40
bills and money with them—and checking on them—they

allowed us no interest; we did not buy or sell stocks; our account was very large—sometimes we had \$100,000 on deposit—sometimes \$50,000—our average would be, I suppose between \$40,000 and \$50,000; we never had any notice from them that we had overdrawn our account.

At that time it would take about ten days to remit
 10 from Vicksburg to New York; these remittances were by cash and drafts, principally by drafts.

And being cross-examined, he says:

I do not know that we ever overdrew our accounts; I never did by my own books.

I think one account which they rendered me some time in July, 1864, showed a small overdraft which may have
 20 been caused by delay in the mails; there were no other occasions.

WILLIAM S. WHEELER.

Taken, sworn to and subscribed this 15th day of October, A. D. 1870, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery.

30 GEORGE PETERS, a witness produced on the part of the Complainants being duly sworn on his oath, saith:

I am a member of the Essex County Public Road Board.

On the 2nd of May, 1870, John Kirtland appeared before the board and made a statement about a mortgage on his property; he appeared before the board several times; his first statement to the board was about running an avenue called Park Avenue, across his property, located on Prospect Street; he appeared to be indifferent about
 40 the Road Board taking the house entirely away or so destroying it so that it would have to be moved, but for

what cause I was unable, at the time, to ascertain; at the second call he entirely changed his opinion from the ground taken at the previous meeting; both himself and Mrs. Kirtland were at the meeting that day, plead with the Board to save the house, as the only means they had of making a livelihood was by keeping boarders; he stated that there was a large mortgage on the house, held 10 by his brother, but as long as that brother lived they would have the use of the house free of any rent, as far as the mortgage was concerned.

And being cross-examined by GEORGE KIRTLAND, he says:

I do not remember that John Kirtland stated the amount of the mortgage; I heard from others that John Kirtland was opposed to the avenue running through his property.

I got an impression from Mrs. Kirtland that they paid 20 no interest on mortgages on the property.

I could not swear that Mr. John Kirtland told me that he did not pay any interest on the mortgage.

I can't say whether Mr. John Kirtland stated to the Board whether he had to pay rent on the house or not.

I do not know that Mr. John Kirtland holds a deed for that property.

We awarded \$15,000 for damages, without inquiring as to the ownership of the property, this we do not do until the awards are made; from all the evidence we 30 have, we have every reason to believe that the property stands in the name of John Kirtland, and that he owns it.

GEO. PETERS.

Taken, sworn to and subscribed this 15th day of October, 1870, at Jersey City, before me,

ISAAC ROMAINE,

Master in Chancery, N. J. 40

And thereupon the Complainants, by their Counsel, declared to me that the testimony on their part was concluded.

ISAAC ROMAINE, *Master*.

¹⁰ *Note.*—In all cases where this examination has been taken in the interrogative form, I have determined, from the subject matter or the manner of the witness, what was necessary to be taken thus for the correct understanding of the evidence or of the disposition of the witness.

A. S. JACKSON, *Master*.

ISAAC ROMAINE, “

LIST OF WITNESSES.

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3. George W. Kirtland,	28
4. Charles T. Jung,	35
5. Thomas R. Williams,	38
6. Stephen W. Whitney,	39
7. William S. Wheeler,	39

Abstract of Accounts of Kirtland & Co., March 8, 1864, as taken from their Ledger.

Cr. Bal. Interest and Commission Account,	p. 178.....			\$67,491 12
" " C. Kirtland, Capital Account,	p. 3.....			5,198 70
Total Assets or Capital, Gross.....				72,689 82
From this there must be deducted—				
Dr. Balance Geo. Kirtland over draft,	p. 2.....	23,570 57		
" " John Kirtland	p. 7.....	2,881 75		
" " Profit and Loss Account, Loss,	p. 367.....	2,712 89		
" " Expense Account [a portion only of expenses up to this date],	p. 21.....	3,732 19	32,897 40	
				<u>32,792 42</u>
As also the following amounts of deficits in the several accounts named, viz.:				
Dr. Balance J. H. Van Antwerp,	p. 235.....	101,043 98		
Short 100 R. I.—125.....		12,500 00		
				<u>113,548 98</u>
And had 950 Harlem,	144.....	68,400		
200 Mich. S.	103½.....	20,700		
100 Erie,	118½.....	11,825	100,925 00	12,623 98
Dr. Balance S. M. Anderson,	p. 126.....	65,817 13		
Short, 1,000 " & P.	12.....	60,000 00		
500 Erie,	118½.....	59,125 00		
900 Mich. S.,	103½.....	93,150 00		
\$20,000 Gold	162½.....	32,525 00		
100 N. Y. Cent.	137½.....	13,762 50		
1,900 Harlem,	144.....	136,800 00		
500 Cumb.	82.....	41,000 00		
200 T. & A.,	74.....	14,800 00		
200 Ft. W.,	125½.....	25,100 00		
				<u>542,079 63</u>
And had 500 Mariposa,	36.....	18,000		
500 Colorado [cost Jan. 9 & 11, '64],		4,525		
1,100 Ch. & Tol.,	148.....	81,400		
50 Hudson,	152.....	7,600		
500 Quicksilver,	60.....	48,000		
200 Mar. & Cin.	81.....	8,100		
700 Ills. Cent.	129.....	90,360		
300 Tol. & Wab.	66.....	19,800		
100 Ch. & N. West,	59½.....	5,950		
800 Erie pfd.,	109.....	87,200	370,875	171,204 63
Dr. Balance D. W. Fenton,	p. 313.....	29,870 77		
On hand, 100 P. D. C.,	74.....	7,400 00	22,470 77	
Dr. Balance L. Myers, jr.,	p. 264.....	115,620 28		
Short, 100 Erie,	118½.....	11,825 00		
100 Tol. & Wab.	66.....	6,600 00		
100 Harlem,	144.....	7,200 00		
				<u>141,245 28</u>
On hand,				
50 Galena,	118½.....	5,925		
200 Quicksilver,	60.....	12,000		
100 Ft. Wayne,	125½.....	12,550		
300 Erie pfd.,	109.....	8,700		
100 T. & A.,	74.....	7,400		
400 Ch. & Pt's.,	120.....	24,000		
100 Ills. Cent.,	129.....	12,900		
\$15,000 Miss. & Mo.,	72.....	10,800		
200 Ch. & Toledo,	148.....	14,800	133,075 00	8,170 28
Dr. Balance W. Oppenheim,	p. 345.....	5,591 54		
" " Joseph Martin,	p. 269.....	21,671 23		
Short, 100 Mich. S.,	103½.....	10,350 00		
\$10,000 Gold,	162½.....	16,262 50		
150 Mich. Cent.,	145.....	21,750 00		
				<u>70,033 73</u>
On hand,				
50 Erie	118½.....	5,912 50		
400 Harlem,	144.....	28,800 00		
100 Ft. Wayne,	125½.....	12,550 00		
200 Lancaster Lead [cost Jan. 2d],		750 00		
200 Ch. & Pitts,	120.....	12,000 00		
100 Quicksilver,	60.....	6,000 00	66,012 50	4,021 23
Dr. Balance Gold Account,	p. 211.....	98,596 69		
On had, \$49,719 30, Gold,	162½.....	80,856 00	17,740 69	
J. D. North, Short \$40,000 Gold,	162½.....	65,050 00		
Cr. Balance Account.....	p. 414.....	60,600 00		
				<u>4,150 00</u>
Dr. Balance W. S. Almy,	p. 440.....	8,900 00		
Short, 200 Ch. & Tol.	148.....	14,800 00		

*Abstract of Accounts of Kirtland & Co., January 2, 1864, as taken
from their Ledger.*

Cr. Balance of Interest & Commission Acct. p. 177.....				\$48,153 83
“ “ C. Kirtland, capital Acct. p. 3.....				5,198 70
Total Assets or Capital, gross.....				\$53,352 53
From this there must be deducted--				
Dr. Bal. Geo. Kirtland, over draft, p. 2.....		\$3,005 32		
“ “ Profit & Loss, Loss, p. 367.....		2,712 89		
“ “ Expense Acct.--only a portion of the expenses, p. 21.....		3,247 50	8,965 41	
				<u>\$44,387 12</u>

As also the following amts. of deficits in the several accounts named, viz.:

Dr. Bal. J. H. Van Antwerp, agt. p. 235.....		\$101,048 98		
And this acct was "short".....				
100 R. I. worth at market, 123.....		12,300 00		
				<u>113,348 98</u>
And had 950 Harlem, 90½.....	\$42,987 50			
200 Mich. S., 86.....	17,200 00			
100 Erie, 108½.....	10,825 00	71,012 50	42,336 48	
				<u>108,468 75</u>
Dr. Bal. E. Washburn, p. 246.....		63,350 00	45,118 75	
And had 1,400 Harlem, 90½.....				
Cr. Bal. S. M. Anderson, p. 193.....		173,952 60		
And had 100 Ft. Wayne, 86.....		8,600 00		
300 Mariposa, 34½.....		10,425 00		
500 Rock Island, 123.....		61,500 00		
200 Quicksilver, 58.....		17,400 00		
And was short--				
300 Mich. S., 86.....	25,500 00			
200 Cumberland, 48.....	9,600 01			
900 Harlem, 90½.....	40,725 00			
600 Erie, 108½.....	64,950 00			
600 Cl. & Pitts., 108½.....	32,587 50			
400 T. & A., 74.....	29,600 00			
\$50,000 Gold, 152.....	76,000 00			
200 N. Y. Cent., 132½.....	26,500 00			
	305,762 50	271,877 60		
	271,877 60		33,884 90	
Dr. Bal. D. W. Fenton, p. 313.....		32,045 77		
On hand, 100 P. D. C. cost.....		6,000 00	26,045 77	
Dr. Bal. J. P. Lyon, p. 200.....		15,875 42		
On hand, 200 Canton, 34½.....		6,850 00	9,025 72	
Dr. Bal. L. Myers, Jr., p. 257.....		20,354 28		
"Short" 100 Erie, 108½.....		10,825 00		
				<u>31,179 28</u>
On hand, 100 N. Y. Cent. 132½.....	13,250 00			
100 Canton, 34½.....	3,425 00			
200 T. & A., 60½.....	12,175 00	28,850 00	2,329 28	
Dr. Bal. W. Oppenheim, p. 345.....			5,591 54	
Dr. Balance, Gold Account, p. 211.....		127,159 19		
On hand, 72,141.80 Gold, 152.....		109,655 53	17,503 66	
So K. & Co. had an amt. of Dr. Balance which was uncol- lectable, of.....			181,836 10	
To carry which they had besides the deposits of Bankers, &c., which were intrusted to them, only.....				<u>44,387 12</u>

