Court of Errors and Appeals.

BETWEEN

JEREMIAH E. ADAMS,

Appellant;

and

CORD MAHNKEN, et al.,

Respondent.

POINTS OF RESPONDENT.

ALWARD & PARROT, *Solicitors.*

The bill in this cause sets forth that the defendants hold two mortgages of complainant, one for $1,500, the other for $2,000, a note for $964.14, and an open book account. That part of the consideration of the $2,000 was usurious. That about the 30th day of March, 1881, the complainant agreed with the defendants to give them in payment of his entire indebtedness an order on Allen C. Clark, of Washington, D. C., for the sum of $5,500. The defendants received this order in payment of the mortgages, note and book account, and agreed to pay to the complainant the difference between said order and the amount to be found due on a proper statement of the account, and in part payment of the difference they gave to the complainant $450. That the defendants have refused to give up said mortgages and note. The bill was filed to compel the defendants to deliver up said bonds and mortgages and note, and fully receipt the account.

I.

The relief asked for ought to have been granted. Because it appears that the above mentioned agreement was made between the complainant and the defendants.

The agreement, as set forth in the bill, is clearly proven by the testimony of the complainant.

(Pages 21 and 22).

The complainant is fully corrobated by the testimony of one of the defendants, Stephen Moorhouse.

(Pages 42, 43, 44 and 45).

At the time the order was given, the defendants and the complainants each believed that the entire indebtedness did not exceed $5,000.

The complainant says that it was understood that the order exceeded his entire indebtedness, and that the $450 was given on account of the balance that was coming to him on account of the order

(Page 21).

The defendant, Stephen Moorhouse, says that the complainant owed them about $5,000.

(Page 44).

The interest of the mortgages had been charged on the ledger. Testimony of the book-keeper Jansen.

(Pages 115 and 116).

On page 52, the defendant, Stephen Moorhouse, says there was due on the mortgages....	$3,500.00
The note was.....	964.14
At this date, March 30, 1881, the balance on book acct., as appear by voucher 22, page 194, and by the testimony of T. Stewart Brown, page 184, was.....	502.57
	$4,966.71

The defendant, Cord Mahnken, page 129, says the complainant owes on the two mortgages $3,500. There seems to be no reasonable room for doubt that at this time the complainant and both defendants, and the book-keeper believed the interest was charged on the ledger; and if the interest had been charged on the ledger, they were correct in saying the indebtedness of the complainant was about $5,000.

II.

The Court below was mistaken in the conclusion that Moorhouse has lived in this State ever since the first mortgage mentioned in the bill of complaint was given.

There is not a word in this cause to support that conclusion.

The bill charges that the defendants reside in the State of New York.

(Page 4).

The answer does not deny it.

By reciting the agreement, p 10, the answer admits that both defendants reside in New York.

The complainant is entitled to the premium of $500, even if the usurious contract does not apply to the second mortgage.

III.

The evidence does not justify the conclusion of the Court below, that from the time when the order was given to the dissolution of the firm the complainant again had credit.

Exhibit 22, p. 194, shows that from the giving of the order, March 30, 1881, to the 18th of April, 1882, the complainant's indebtedness was only increased for merchandise $14.62. There are two protested checks charged, one for $76.38, the other for $77.54. These checks do not appear in the case.

The testimony of T. Stewart Brown, p. 188, line 15, shows that these checks have never been credited to complainant.

The testimony of the same witness, page 185, shows that the complainant's credit was not extended during the period of one year, only 10 bills of merchandise appear on the defendant s books, and the bills are very small, and each bill is paid for before the succeeding bill is charged.

The Court below is mistaken in its conclusion that no other mortgages appear in the assets.

(Page 110, line 28).

p 82 line 45 — p 94 line 10

IV.

The answer admits that the defendants made inquiry as to the value of the order, and says it was received by defendant Stephen Moorhouse, after consultation between the defendants relative thereto as to what it was to be given and accepted for. Page 17, line 10.