On October 1, 1863, the following Accounts were behindhand, as follows :

D. W. Fenton [Gold. 139. Erie, 118½; Harlem, 133; P. D. C. 60], p. 313.....	\$13,951 17	
S. H. Van Antwerp [Harlem, 133; Mich. Cent., 126; Mich. S., 108; Erie, 12); R. I., 113½], p. 235.....	18,448 98	
S. M. Anderson [Gold, 139; R. I. 110; M. S., 84½; C. & P., 105½], p. 259.....	7,382 39	
W. Oppenheim, p. 345.....	5,591 54	
Profit and Loss, p. 367.....	2,712 89	
Expense Account, p. 21.....	2,901 56	
A Total of.....	\$50,988 53	
And Interest and Commission Account to that date shows a Cr. Balance of only.p. 88		\$34,938 90
And C. Kirtland, p. 3.....		5,198 70
		<hr/>
		40,137 60
And George Kirtland's Account a Dr. Balance of.....	1,965 22	
	<hr/>	
	\$52,953 75	
S. M. Anderson's Account behindhand, Sept. 1, '63, p. 258, Ex. C 6.....		\$2,608 64

An Oration on the

Life of

George Washington

Delivered at the

University of the City of New York

By

EXAMINATION OF WITNESSES FOR DEFEND

Witnesses were called to the stand and examined

by the court and the jury. The testimony of

the witnesses was taken and the case was

submitted to the jury for their verdict.

The jury returned their verdict in favor of

the defendant and the case was closed.

The court then adjourned until the next

In Chancery of New Jersey.

Between

WILLIAM S. WHEELER AND DUFF GREEN,

Complainants,

and

GEORGE KIRTLAND, EMILY G. KIRTLAND, JOHN KIRTLAND, ENOS J. HALSTED, GEORGE W. BOWERS & CHARLES W. WILEY
Executors of M. O. HALSTED,
Dec'd,

Defendants.

On Bill, &c.

EXAMINATION OF WITNESSES FOR DEFENDANTS.

Examination of witnesses in the above entitled cause on the *part of the defendants*, taken before me, Abraham S. Jackson, a Master and Examiner in said court, at my office No, 31 Montgomery St., Jersey City, on Monday, 10 February 27, A. D. 1871, at 10 o'clock, A. M.

Present—BENJAMIN WILLIAMSON,

Of Counsel for the Complainants,

and

COURTLANDT PARKER,

Of Counsel with the Defendants.

GEORGE W. BOWERS, a witness produced on the part of the defendants, being duly sworn, deposes and says:

I live at East Orange, N. J.; I am a son-in-law of

Settled

Mathias O. Halsted, dec'd. ; I am one of his executors, in conjunction with Enos J. Halsted, Charles Wiley and George Kirtland.

As the executor of M. O. Halsted I came into possession of his books of accounts and papers ; I have his book of accounts here ; I now produce it.

10 There is a record here in this book of account in his handwriting, in his inventory for 1866, in these words, in page 29 :

“Bonds and Mortgage—George and Emily Kirtland—\$20,000.”

There is also another entry in said book of account in his handwriting, in these words : “Folio 37—Emily G. Kirtland, Dr., 1864, April. To amount included in sale of Home Lot, and not paid for, but by agreement with Mr. Kirtland, to be charged to Emily—\$5,000.”

20 Said book of account is offered in evidence, and marked *Exhibit D 1* for defendants.

Q. I understand you that you found among the assets of Mr. Halsted, bonds amounting to \$20,000, made by Geo. Kirtland, and secured by mortgage of the property spoken of in this suit.

Can you give us the date of those instruments and tell us what became of them ?

30 A. One mortgage for \$14 000, dated November 23 1864 ; and one mortgage for \$6,000, dated November 4, 1865. Those mortgages in the division of the estate were set apart to Mrs. Hepzibah E. Halsted.

July 11, 1868, payment of \$4,000, was received by the assignment of a bond and mortgage for that sum, given by myself and wife to Emily G. Kirtland.

February 1, 1869, a payment was received by a bond and mortgage of Samuel W. Baldwin and Frederick Lyman, for \$5,000.

40 November 1, 1869, a payment was made of \$4,000 in cash.

There now remains unpaid the sum of \$7,000 of the principal of these bonds and mortgages.

The bond and mortgage given by myself and wife to Emily G. Kirtland, was on property purchased of the estate by my wife and given to Emily G. Kirtland in the second division of the estate.

The Baldwin & Lyman mortgage was on a part of the 10 Home lot referred to in the extract, on page 37 already quoted; Baldwin & Lyman were purchasers of part of the Home lot.

Cross-examined by MR. WILLIAMSON.

I don't know what consideration Kirtland gave to Mr Halsted for the mortgage of \$14,000 or \$6,000.

The books of account do not show the consideration of these mortgages. 20

There are no entries in the book of account, under those dates explanatory of those charges.

There is no entry made about \$14,000 mortgage, except on page 29, under date of January, 1865.

I do not think that Mr. Halsted kept any book of original entries in 1864; Mr. Halsted did not keep any bank book.

There is no memorandum in this account book of money advanced to Kirtland & Co., nor any charge against them; I have not seen any such entries. 30

G. W. BOWERS.

Taken, sworn and subscribed before me, Feb. 27, 1871, at Jersey City.

A. S. JACKSON,

Master in Chancery.

And thereupon the examination was further adjourned to Saturday, May 6, 1871, at ten o'clock, a. m., at the 40 same place.

Settled

At which time and place the examination was resumed, in the presence of the counsel of the respective parties.

WILLIAM M. LEWIS, being duly sworn on his oath, says: I am thirty seven years of age; I live in East Orange N. J.; my occupation is cashier and bookkeeper with Donnelly, Lauson, & Co., bankers, No. 4 Wall street, New York; I have been employed as bookkeeper for 15 years, principally in banking business; I have had charge of books in banking stock and mercantile business; the principle in bookkeeping is the same in all these; in stock bookkeeping there is a difference, apparently on the face of the Ledger; in a set of mercantile, the debit and credit side of the Ledger would shew the true and exact condition of a man's account, but the balance on a Stock Ledger would not show, necessarily, the true condition of a man's account.

20 On a Stock Ledger operators are sometimes long and short on stocks; an account on the Stock Ledger may show credit, and if the party were short of stocks, the credit would be an advance, made by the broker he having to purchase the stock of which the customer was short; if the party was long in stocks, the broker would make the purchase and charge the amount paid for the stock to the debit of the operator.

Q. Will you explain the meaning of the terms long and short stock, as you have used them?

30 A. When a man buys stock he is long that much stock; when he sells stock without having purchased it he is short.

Q. If the operator sells short, what must the broker do for him?

A. He must sell the stock and place the proceeds to the customer's credit and provide the stock somehow; he can borrow the stock on the street, or provide it.

40 Q. Is there any difference in the method of arriving at the state of a stock-broker's business at any date, by investigating his books and affairs, than that to be used in other mercantile books?

A. The difference is this : that in a mercantile ledger, balance of each account will show the true condition of the account. The balances on the Stock Ledger do not necessarily show the true condition, because some of the accounts may be long and some be short. The Stock Ledger may show a credit to a customer's account, and if that customer was short of stock, the stock which he is¹⁰ short would have to be purchased by the broker; and if the amount paid for it exceeded the amount for which the stock was sold, the ledger might show a debit to the customers account.

Q. What then is to be done further than making up the balances of each customer's account as per ledger, to ascertain the pecuniary condition of a stock-brokers business at a given date?

A. The balance of each account should be taken, and each customer's account should be examined, to ascertain²⁰ if the account was long or short; all the stocks the customer was long should be sold out at the market value, and the proceeds placed to his credit; if the account was short, all the stock so short should be purchased at the market value; the amount paid placed to the debit and the balance would then show the true condition of the account.

Q. Have you investigated the books and affairs of Kirtland & Co., in order to determine the condition of that firm as to solvency on the 8th day of March, 1864; if yea,³⁰ with what result?

A. I did examine the ledger of Kirtland & Co., and made a statement of the condition of their ledger on the 8th day of March, 1864, their business as shown by their ledger. I have this statement with me, which shows the concern to have been solvent, and worth about forty thousand dollars, provided that the accounts rendered in the statement as due Kirtland & Co. were good.

Paper marked *Exhibit D 2*, produced by the witness, is⁴⁰ asked;

Q. Does this paper correctly exhibit all the accounts from the books of Kirtland & Co. as apparent on the day mentioned ?

A. It does.

This paper is offered in evidence by the defendant and 10 marked *Exhibit D 2*.

It shows the condition of each account on the ledger, after charging each account with the stocks and gold it was short, and crediting each account with the stocks and gold it was long, at the prices of stocks and gold on that day.

Q. In making the statement of the account of Geo. Kirtland, is he charged with \$20,000 used in connection with the purchase by his wife of property in Orange ?

20 A. He is charged on the 8th of March, with \$20,000 paid M. O. Halsted ; the charge against Geo. Kirtland of \$23,570 37, includes this \$20,000.

Q. State, if you know the ordinary method of doing business by a Stock-broker, acting for customers.

A. A stock-broker's business depends upon the order he gets, his general business is purchasing and selling stocks on commission ; when he receives an order to purchase stock, he goes into the stock market and makes the purchase ; when he receives orders to sell stock, he goes into 30 the stock market and makes the sale requiring from the party from whom he has received the order a sum of money known as margin, the sum so required generally being about ten per cent. of the value of the stock ; the balance of the purchase money is advanced by the broker, and the stock is held as collateral security, if the stock should happen to decline, a sufficient amount to exhaust the margin, the broker sells to secure himself from loss.

Q. Does these "margins" necessarily appear on the ledger ?

40 A. Necessarily, they do not appear, for the reason that if the margin is cash it would, in the usual manner of do-

ing business, appear as a credit to the operator's account, but the margin might consist of other kind of property such as stock, or any security which the broker might be willing to receive.

Q. You stated that you were a book-keeper, have you been employed as examiner of books, an expert therein?

A. Not as an examiner, except in this case.

10

And being cross-examined, he says:

I made out this Exhibit D 2 sometime in February or March; it is in my handwriting.

I have been engaged nearly four years with Fisk, Thomas & Co., Gilles, Harney & Co., and Harney & Searles, brokers, and am now engaged with Harney & Searles, keeping their books in connection with my other books.

20

The sum of \$156,317 13, opposite S. M. Anderson, shows the balance he owed the firm after he had closed his stock account; and that is the case with all the amounts opposite the names in Exhibit D, 2; I knew nothing of the affairs of S. M. Anderson on the 8th of March, 1864; the ledger doesn't show that there was any security for the amount due from S. M. Anderson, and the same is true in regard to the balances of the other individuals; the books were furnished by Mr. Geo. Kirtland, by consent of Mr. Jackson; I did not take them out of Mr. Jackson's office; I was portions of three or four days examining them; I don't remember how many hours I was examining of the books; I made a thorough examination of the books; I examined the ledger with the assistance of the cash-book, that's all; Mr. Geo. Kirtland was with me at the examination, but the examination was conducted by myself; he helped me by calling off items; I ascertained the price of stocks at that day, by a list handed me by Mr. Geo. Kirtland; it was a long paper with the papers of Kirtland & Co.; from my knowledge of the price of stocks, I concluded that it approximated the price

40

of stocks ; if the margins are cash, it would appear in the books, if securities they are not credited ; I didn't examine the accounts with a view of ascertaining the condition of the customers' margins.

Witness is shown Exhibit C 8, on part of complainants, showing abstract of accounts of Kirtland & Co., on March 10 8th, 1864, as taken from their ledger.

I have seen this Exhibit ; I saw it in the Master's office ; it was handed to me by Mr. Kirtland to look at, and after I had taken off an account I compared them with this, and noticed that there was a difference between the two, and again went over the two and found I was correct ; they differed in the aggregate amounts, particularly in Anderson's account, and in the gold account ; I was very particular in going over these accounts ; the difference between Exhibit C 8 and my account in Anderson's account,
 20 is about \$15,000 ; I didn't find out where the difference consisted ; in making out Mr. Anderson's account, I made an estimate of what stocks were worth on the 8th of March, 1864 ; a different estimate of making up the account might make the whole difference in the amount ; I reside at Orange now, I have lived there about two years ; I live two or three blocks from Mr. Geo. Kirtland ; I have not had considerable conversation with him about these accounts ; he did not assist me in ascertaining the price of stocks on the 8th of March, 1864 ; Mr. Geo. Kirtland
 30 did not specify the kind of credit Mr. Anderson had on the 8th of March, 1864 ; I think I. B. Kirtland, president, is an uncle of Geo. Kirtland ; I know nothing of the credit of D. W. Fenton or of J. H. Antwerp in March, 1864 ; Mr. Kirtland did not tell me that they lost the amount of \$156,000 of Anderson's account ; he told me that they did not ; he told me some time between this and last October ; Mr. Kirtland did not tell me that they did not lose anything by Mr. Anderson ; I asked them if they had security, and he said they did have for a part.

40

Re-direct-examination :

Q. Wasn't what Mr. Kirtland said to you this: that he did not think Mr. Anderson's account bad?

A. That was not his reply; his reply was that he didn't think the balance of his indebtedness would consume his capital; that he held collateral from Mr. Anderson, but what amount he never stated. 10

Q. In examining these books, did you not check off all the items from the cash-book to the ledger?

A. No, sir; he called off the items from the ledger; the ledgers are itemized, which is an unusual thing in stock-books, and I took them down on paper; in some cases I know they were correctly called; in others I don't, but I took it for granted they were; I made up the price of stocks on the 8th of March, from a written list furnished me with which my own knowledge accorded; I also examined Exhibit No. 8, and found that my prices and that 20 agreed.

Re-cross-examination:

I don't mean to say that, from my own recollecting, I could tell the prices of stocks on the 8th of March, 1864; Mr. Anderson's account was both long and short of stocks, and if his account had been closed on the 8th of March, 1864, by purchase and sale of stocks at the market value, his account would have shown the indebtedness as set forth in that statement. 30

Re-direct-examination:

I had a general idea of the value of stocks and the prices on the list furnished me accorded with that idea.

Re-cross-examination:

I don't remember what Terre Haute and Alton sold for on the 8th of March, 1864, or Cumberland, or Michigan Southern, or New York Central, or Erie, Cleveland & 40 Pittsburg, or Michigan Central, Toledo & Wabash, or

Rock Island; I think gold, that day, was about 260; no, 160.

Re-direct-examination :

I remember Rock Island and New York Central were
 10 above par, and I think Erie was; I think Erie was 112; I
 may be mistaken; no, 118; I have a general idea that
 Rock Island, New York Central and Erie were above
 par, and that Prairie du Chien and Canton were below
 par.

Re-cross-examination :

I can't tax my memory as to what other stocks were
 below par; I can't remember just now any other that
 were above; I think Harlem was 119; I am not sure; I
 think Fort Wayne was above par; can't remember ex-
 20 actly.

W. M. LEWIS.

Sworn and subscribed before me, May 6, 1871, at
 Jersey City.

GEORGE KIRTLAND, being already sworn in the cause
 for the complainants, was re-called for the defendants :

Q. State the circumstances under which you father-in-
 30 law, M. O. Halsted, conveyed the real estate mentioned
 in suit to your wife ?

A. I paid him \$20,000 cash, and he charged my wife
 \$5,000 on account on his books; he kept an account with
 all his children of money he advanced them, or property
 he gave them.

Q. Who made the arrangement with Mr. Halsted for
 the purchase of this place ?

A. I can't say about that; my wife, Mr. Halsted and
 myself talked about it very little.

40 Q. At that time what was your belief in regard to
 your own solvency and that of Kirtland & Co. ?

A. That we were perfectly solvent ; that we were worth money.

Q. When did you first begin to fear the contrary ?

A. In November, 1864.

Q. You say you paid Mr. Halsted \$20,000 cash ; did you afterwards receive from him and use in your firm a like amount—if yea, state the circumstance ? ¹⁰

A. Yes, I received the same amount and the same check back again ; he said he had no use for it, and I put it in the concern to his credit.

Q. Was that done ?

A. That was done ; yes.

Q. When ?

A. I took over the check one night and brought it back the next morning, and gave credit in the books for it. ²⁰

I gave him a check for the money and credited it on the account ; some time afterwards he wanted some U. S. Bonds, which I furnished him, and sometime after that he wished some more, making in all \$20,000 ; the books show the dates of these transactions.

These bonds came back into my possession, a part of them ; I don't know but all ; I used some of them in the regular business way, perhaps all, I don't recollect ; after the firm failed my wife mortgaged the place for \$14,000 to Mr. Halsted, on which I returned him \$10,000 in bonds which we had of him at the time we failed ; also paid him 200 shares of stock ; sold him stock worth \$1,000. ³⁰

The money on the mortgage came to us in part money and part stock.

This mortgage represented \$14,000 in cash, which my wife got of her father ; it went part to pay him back \$10,000 in bonds, \$1,000 in stock, and the balance went to pay other debts of Kirtland & Co. ; the bonds and the amount of the stock were due Mr. Halsted from Kirtland & Co.

After this there was more money got from Mr. Halsted, and applied to pay the debts of Kirtland & Co. ; ⁴⁰

Settled

the place was mortgaged to him for \$6,000, which amount he advanced; this money went to redeem seventeen \$1,000 Tennessee bonds, which were due from Kirtland & Co.; it went to pay a debt of theirs.

The purchase of this property was a *bona fide* purchase of my wife's; my wife has since paid the taxes and
 10 expenses on the property, and paid it from her own money.

Part of this property has been sold since these mortgages were made; my wife has had part of the proceeds of the sale, and part of it has gone to lessen the amount of the mortgages; there was one payment of \$4,000 paid on the mortgage by my wife, which came from her father's estate; one payment, I think, of \$5,000, which came from a piece of property which she sold, I think, to Baldwin & Lyman; I think there was \$4,000, which
 20 came from property sold to Charles Day; these were paid on the mortgages; they were paid on the \$6,000 mortgage, and the balance on the \$14,000.