Defendant Cord Mahnken, in his testimony, denies there was any consultation. Page 134, line 40; page 149, lines 1 to 10.

Neither Edward A. Mahnkenn or John H. Jansen pretends to testify to any consultation between the defendants.

The defendant Stephen Moorhouse is the only witness that testifies as to the consultation before the order was taken, and as he is not contradicted his statement must be received as true.

Edward A. Mahnken was not present at any conversation with complainant about the order.

What Jansen testifies to on page 75, does not appear to have been at the time the order was taken.

On page 123, lines 1 to 10, there is no allusion to what the order was for.

Stephen Moorhouse was a partner, and what he did when he accepted the order was binding on both defendants.

What he said afterwards cannot affect the complainant.

Cord Mahnken was a man of defective memory. See his testimony everywhere.

The manner in which John H. Jansen gave his testimony shows that he is not a reliable witness. Page 116; page 119, line 10, direct; page 124, cross-examination; page 126, as to Moorehouse asking for money.

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NEW JERSEY

Court of Errors and Appeals.

Between

JEREMIAH E. ADAMS,
Appellant,
and
CORD MAHNKEN,
Respondent.

On Appeal from Chancery.

BRIEF OF RESPONDENT.

The opinion of the Chancellor clearly states the objects of the Bill of Complainant originally filed in the Court of Chancery.

The Chancellor dismissed said Bill of Complaint with costs.

From this decree the complainant therein has appealed.

The whole case depends almost entirely upon questions of fact.

Jeremiah E. Adams, the appellant, has resided in and kept a retail grocery store at Elizabethport, in this State, since the year 1856. Cord Mahnken, the respondent, and one Stephen Moorhouse, were partners, trading as Mahnken & Moorhouse, in the business as wholesale grocers, at 174 Duane Street, New York city, from April 1st, 1872, to April 1st, 1882; they did a very large business, as their books, offered in evidence, show; the said Moorhouse furnishing no capital, and retiring with $40,000 cash.

For one year previous to April 1st, 1872, the firm name was "C. Mahnken & Co.," consisting of Cord Mahnken, Stephen Moorhouse, and James W. Longwell. Subse-

quent to April 1st, 1882, the firm name was also "C. Mahnken & Co.," consisting of Cord Mahnken, Edward A. Mahnken, and James W. Longwell.

Appellant bought largely of Mahnken & Moorhouse, and also both firms of C. Mahnken & Co., p. 24, l. 26.

The mortgage executed by appellant to Mahnken & Moorhouse for $2,500, was dated August 16th, 1872, p. 19, l. 38. It is admitted that it was recorded in the Union county clerk's office at Elizabeth, in Book 24 of Mort-
10 gages, on page 496, &c., and was cancelled of record *January 16th*, 1885, p. 63, l. 23, but the appellant in his bill of complaint claims that there was only $2,000 advanced for the $2,500 mortgage, and the balance, $500, was for premium paid thereon, and the mortgage therefore usurious; and further, that the transaction of said mortgage and the bonus was entered in the general account of the appellant on the books of Mahnken & Moorhouse, and that the $2,000 mortgage, executed January 15th, 1875, was given in part payment thereof, which is denied by the
20 respondent. Moorhouse says the $2,500 mortgage was paid off by appellant in small payments, p. 49, l. 13. Respondent says, "I believe it was paid. I know it was paid" p. 140, l. 23. "It was paid in checks and cash," p. 144, l. 1. Edward A. Mahnken shows eleven payments as taken from the cash books of Mahnken & Moorhouse, exhibits No.'s 8 and 9, made by the appellant, *on account of Bond and Mortgage*, p. 66, l. 28—p. 67, l. 11. Henry Eggers, then book-keeper of Mahnken & Moorhouse, testifies to same entries in said books, and all made in his
30 handwriting, pp. 162 and 163. Also as to same entries made by him in Mahnken & Moorhouse Blotters and original books of entries. Exhibits 1 N. Y., 2 N. Y., 3 N. Y., pp. 169, 170, 171, 172, 173, 178, and further that "entries of such a nature as these were always ordered by either Mr. Mahnken or Mr. Moorhouse," p. 165, l. 31. On cross-examination Eggers was asked, p. 166, l. 1. "Q.—Then you have no knowledge whether these checks were paid on account of the mortgage or grocery account? A.—They were undoubtedly paid as put down in these
40 cash books. Q.—Why do you say so? A.—Because I