Q. The mortgage is stated to have been given by Charles R. Day for \$9,000, or some such sum; what became of that mortgage?

A. That mortgage is paid.

E. H. Hall and Richard Mumford, bookkeepers, kept the books of our firm.

On the 1st of July, 1864, the complainants owed us
 30 \$1,303 80.

Sometimes Lewis would call off the name of the stock, and the number of shares, and I would put it down on blank paper; at other times I would call it off and he would put it down; whenever I would call off, I would call off correctly to the best of my knowledge.

I footed up some of the columns after him, that is all; I gave him a copy of the New York Stock Exchange Price List; it was a correct list; that is, it had on the
 40 highest and the lowest prices.

He procured no information that I know of, of the se-

curities held for margin ; that does not show on the books.

Exhibit D 3, being shown the witness, he says, that is the receipt for seventeen \$1,000 Tennessee bonds given to William Fellows for account of Saffarans & Stratton's estate ; the place was mortgaged for \$6,000 to procure those seventeen \$1,000 Tennessee bonds which Kirtland 10 & Co. owed to Saffaran & Stratton.

There was an account of \$2,288 79 paid to J. L. Brownell, paid out of the proceeds of the \$14,000.

Of the \$20,000 charged to me in the books of the firm, and which went to the credit of M. O. Halsted, the following sums came back from him and were used to pay creditors of the firm :

\$10,000 00 in U. S. Bonds, to Mr. Halsted.

991 21 to Mr. Halsted.

6,000 00 to Saffarans & Stratton.

2,288 79 to J. L. Brownell.

20

Settled

Then there was small amounts of \$50 and \$100 paid to different people, which I have no memorandum of.

All of the money that I took from the firm to pay for that property went back to it ; some of it, I think the day before the date of the first mortgage ; the book states, November 21, 1864, and the amount \$10,000 ; the payment to Brownell I do not know the date of ; I think it was in November ; I do not know when Mr. 30 Halsted charged my wife with \$5,000, as an advance for the homestead ; he was to do it at the time the property was bought.

And being cross-examined, he says :

The book in which the date of November 21st, 1864, is given, to which I referred above, has not been offered in evidence ; it is called the collection register.

I brought that book here ; I got it from my brother 40 Thomas ; he lives in Orange when he is at home ; I can't

state exactly when I got it from him ; some time last fall ; when he was in business he had it in use himself ; it was only partly used by Kirtland & Co. ; it was not exhibited here because it is not a cash-book or a ledger, either.

I turned to that book to find out the date when the \$10,000 U. S. bonds were returned to Mr. Halsted ; I presume I returned them myself.

I don't recollect whether the Sheriff seized the books the day after that entry was made ; he may have seized them that day, or the day after ; I think the mortgage is dated November 24th ; I can't state now where I got the bonds that I returned to Mr. Halstead ; I think the same identical bonds were given him that I got from him.

The entries in the book under date of November 21st, 1864, are in the handwriting of Morris R. King.

Part of the time I suppose these bonds had been in our safe, and part of the time pledged for borrowed money.

I cannot tell how long those bonds were in the possession of Mr. Halsted ; I was carrying bonds over to him and bringing them back every month.

When our dealers deposited securities with us for margins we generally made entries of them in our books ; we did not enter them in the ledger ; sometimes we would enter them on this collection register ; and sometimes in another memorandum book ; that memorandum book in which those entries were made has not been produced in this case ; I told you there were three books altogether where those entries were made ; the book I produced today is one of them ; I have one of the others ; and the third I don't know where it is ; the one I have is here, but has not been exhibited ; I will produce that book.

Upon request, the witness produces the book ; it is called a memorandum book ; it was not produced when the books were called for, because it was not a cash-book, a ledger, or a stock-book.

Q. Have you not said in your examination that the assignee had all the books of Kirtland & Co. ?

I presume I have; I do not consider this a book of Kirtland & Co., nor that book a book of Kirtland & Co.

I do not consider the two books I have produced here to-day as cash-books or ledgers.

These books were not in the hands of the assignee that I know of.

I am willing to exhibit these books. 10

Both books are here offered and made Exhibits by the defendants, and marked Exhibits D 4 and D 5 for defendants.

On March 8, 1864, I held securities of Anderson—\$7,140 in gold, and an order on Watts, Crane & Co., amounting to about \$30,000; the order was not accepted and paid by them; I did not buy that gold for Anderson that I recollect of; I think he brought it in the office himself; I 20 know he did part of it.

I think there was something else Anderson left as security, but I haven't fixed it up yet; the gold is entered in Exhibit D 5, but the order is not; I don't know what became of the order.

There is no entry of that order in any of our books that I know of.

I can't tell why I recollect that order; I recollect a great many things but I can't tell the reason why; I do not know that the firm disposed of that order; they may 30 have lost it; I discovered the loss a long while ago; Watts, Crane & Co. were first-rate then; I have made efforts to find that order; I have looked all through our papers that I came across, and all through the papers down at the assignee's; Anderson was the drawer of the order; it was payable upon the sale of certain lots of cotton; I don't recollect what the date of it was; it was not accepted by Watts, Crane & Co.

Watts, Crane & Co. held the cotton, and they knew we held the draft for certain proceeds of the cotton; I 40 know they knew it, because I talked with them about it;

never asked them to accept it; I only talked with them about it.

It must have been with Mr. Crane or Mr. Flynn with whom I talked about it; I think I talked with both.

10 I can't recollect when I talked with them about it; our concern understood that we were to have the money when the cotton was sold; I understood that from Anderson and from one of Watts, Crane & Co.'s folks; I did not ask them to accept it, because I did not suppose they would accept it; it was not drawn in a way to accept it.

Whereupon the examination was adjourned to Monday, May 8, 1871, at eleven o'clock in the forenoon, at the same place.

20 At which time and place the examination was resumed, in the presence of the counsel of the respective parties.

I could not tell you when the \$7,140 in gold was received from S. M. Anderson; some of it as soon as the account was opened.

I cannot tell for certain as to the date of the 8th of March, what securities we had belonging to Van Antwerp, we had some U. S. bonds belonging to him.

I couldn't state where these bonds were entered; they ought to be on the collection register; I don't know now what became of these bonds; I am not positive as to what amount of bonds; there were either \$5,000 or \$7-500; I do not recollect that I returned them to Van Antwerp; I do not know that I ever gave him credit for them on the ledger; I don't think I did.

I couldn't tell now what securities other than those in the ledger I had belonging to E. Washburn; I think there was something, though, that ought to be entered on the collection register; I don't know whether it was or not.

40 I couldn't state what the amount of that security was; I think it was an obligation of some kind I had from him;

but I can't distinctly state now what it was ; it was not his own obligation, it was drawn by somebody else ; I don't remember now.

I do not now recollect by whom it was drawn.

It was given after he opened his account and before he ran in debt.

I don't think anything was ever collected from that. 10

On the 8th of March, 1864, I had securities of D. W. Fenton other than those entered in the ledger ; they were Mobile and Ohio bonds ; there were several of those ; I don't know how many ; they were \$1,000 bonds in American currency ; also, Syracuse and Binghampton railroad bonds, and Importers' and Traders' Fire Insurance stock ; I think there were three or four \$1,000 Syracuse and Binghampton bonds, and thirty or fifty shares of Traders' and Importers' Insurance stock.

I don't know or recollect whether they were entered or 20 not ; I believe I sold everything except one Mobile and Ohio bond.

There were no proceeds ever entered except the proceeds of thirty shares of Importers' & Traders' Insurance stock ; this was entered in the ledger to the credit of D. W. Fenton ; it was after the 8th of March, 1864, though. There were four coupons of the bonds of the Syracuse and Binghampton railroad entered, so I suppose there must have been four bonds.

I suppose the proceeds of the securities went to pay 30 the debts of Kirtland & Co. ; I don't recollect where they went ; they never went to my benefit.

The assignee got the one Ohio and Mobile bond, at least he says he did ; I don't know whether he did or not.

I do not know that there is any entry on any of these books that will show when any of these securities were sold.

I did not on the 8th of March, 1864, have any securities of L. Myers, Jr., except those entered on the ledger ; L. 40 Myers, Jr.'s account was my individual account—a specu-

lative account; the firm of Kirtland & Co. owed L. Myers money instead of L. Myers owing them money.

The amount that Kirtland & Co. owed L. Myers is shown by Exhibit D 2.

10 I don't think we had any securities of W. Oppenheim on the 8th of March, other than those entered on the ledger; there may have been a certificate of deposit in the United States Trust Company for \$2,500; that certificate wouldn't be entered at all; I couldn't state now what became of it, it is so long ago.

I do not recollect what became of the \$7,140 in Anderson gold; it may have been sold.

I don't know whether it was ever credited on his account in the ledger.

20 I couldn't state whether the assets of Kirtland & Company, when seized by the Sheriff, were sufficient to pay fifty cents on the dollar, if properly used.

I don't recollect that I ever stated that we had assets enough to have got through—I may have.

The assignment made by Kirtland & Co. was spoken of before it was made.

We understood when the assignment was made that we would then be allowed to go on and do business; afterwards we found ourselves no better off than at first.

30 I couldn't tell you whether these securities of Anderson, Van Antwerp, Washburn, Fenton, Meyers, Jr., and Oppenheim, which were in my possession March 8th, 1864, were in my possession January 1st, 1864; I don't know anything about it, securities were apt to be changed in two or three months time.

I don't recollect now to whom I paid the \$6,000 in November, 1865, to redeem the seventeen \$1,000 Tennessee bonds; Hammon & Jerome had the bonds at one time; Leonard W. Jerome & Co. had them, then Fenner,
40 Bennet and Bowman had them; I don't know who had them last.

The memorandum against the entry of these bonds in the collection register is in the handwriting of John Kirtland; the memorandum, "\$3 45 balance due," I suppose, is the correct statement; that was the amount on the book as due us from Saffarans & Stratton, that is all they paid us; Mr. Fellows did not pay us \$2,874 84 when we gave him those bonds.

10

I couldn't tell you whether on the 1st of July, 1864, Kirtland & Co. had any securities belonging to W. S. Wheeler not entered on the ledger; I do not remember whether I examined the collection register to ascertain whether they did or did not before I swore to my answer.

Q. Explain the entry in collection register on June 24th, 1864, against the name W. S. Wheeler?

A. The entry shows that we received from W S Wheeler, manager, a draft drawn by E. Herrick on Hayden, Gere & Co. at fifteen days sight, payable at New York for \$10,000, marked as returned to Wheeler, July 6th, 1864.

Q. Will you explain the entry on June 30th, 1864?

A. It shows we had a draft on Robinson and Chamberlain for \$625, one day sight, paid July 5th.

Q. Will you explain the entry of June 15th?

A. Draft on J. B. Williston, trustee, \$1,000, ten days sight, paid on the 2d day of July.

Q. If you received the \$10,000 draft on the 24th of June, at fifteen days sight, and it was not accepted, why did you hold it until July 6th?

A. I do not recollect, it is seven years ago.

Q. How did the account of the Jackson Insurance Company stand on the 14th of November, 1864, at the close of business?

A. Credit \$192 63.

Q. How did that amount increase to \$181,689 74, the amount of the judgment taken against you January 6th, 1865?

A. One item of \$100,000 was borrowed from them and credited to their account November 16th, 1864; \$7,000

from Gartinwaite, Stewart and Lewis was credited to them; \$5,000 of J. T. Coleman & Co., and \$7,500 and odd dollars from Halsted, Haines & Co.; I don't know anything about the balance.

10 I believed we owed the Jackson Insurance Company more than the amount in that ledger; that additional amount may be on the collection register; I don't know where it was.

Q. Where is the book of original entries in which are the items making up the sum total entered on line 6, p. 141 Exhibit C 5.

A. I don't know; I suppose the assignee has it.

Q. Without that book can you tell what became of that draft of \$10,000 received the 24th of June, 1864?

20 A. It is marked on the collection register, where the entry is made, as being returned to Wheeler; that is all I know about it.

And being again examined in chief, he says:

Q. You have been asked about the Anderson account, have you anything further to say about that; was he interested in other accounts?

30 A. He was interested in some other accounts; the account of Mrs. Anderson was his individual account; the account in the name of Sumner he was partner in; that is all I believe that he was interested in; those two accounts amounted to about \$10,000 credit.

Q. In relation to the L. Meyer's account, you call that your speculative account; what do you mean by that?

A. That is an account of my own put in the name of L. Meyers, Jr., with his consent; it shows a profit to me of \$2,830.

40 The account of J. Martin & Co., is a speculative account of Kirtland & Co., and shows a credit of \$500; accounts are kept in this way because people don't like to have their own account in their own ledgers.

The account of C. Kirtland is a speculative account, and shows a profit of \$3,800 to C. Kirtland; that \$500 of Weaver & Sterry was credited to profits.

When my wife bought this property of M. O. Halsted, part of the consideration was a check of \$20,000 of Kirtland & Co.

That check I gave to Mr. Halsted, and the next day 10 he returned it to me.

Then I credited him in the books of the firm the same as if he was a depositor; he was.

After that he wished some U. S. bonds in the first place, I think, \$12,000; I got him those bonds.

After that there were other bonds got, to the amount of the balance of the \$20,000; I got these bonds and gave them to him.

Some of these bonds were placed in his hands shortly after the 8th of March 1864, and the rest in a month or 20 so.

Mr. Halsted gave us back the bonds right after he bought them; we gave him nothing in exchange for them he just left them in the office; you might call it borrowing them; at the time of our failure all the bonds had been returned to him except \$10,000; this amount of \$10,000, we still owed him in connection with that transaction; the mortgage for \$14,000 was for money got from him with which we redeemed and returned to him the ten \$1,000 U. S. bonds; the \$4,000 balance we got in money; 30 we owed him a balance of \$991 on another transaction; he preferred to take 200 shares of stock, which I bought for him out of the money and gave to him.

The balance went to pay the debts of Kirtland & Co.; one debt to J. L. B. Brownell; there was a few hundred dollars left which went to pay some small debts of the concern.

For the mortgage of \$6,000 we got money from Mr. Halsted; with that money we redeemed 17 \$1,000 Tennessee Bonds, which were returned to Saffarans & Stratton 40 owed them by Kirtland & Co.

Settled

And being again cross-examined, he says :

I don't recollect from whom we got the \$10,000 in U. S. bonds returned to Mr. Halsted, whether we bought them in the street or returned him the same bonds; I do not recollect; they were one lot; I mean that we gave
10 him back \$10,000 at one time.

GEO. KIRTLAND.

Sworn and subscribed befor me, May 8, 1871, at Jersey City,

ISAAC ROMAINE,

Master in Chancery.

And thereupon the examination was further adjoured
20 to Monday, May 22, 1871, at ten o'clock, A. M., at the same place.

At which time and place the examination was resumed in the presence of Courtlandt Parker, of counsel with the defendants, and of Stephen W. Whitney, on the part of the complainants.

EMILY G. KIRTLAND, a witness produced on the part of the defendants, being duly sworn, on her oath saith :

30 I am the wife of George Kirtland, and am one of the defendants in this suit.

I am the daughter of Matthias O. Halsted, deceased; I was married the 3d of September, 1863; at the time of my marriage I was living on Main street, Orange, in the old homestead, with the family of my father; I continued to live there after my marriage; this property had been offered for sale by my father for four or five years before I married; it had been offered for sale at \$25,000; I
40 knew it was for sale before my marriage because my father told me so, and I had heard him tell other people

so; other people had been looking at it with a view to purchase more than once; it continued for sale after my marriage, with no difference in the price; the fact of its being for sale was generally known; I purchased it from my father; I wanted a house, and I felt attached to that place because I had been born there, and it always was my home, that is why I came to buy it; I proposed the purchase to Mr. Kirtland and to my father; I bargained with my father about it; I was to pay \$25,000 for the place; I was to pay \$20,000 in cash, and \$5,000 he was to give me as part of my share of his estate; my father had made advances to others of his children—he had given each of them a house, and had charged these as advancements to them. 10

The arrangement I speak of was carried out between me and my father; I got the \$20,000 cash from Mr. Kirtland, my husband; that was given to my father in a cheque, I think; I was present when the deed was delivered and the arrangement concluded; the \$5,000 was charged to me by my father in the book in which he kept his accounts, and at his death it was deducted from my share of his estate. 20

It was so charged in his book about the time the deed was delivered; I don't remember the date exactly; I saw my father make the charge, that is, I saw him write it down.

My father kept the book in which that charge was made, among his private papers down to the time of his death, when it was handed to his executors, and Mr. Bowers now has it, who has principal charge of the estate. 30

The object of my father in selling the property was because he was an old man, and this was too great a care for him; this is what he said; at the time of my making this purchase; I had no idea of my husband being likely to fail in business—none whatever.

I supposed my husband, pecuniarily, was very well off indeed, doing a good business and making a great deal of money. 40

Settled

So far as I knew his idea, of this then situation, was the same.

I derived my information as to my husband's wealth, some from him and some from other business men in New York.

I regarded this \$20,000 from my husband as a present.

- 10 I first learned that my husband was not solvent the day before he failed; he came home and told me that unless he received some money by mail, which he expected, he should have to fail the next day; that was the first knowledge I had of it.

- 20 My father and I talked over this purchase about two months I should think before it was complete; I talked with him myself frequently about it; I lived with him until I bought the place; after that he lived with me; my father paid me board for himself and my mother while he lived with me up to the time of Mr. Kirtland's failure; after that he paid half the expense of the family until he died; he died June 15th, 1866.

After the purchase, I paid all the taxes, repairs and charges that were upon that real estate; since my father's death and now I pay those charges out of my separate estate.

- 30 After my husband's failure the place was mortgaged for \$14,000 first, and afterwards for \$6,000; these two amounts represented the \$20,000 that had been received by me.

This money was raised for the purpose of giving Mr. Kirtland the money to pay some part of the debts his firm owed; that was understood by me at the time.

- 40 I know that Mr. Kirtland paid my father \$10,000 in bonds that he owed him; I know that the \$6,000 was paid to another of Mr. Kirtland's creditors—I do not remember the name; Saffarans, I think, is the name; I was not present when the proceeds of the mortgages were obtained; I signed the mortgage, and gave it to my husband to use, with the distinct understanding of using it to pay my husband's debts to the extent of

\$20,000 ; I have laid out money on the property since I owned it in repairs and some improvements ; this was done all along ; no great part of it was done at one time ; I had it all painted when I bought it ; in making the statement above about paying the charges I did not state what is the fact, that I paid the interest on these mortgages. 10

EMILY G. KIRTLAND.

Taken, sworn to and subscribed, this 22d day of May, A. D., 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

And thereupon, the cross-examination of this witness was adjourned to a day to be agreed upon by the counsel of the respective parties.

In the meanwhile the examination of the witnesses, Crane, Myers, Slingerland, Kirk, George Kirtland, 20
Bowers, John Kirtland, Bennett and Fellows, was taken and concluded, Saturday, July 8, 1871, at ten o'clock, A. M., having been fixed by counsel for the cross-examination of the witness, Mrs. Emily G. Kirtland, the same was taken up on that day and concluded.