kept the books true and honest. Q.—Why did you make the entry *on account of bond and mortgage?* A.—As clerk of the firm I was so ordered and had to perform my duties. Q.—That is the only reason you made the entry? A.—Yes, sir; because I was told to; I do not mean that I had particular orders for every entry made in the books, but on these particular items I am certain. As Adams kept a large account and they would have been credited on his account in general, if Mahnken & Moorhouse had not told me different." On page 179 Eggers testifies that the handwriting in the three Blotters are his, and that Moorhouse gave him his orders in reference to entries in the books. On cross-examination appellant was asked: "Q.—All that you paid to Mahnken & Moorhouse you paid by check, did you not? A.—I think I did; I don't recollect of paying them any money," p. 32, l. 28. On re-direct: "Q.—When you gave Mahnken & Moorhouse a check did you specify on what account it should be credited? A.—No, sir." p. 35, l. 36. On cross-examination: "Q.—Were not checks, exhibits A 1 to A 14, (see page 22) paid by you to Mahnken & Moorhouse, or some of them, on account of the $2,500 mortgage? A.—Some of them I think were." p. 32, l. 12. As appellant swears he never appropriated his payments, Mahnken & Moorhouse had a legal right so to do and did appropriate eleven out of the fourteen checks mentioned on page 22, viz: the first one and the last ten, in payment of the $2,500 mortgage, and which paid it off, as shown by Statement Exhibit No. 15, on page 195, except a small balance of $3.12, which no doubt is a difference caused by the calculation of interest thereon by different persons and at different times. Edward A. Mahnken testifies as to making said statement, p. 68, l. 4. Heavy payments were also made by appellant on his grocery account during the payment of his $2,500 mortgage, as shown by the books of account of Mahnken & Moorhouse, offered in evidence, and as he had been sent several statements and had frequently looked over his account at the store, the presumption is he either made the payments directly thereon, or knew what payments were being appropriated

on account of the mortgage. It was to the interest of Mahnken & Moorhouse to appropriate all credits to the general account of appellant, on their book, as there was a large balance due and owing all the time the payments were being made, which was unsecured, and not on account of principal and interest of the mortgage, which was secured. The last payment on said $2,500 mortgage, $153.13, was made *January 9th*, 1875, as testified to by Edward A. Mahnken, p. 67, l. 17, and by Eggers, p. 163, l.
10 3, and as shown by Blotter, Exhibit 3, N. Y., and Cash Book, Exhibit No. 9, of Mahnken & Moorhouse.

The appellant seeks to support his claim that the $2,500 mortgage transaction was entered in his general account on the books of Mahnken & Moorhouse by the equivocal testimony of himself, p. 20, l. 30, and p. 27 l. 17, and that of Moorhouse p. 42 l. 40; but the positive testimony of Edward A. Mahnken, p. 67, l. 37, p. 77, l. 33, and the books of account of said firm offered in evidence, show conclusively that such was not the case, except the pay-
20 ments thereon by which it was fully paid and satisfied, and which payments appear only on the blotters and cash books, as before spoken of.