And, being cross-examined, she says :

Q. In your answer you say you have made expenditures, and paid the interest on the mortgages out of the separate estate received from your father. What was the amount of this separate estate, and when received? 30

A. It was about \$20,000. I don't remember the dates of the times it was received. It was received in amounts as my father's estate was divided by the executors of my father's estate, from time to time.

Q. Did you pay the interest on the \$14,000 mortgage from its date, November 24th, 1864, and if you did, to whom?

A. I did not; I had an understanding with my father that if I would keep that place as he lived, so that he might live there with me, he would give me the interest 40
on the mortgage and pay half the expense of living.

Settled

Q. Was the same arrangement made with regard to the payment of the interest on the \$6,000 mortgage?

A. It was.

Q. Did you, yourself, pay all expenditures that were made in keeping up the property.

A. I did.

10 Q. When you purchased the house and lot was the furniture included?

A. I don't remember whether it was included, or whether my father gave it to me.

Q. Can you tell what value was put upon the furniture?

A. I cannot.

Q. About what value?

A. I have no idea.

Q. Did you loan a \$1,000 bond of the Pittsburg and
20 Steubenville Railroad Company to Thomas T. Kirtland, about March 13th, 1865?

Objected to as irrelevant, and no part of the cross-examination.

A. I did not, not myself.

Q. Who did?

A. I don't know.

Q. Did you own such a bond?

A. I don't think I did.

Q. Who furnished the money to pay for the ex-
30 penditures on the premises, prior to your father's death?

A. When I bought it my father painted it throughout, and put it in perfect order, after that, I think there were no expenditures before his death; no improvements.

Q. Can you tell the amount, in value, of the improvements your father put upon the property?

A. I cannot.

Q. Do you know the fact that you were charged in your father's books, in April 1864, with \$5,000?

A. I do. I saw him charge it.

40 Q. Did he pay any part of it in money?

A. No.

led

Q. Why was the charge made?

A. I don't know.

Q. Do you not know why your father charged you with that \$5,000?

A. I don't quite understand the question. I said in my testimony that, when I bought the place of my father, I was to pay him \$25,000—\$20,000 in cash, and \$5,000 was to be charged to me as part of my share of his estate. That is all I know of the \$5,000 charge.

Q. Was the house furnished when your father gave you a deed for it?

A. It was.

Q. By whom?

A. It had furniture in it that my father had owned ever since he kept house—forty years.

Q. Why did not your husband pay the full amount of \$25,000 to your father for the house, but leave \$5,000 to be charged against you?

A. Because my father had given each of his other children places and charged them to them, and, as he didn't wish to give me the whole amount of \$25,000, he proposed to give me a part of it, namely, \$5,000.

Q. With the furniture, did your father give you horses, carriage or farming utensils?

A. He did not; only the furniture.

Witness, on the evidence being read over to her says, "I made a mistake there; Mr. Williamson asked me "why was the charge made;" he asked me before if I knew it was charged in April.' I understood his question to be: 'Why was the charge in May,' and I find he said: 'Why was the charge made.'"

And, being again examined in chief, she says:

Q. Has any part of either of these mortgages for \$14,000 and \$6,000 been paid by you out of your separate estate, and if yea how much, and about when?

A. It has; I paid \$4,000, but I can't tell when without reference; it was more than a year after my father died; it was long before this suit.

Settles

Q. Did you not pay beside money you received from Baldwin and Lyman, and Charles R. Day?

A. I did.

Q. About how much?

A. \$5,000 from Baldwin and Lyman, and \$4,000 from Charles R. Day.

10 Q. About what time were those payments?

A. They were all before this suit was commenced.

then
 Taken, sworn to and subscribed this Eighth day of July, A. D., 1871, at Jersey City, before me,
 } EMILY G. KIRTLAND.

ISAAC ROMAINE, Master in Chancery.

And, thereupon, the counsel for the defendants declared the testimony on their part closed.

20

A. S. JACKSON, Master.

LIST OF WITNESSES.

1. George W. Bowers, page 47
2. William L. Lewis, " 50
3. George Kirtland, " 56
4. Emily G. Kirtland, " 68

In Chancery of New Jersey.

Between

WILLIAM S. WHEELER and DUFF
GREEN,

Complainants

and

GEORGE KIRTLAND, EMILY G. KIRTLAND, JOHN KIRTLAND, ENOS J. HALSTED, GEORGE W. BOWERS & CHARLES W. WILEY, executors of M. O. HALSTED, dec'd,

Defendants.

Complainants
rebutting testi-
mony, June 17
1871.

10

The above day having been fixed by the counsel of the respective parties for a continuation of the examination in this cause, the same was proceeded with, in the presence of the counsel of respective parties.

ISAAC A. CRANE, a witness produced on the part of the complainants, Wheeler and Green, being duly sworn on his oath saith. In March 1864, I was a member of the firm of Watts Crane & Co. On the 1st of March 1864,²⁰ I don't think we had any cotton belonging to S. M. Anderson. During the months of March and April, we received sixty-three bales of cotton; we sold them, principally in April and May; April, May and June. S. M. Anderson drew on us for more than the proceeds of the cotton before it was sold; those drafts were paid; three of them were paid. I don't know if he drew any more on us or not; there was one of \$6,900, one of \$3,600, and one of \$7,378.56. I do not remember, that in the month of March 1864, we agreed with Kirtland & Co.,³⁰ to pay any part of the proceeds of Anderson's cotton to

them; the drafts on us amounted to about \$3,000 more than the proceeds of the cotton and amounted to \$17,878.56. I have no recollection that we at any time agreed to pay to Kirtland & Co any part of the proceeds of that cotton. I did not at that time have a partner named Flynn, or an employee of that name.

- 10 And being cross-examined he says: The names of my partners from February to May, 1864, were David Watts, D. A. Given, W. G. Brown, Henry F. Given, W. C. Watts. About that time we had a cashier named Quinn; our business was a very large one.

I. A. CRANE.

Taken, sworn to, and subscribed this 17th day of June A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE. Master in Chancery.

20

JOSEPH M. MEYERS, a witness produced on the part of the complainants, Wheeler and Green, being duly sworn on his oath saith. November 10th 1864, I was a partner with I. B. Kirtland, in Memphis; the name of the firm was, "The Jackson Insurance Company"; I think at that time, the amount of capital was \$50,000; Kirtland had three quarters interest to my one, about that; mine was a quarter interest.

Jos. M. MYERS.

- 30 This testimony objected to, as irrelevant, and not in rebuttal.

Taken, sworn to, and subscribed this 17th day of June A. D. 1871, at Jersey City, before me.

ISAAC ROMAINE, Master in Chancery.

WILLIAM A. SLINGERLAND, a witness produced on the part of the complainants, Wheeler and Greene, being duly sworn on his oath, saith:

- 40 November 10th, 1865, I was a partner of Leonard W. Jerome.

I can't say whether on that day Kirtland & Co. redeemed from us, 17 Tennessee Bonds of \$1,000 each; I remember the fact of their failure; I can't say whether they did in twelve months after their failure, redeem 17 Tennessee Bonds of \$1,000 each, or any part thereof.

In November, 1865, the firm of Harriman & Jerome were not in existence.

I remember at one time we had some Tennessee Bonds¹⁰ of Kirtland & Co., when, I can't say, and how many, I can't say; I think it was before the failure of Kirtland & Co.; they may have been redeemed at about the time of their failure, or after.

I do not think we carried for them for ten months after their failure, any Tennessee Bonds.

W. A. SLINGERLAND,

Taken sworn to and subscribed this 17th day of June, 20
A. D., 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

WILLIAM H. KIRK, a witness produced on the part of the complainants Wheeler and Greene, being duly sworn on his oath, saith:

I was a builder in 1856; I built a house and barn for John Kirtland that year; I took the figures from our ledger and find that the whole cost was \$8,423.85.

There were two payments made up to and including October 1st, 1856, amounting to \$3,000. June 12, I received \$1,500, August 9, I received \$1,500, and October 2d, I received \$1,500, these are the only payments I received up to that date.

And being Cross-Examined, he says:

Oct. 2d, I received \$1,500; November 2d, I received \$1,500; November 13th, \$1,500; December 20th, \$2,000; by a note of 20 days, that is all the money I have any account of.

WM. H. KIRK. 40

Taken sworn to and subscribed this 17th day of June
A. D., 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

GEORGE KIRTLAND, a witness heretofore produced and
10 sworn, being recalled on the part of the complainants
Wheeler and Green, saith :

Being shown memorandum book, says : in the last page
the words " In I B, K's letter of November 24, '63, he
says : this coin is for his account.

" Total amount of J. J. Polk's gold deposited Septem-
ber 11, \$43,016.18" is in John C. Kirtlands handwriting,
I believe.

I don't know whether this amount was credited to I. B.
Kirtland.

20 Witness being shown a book purporting to be a memo-
randum book of Kirtland & Co., says, this is not the
third memorandum book I referred to when I produced
Exhibits D 4 and D 5.

I don't know what book this is at all, the first twenty
pages are in my fathers handwriting ; in the latter part
of the book the handwriting is E. R. Halls, who was a
bookkeeper of Kirtland & Co, the last page is in my hand-
writing.

I have no recollection what book this is.

30 The said book is offered in evidence and marked *Exhi-
bit C 12*, for complainants.

I have had a conversation this week with Mr. Bennett
of the firm of Fenner, Bennett & Bowman. I do think the
conversation was in reference to redeeming 17 Tennessee
Bonds of \$1,000 each in November, 1865.

After December, 1864, I don't think we had any bonds
or stocks.

I have the present week had some conversation with
Henry Bennett, respecting the fact, I said to him, I did
40 not think we had any bonds or stocks in their hands after
December 6th, 1864 ; I don't think we had any.

Witness being shown a paper, says : I think that is in E. R. Hall's handwriting.

And being Cross-Examined, he says :

I can't say positively now, from whom we redeemed the bonds we returned to Saffaran and Stratton, we re-10 deemed them from somebody.

I think these bonds were in deposit with Jerome, Riggs & Co.

I know that the concern of Jerome & Riggs, after we failed, called in that loan, and I went down and saw Mr. Slingerland ; told him I did not want to pay the loan ; he told me if I would go out and borrow for their concern some money, either \$100,000 or \$150,000, the loan could stand ; I tried, but did not do it, but the loan did stand It was paid up to them afterwards, but I do not recollect 20 where it was placed.

Q. Tell us what you know about this last book which has been shown you by the complainant.

I don't know anything about it.

It is not a cash book or anything that pertains to a cash book ; I don't understand what it was made for ; it isn't even a memorandum book ; it isn't complete in any part ; I can't tell why the entries in my handwriting are there, the same entries are on the cash book ; it is hardly a casual memorandum book ; I don't recollect of seeing it before ; I must have seen it when the entries in my handwriting were made. 30

And being again Cross-Examined, he says :

I don't know anything about the gold account of the Jackson Insurance Company ; if there is an account, it is in another book ; I don't remember that we had any gold of them, except in bags ; they did not check on us for any gold.

Hall was one of our bookkeepers at the date of that 40 account.

I have no recollection of the transaction, the accounts of which is in my handwriting; I have not the slightest recollection of seeing that book in the Assignees hands; I do not recollect the book at all.

And being again Cross-Examined, he says:

10

Mr. Hall is now in New York, in the employ of Paris & Allen.

GEO. KIRTLAND.

Taken sworn to and subscribed this 17th day of June, A. D., 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

20 GEORGE W. BOWERS, a witness heretofore produced and sworn, being recalled on the part of the complainants Wheeler and Green, saith:

The deed to my wife, referred to on page 25 of *Exhibit D 1*, is dated July 25th, 1864; the consideration expressed in that deed, is \$8,500—I am mistaken about that, it is "\$1,00 and natural affection."

All the property I know of having been sold that year by Mr. Halsted, was the place sold to his daughter Emily and about 20 acres of the 40 which was sold to Wiley & Wade, the remaining 20 acres was sold by the executors
30 the consideration to Wiley & Wade was \$14,900, I think.

The bond secured by the mortgage was signed, but I don't know whether it was signed by both Emily and George, or not.

And being Cross-Examined, he says:

The deed is not on the usual blank, but is written out in full and is in Mr. Halsted's handwriting in full; I noticed the other day for the first time, the space for the date was left blank, and was filled in, in Mr. Halsted's
40 handwriting, July 25th; it is in different ink. It was contemplated that the property should be conveyed to

Mrs. Bowers as far back as December, 1858; the house was built for her in 1859. On pages 31, 32, 35, 36, 37 & 38, appear entries of advances by Mr. Halsted to his respective children; all bearing date, April, 1864; I will make copies of these pages for you; I knew nothing of these entries until after Mr. Halsted's death.

G. W. BOWERS.

10

Settled

Taken sworn to and subscribed this 17th day of June, A. D.; 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

JOHN KIRTLAND, a witness heretofore produced and sworn, being recalled on the part of the complainants Wheeler and Greene, says: 20

In *Exhibit D 4*, 5676, is the number of a draft received by Kirtland & Company, for the credit of W. S. Wheeler, June 24th, 1864.

The draft shown me is the one referred to. The handwriting on the back, "Received Payment Kirtland & Co.," is mine.

I can't say that draft was paid to me; it was paid at the office to some one.

When I executed the trust deed to George W. for \$7.500; I can't tell if the Sheriff had seized the books in New York; Thomas T. was my son, he was in business alone, in New York; he was in the office where Kirtland & Co were from the last of February, 1865, to the first of May; George and I were there because we had no other place to go, and had desks there.

The latter part of *exhibit D 4*, is part in my handwriting, and part in George's; after Thomas left, George and I kept on collecting, and then we kept the book as our own, in Thomas T's name; I think the entries there made, were in Thomas T's name. 40

In the business, which was done in Thomas T's name, as I recollect it was a draw game; during this time, Thomas T. was in New York more or less, all the time; I don't know any other reason for George and I continuing the business in Thomas T's name, than because it was commenced in his name and we did not think it worth while
 10 to change; I don't know where Thomas is now, he went away last September.

The only other book of Thomas Kirtland's I know anything about was the cash book, I don't know where it is; I saw it a few days ago in New York; I saw it at 19 New Street, at Mr. Pearl's office; he is a banker; the book was left in there, expecting to carry the books home; I left it there; I have carried it home since, I expect it is home now.

Witness being shown Exhibit C 12, says; I should say
 20 I have seen that book before; the accounts of the Jackson Insurance Company is in Mr. Hall's hand writing; I don't know anything about it.

Witness being shown a paper, dated Nov. 21st, 1864, purporting to be a memorandum of southern coin belonging to Jackson Insurance Company, says, that is in the handwriting of Mr. Hall; the amounts mentioned in the memorandum; I can only say, it says they were turned over to P. M. Meyers that day.

Said memorandum is offered in evidence and marked
 30 Exhibit C 13, on part of complainants.

The draft before referred to is offered in evidence and marked Exhibit C 14, on part of complainants.

I have a book showing the amount of money received from my brother George W. The counsel for the complainants asks for the book.

Counsel for the defendant says he will not refuse to produce the book, for the purpose of showing these entries, but, the same being a private memorandum book, he produces it under protest and only for the purpose of
 40 showing those entries. Said book is offered in evidence, and marked Exhibit C 15, on part of complainants.

Q. Of what did your \$25,000 in property, January 1, 1856, which you have before mentioned, consist.

Question objected to as improper at this time.

It was in money and various stocks ; that is as particular an answer as I can give ; there were some Bank 10 Stocks, some Insurance Stocks and very likely some Railroad Stocks.

And being Cross-examined, he says :

My real estate was included in this \$25,000 ; this business of Thomas Kirtland was collecting notes of merchants ; I don't think there was another transaction on the book.

Q. Just look at the last entry on Exhibit D 5, in reference to J. J. Polk's gold, can you tell us if that was ever 20 credited to I. B. Kirtland ?

I think not.

Q. Why not ?

Simply, because we had no authority from Mr. Polk to do so.

This book, Exhibit C 12, is a casual memorandum book, not a regular book of the firm, simply to keep a little track for the time being, of who bought and sold ; it was not necessary to the business ; I have not seen the book 30 since we failed in 1864.

The items mentioned on Exhibit C 13, were special deposits in our hands, belonging to the Jackson Insurance Company, and when we failed handed over to Mr. Meyers for the Jackson Insurance Company.

And being again examined in chief, he says :

The account in the book last mentioned, shows the true nature of the accounts between the Jackson Insurance Company and Kirtland & Co., and the amounts received 40 and the disposition of them ; these transactions are not

shown, and were not kept in any other books of account.

Not very much of the \$25,000 was made up of real estate; the real-estate was in Orange; I had none anywhere else; my impression is, that real estate ^{would have} was sold for \$5,000 and had no mortgage on it then.

10 *And being again Cross-examined, he says :*

Q. Is the Joseph M. Meyers secretary mentioned in the memorandum of November 21st, 1864, of the Jackson Insurance Company, in exhibit C 12, the same person called and examined as a witness for the complainant to-day?

A. He is.

JOHN KIRTLAND.

20 Taken, sworn to and subscribed this 17th day of June, A. D., 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery

And thereupon the examination was further adjourned to Saturday, June 24, 1871, at ten o'clock, A. M., at the same place.

At which time and place the examination was resumed the presence of the counsel of the respective parties.

HENRY BENNETT, a witness produced on the part of
30 the complainants, being duly sworn, deposes and says :

I reside in the City of New York; in November, 1865 I was a member of the firm of Tenner, Bennet & Bowman and had been a member of that firm for about 8 or 9 years previously.

Kirtland & Co. did not redeem from us any Tennessee Bonds after December 6, 1864; we have no record of such transaction; I think that it was in the early part of November, 1864, when we had our last transaction with Kirtland & Co.; November 6, 1864 was the date of the
40 last loan; this, I consider the close of our transactions with them.

Cross-examination by Mr. Parker.

I have no record of the kind of securities which we had from Kirtland & Co. for loans to them; but I think it is highly probable that we had Tennessee Bonds.

HENRY BENNETT. 10

Taken, sworn and subscribed before me, June 24, 1871,
at Jersey City,

A. S. JACKSON, Master in Chancery, N. J.

WILLIAM FELLOWS, a witness produced on the part of the complainants, being duly sworn, deposes and says :-

I reside in Richmond County, N. Y.

Witness been shown Exhibit D 3 for defendants, pur-²⁰
porting to be a receipt, dated November 6, 1865, for 17
one thousand dollar Tennessee Bonds, is asked :

Q. Are you the person for whom this receipt was signed?

A. Yes sir, it was signed by my son; my son received the bonds, as mentioned in that receipt, for me; at the same time the date of the receipt I paid to Kirtland & Co. \$2,874.84, which they said Saffarans & Stratton owed them on the bonds.

30

Cross-examination by Mr. Parker.

I was not present when the receipt was signed; I am not sure that I was present when the bonds were delivered; I may have been on both occasions, but I have no recollection of it; I don't recollect whether the signing of the receipt and delivery of the bonds were separate occasions.

I could hardly state in the course of business whether they were on one or on separate occasions.

I don't know to what individual I made the payment ⁴⁰

of the \$2,874.84; the payment was done in the office and not by myself; I know it was done, from our books.

I don't know to whom it was said that Saffarans and Stratton owed Kirtland & Co. on the bonds, nor by whom.

Redirect-examination.

10

Before the date of the receipt, I made application to Kirtland & Co. to redeem these bonds; I think that I applied to Mr. Kirtland, senior, John Kirtland, here.

I made three or more applications to them; at the time of the first application the difficulty was, that Kirtland & Co. did not have the bonds; there was some delay about it and a good deal of difficulty.

Q. In the conversations which you had with John Kirtland, was there anything said about Saffarans and
20 Stratton owing them anything on the bonds?

(Objected to, as leading)

A. I don't recollect anything.

I can't recollect how it did happen that the \$2,874.84 was paid to Kirtland & Co.; it is so long ago, that it has gone out of my head entirely.

Re-cross-examination.

30

Q. Do you recollect anything being said in any of the conversations you have alluded to in your re-examination about the Kirtlands expecting to raise \$6,000.00. or some sum to redeem these bonds, by a mortgage on the property of young Mrs. Kirtland?

A. There was something of that sort said, but I cannot at this time recall any details.

I remember its being proposed that I should take such
40 a mortgage and my assenting to it, if it could be made a first mortgage; there was something about that.

2d Re-direct-examination.

Q. Did George Kirtland ask you to cash a mortgage on his property in Orange?

A. I don't recollect.

It just occurs to me in answer to a previous question in the direct examination, in reference to the \$2,874.84¹⁰ that I was glad to pay that, in order to get possession of the bonds.

WM. FELLOWS.

Taken, sworn and subscribed before me, June 24, 1871,
at Jersey City.

A. S. JACKSON, Master in Chancery, N. J.

20

The complainants offer in evidence the following Exhibits on their part:

Exhibit C 16, is the Ledger of Kirtland & Co, 1856 to 1859; page 701, John Kirtland account; pages 707, 311, 312, 578, 579, 957, 965, account of Henderson, Kirtland, North & Platt.

Exhibit C 17, is the Ledger of Henderson, Kirtland, North & Platt; page 270, account of George W. Kirtland; pages 86, 87, 80, account of John Kirtland.

Exhibit C 18, is the Ledger of Kirtland, North & Platt; page 2, capital account; pages 90, 91 & 92, John Kirtland account.

Exhibit C 19, is a Cash Book of Kirtland, North & Platt; page 227, line 15; page 228, line 16; page 236, line 15; these are payments by the assignee of Kirtland, North & Platt.

Exhibit C 20, is the assignment of Kirtland, North & Platt.

Exhibit C 21, is the Schedule of the Creditors of Kirtland, North & Platt.

Exhibit C 22, is the certificate of register of Essex Co., N. J. 40
July 8, 1871.

The cross examination of Emily G. Kirtland having been concluded, the examination for the complainants in rebuttal was continued.

Counsel for complainants offers in evidence, a letter dated February 17th, 1865, from Kirtland & Co. to W. S. Wheeler, which is admitted by counsel for defendants, to have been written by George Kirtland.

Said letter is marked exhibit C 23, on part of complainants.

Mr. John Kirtland, in obedience to a subpoena *duces tecum*, produced a book, purporting to be a cash book, marked "T. T. K." which said book is offered in evidence and marked Exhibit C 24, on part of complainants.

Counsel for defendants objects to this book as evidence, on the ground that it is the book of T. T. Kirtland, not in the handwriting of either of the defendants, nor anything with which they are concerned, or for which they are responsible, and merely hearsay.

JOHN KIRTLAND, a witness heretofore produced and sworn, being again recalled, says :

Being shown Exhibit C 24, on part of complainant, he says: the entry on page 12, under date, October 27th, 1865, is the first in my handwriting; the next is the 2d of November; the next is the 6th; the next is the 7th, the 9th; that is all on that page; on page 13, entries under date of November 14th & 15th, are in my handwriting; on page 14, there are none; on page 20, entry under date, May 20th, is in my handwriting; on the opposite page, entries of May 19th & 20th, are in my handwriting; on page 21, entries, commencing June 21st, and up to August 16th, all seem to be in my handwriting; on the opposite page, all the entries from June 23d to August 23d, are in my handwriting; on the 22d page commence August 17th to October 15th, all the entries are in my handwriting; on the opposite page all the entries except four, from August 20 to October 15, are in my handwriting; on the 23d page, from October 15th to November 24th, all the entries are in my handwriting, except two; on the opposite page

all the entries are in my handwriting, except two, October 15th to November 26th.

From that time on the entries in the book are in my handwriting, and that of my son George.

Q. Exhibit D 4 being shown the witness, is asked : look at date, February 20th, 1865, opposite No. 11, in whose handwriting is the following "paid February 27th, 10 1865?"

That looks like mine.

Q. Is not a majority of the entries in Exhibit D 4, under date, of February 18th, 1865, and up to February 24th, 1868, under the head of "Remarks," in your handwriting.

Including the whole time, a majority of them are.

And being cross-examined, he says :

Q. How came the entries on the book, marked "Cash 20 T. T. K." which are in your handwriting?

Thomas T. Kirtland left and went to Memphis, and was gone a while, and while he was gone I made a few entries there, as his clerk.

Q. The other entries which are interspersed and which you particularize from October 27th, 1865, to November 26th; how came they to be in your handwriting?

I can't account for it in no other way than he handed me the collections to mark, as they came in from the country. 30

Q. Whose business was that shown in the books of T. T. Kirtland, yours or your son George's, or that of Thomas T. Kirtland?

It was Thomas T's, the first part of it, up to about the 1st of June, 1866.

Q. After that, whose was it?

George and myself conducted it after that.

Q. Can you explain any of the entries in those books prior to the first of June, 1866, or recall now the transactions which they record? 40

I cannot.

Q. What is the business which you and your son did, and which is recorded there?

Selling commercial paper, and securities of various kinds, and collecting notes and drafts for business men in New York.

Q. How did it eventuate, in profit or loss?

10 There was no profit; that is, not sufficient to keep the thing going.

And being again examined in chief, he says :

Q. Were you doing business in your own names, or in the name of T. T. Kirtland, in March, 1865?

What we did, we did in his name; we did business in his name in March, 1865.

The business was not a very large one; George and I
20 had no books; the business was all done through the name of T. T. Kirtland; I don't know whether we made entries of our business in T. T. Kirtland's book; I don't know where we made them.

Q. Will you look at cash book T. T. K., Exhibit C 24, at entry on page 1, date March 3d, Kirtland & Co., \$13,700; what is the meaning of that entry?

I can't tell you sir.

Q. And on same page, March 1st, Kirtland & Co., \$1,500; what does that mean?

30 I can't explain it.

Q. On same page, date March 11, C. Kirtland, \$14,000, explain that?

I can't do it.

Q. What is your wife's name?

Her name is Catherine.

Q. This T. T. Kirtland was your son, younger than George?

Yes sir, and a single man.

Q. From November, 1864 to February, 1868, did you
40 have any license as a broker, except as T. T. Kirtland?

I don't recollect; I think we did.

Q. In what name?

My impression is, that it was in George's name, that is my impression.

And being again cross-examined, he says :

Q. Look at the Book, "Cash T. T. K." on page one and its opposite, at the items of which you have been asked, in connection with items on the opposite page, and, as a bookkeeper tell me what those items indicate, and in whose handwriting, if you know, the items are? ¹⁰

I cannot tell further than this; on one side \$13,700 appear to the credit of Kirtland & Co; on the same day 13,472.95 was paid out for their account; what it means I cannot say, nor what it relates to; it is in the handwriting of Thomas T. Kirtland.

What I mean when I say I don't know, is that I have no recollection of the transaction; and all those items are in the handwriting of Thomas Kirtland. ²⁰

JOHN KIRTLAND.

Taken, sworn to and subscribed this 8th day of July, A. D., 1871, at Jersey City, before me,

ISAAC ROMAINE, Master in Chancery.

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 309

LECTURE 10

THE QUANTUM THEORY OF LIGHT

1. INTRODUCTION

2. THE PHOTOELECTRIC EFFECT

3. THE COMPTON EFFECT

4. THE WAVE THEORY OF LIGHT

5. THE QUANTUM THEORY OF LIGHT

6. THE PHOTOELECTRIC EFFECT

7. THE COMPTON EFFECT

8. THE WAVE THEORY OF LIGHT

9. THE QUANTUM THEORY OF LIGHT

10. THE PHOTOELECTRIC EFFECT

11. THE COMPTON EFFECT

12. THE WAVE THEORY OF LIGHT

13. THE QUANTUM THEORY OF LIGHT

14. THE PHOTOELECTRIC EFFECT

15. THE COMPTON EFFECT

In Chancery of New Jersey.

Between

WILLIAM S. WHEELER, *et al.*

Complainants.

and

GEORGE KIRTLAND, *et al.*

Defendants.

} *On Bill
&c.*

THE SAME COMPLAINANTS,

vs.

JOHN KIRTLAND, *et al*

Defendants.

} *On Bill
&c.*

GEORGE W. KIRTLAND,

Complainant.

vs.

JOHN KIRTLAND, *et al.*

Defendants.

} *On Bill
&c.*

It is agreed that the testimony taken in either of these causes may be used so far as applicable on the hearing in the others as if specially taken therein. *June 17, 1871.*

PARKER & KEASBEY,

Solicitors for the Messrs Kirtland

B. WILLIAMSON & SON,

Attorneys for Wheeler & Green.

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