The respondent denies that the $2,000 mortgage, dated January 15th, 1875, (Exhibit No. 2), had any connection whatever with the $2,500 mortgage, nor was it given in part payment thereof, but insists that it was executed for an entirely different indebtedness, viz.: on account of the indebtedness then due and owing by the appellant to Mahnken & Moorhouse on book account for groceries
30 sold him. The testimony of T. Stewart Brown, one of the appellant's witnesses, p. 187, l. 43, and ledger A of said firm, (Exhibit No. 10), show the balance then due and owing said firm from said appellant, viz.: on January 15, 1875, to have been the sum of $2,548.58, and there is no contradiction thereof. The insistment of the appellant that the $2,000 mortgage was given in part payment of the $2,500 mortgage is not sustained by the proofs. Appellant on direct examination says, p. 20, l. 4.: "I had an open account with Mahnken & Moorhouse, all the
40 time between the giving of the first mortgage and its can-

cellation. During that time there was no settlement between Mahnken & Moorhouse and myself, either of the mortgage, interest or grocery account. There was no settlement made when the old mortgage was cancelled and the new one given." "Q.—What was the consideration of this second mortgage? A.—$2,000. He gave me credit for it on his books. I suppose he did. Q.—Was this second mortgage given on the grocery account, or on account of the balance that was due on the old mortgage? A. It was given to help settle up the old mortgage and the grocery account together. It was all one concern. I never had any settlement with them. I never took any receipts from the time it commenced; receipts as to settlement I say. Q.—What was your understanding as to the first mortgage; was that entered in the account or not? A.—I supposed it was. Q —State distinctly how the old mortgage was paid? A.—By giving another mortgage the same day, $2,000, or about the same day. I don't recollect of giving any money at that time, or at the time of giving the mortgage, but I had previously been paying them money on account, and dealing with them several hundred dollars per month, and paying them money by check." On cross-examination (p. 25, l. 3), he says: "Q.—At the time you gave the $2,000 mortgage did you not know that you owed Mahnken & Moorhouse over $2,000 on book account? A.—I did not know how much. Q.—You knew you owed them a large amount, did you not? A.—Yes." Also, (p. 26, l. 23): "Q.—Was there anything said at that time as to what the ($2,000) mortgage was given for? A.—No, sir." Also, (p. 27, l. 17): "Q.—Did you ever see the $2,500 mortgage credited upon any statements of your account that had been sent you? A.—I think not." On re-direct, (p. 35, l. 7): "Q.—What was the consideration of the $2,000 mortgage? A.—$2,000. Q.—What do you mean by that? A.—I mean that I got credit for $2,000. Q.—On what account? A.—On account of the $2,500 mortgage and the book account." Moorhouse on direct examination, (p. 43, l. 5), testifies: "Q.—For what indebtedness was this $2,000 mortgage given? A.—To balance the

ledger account. Q.—Of what was the ledger account composed? (Objected to, as the ledger itself is the best evidence). A.—Of the mortgage and goods sold." On cross-examination, he says: "Q.—After taking the $2,000 mortgage you extended Mr. Adams's credit, did you not? A.—Yes, sir. Q.—The $2,000 mortgage was credited on the books of the firm, was it not? A.—I presume it was," p. 50, l. 36. "Q.—Was not the $2,000 mortgage given by Jeremiah E. Adams to Mahnken & Moorhouse to secure that much indebtedness, due and owing by him to the said firm at that time on book account? A.—Yes, sir; I think it was," p. 51, l. 7. "Q.—At the time the $2,000 mortgage was given did not J. E. Adams owe the firm of Mahnken & Moorhouse, on book account, over or more than the sum of $2,000? A.—He did," p. 49, l. 25.

The proofs clearly show that the $2,000 mortgage was given by appellant on account of what he owed Mahnken & Moorhouse on book account, at that date, January 15th, 1885, the balance then being the sum of $2,548.58, and could not have been given in payment of the $2,500 mortgage, as that mortgage or the payments thereon never appeared in the account of the appellant on the books of Mahnken & Moorhouse in any shape or manner, nor ever appeared in any of the statements rendered him. Then, again, the $2,500 mortgage had been paid off previous to the execution of the $2,000 mortgage, as shown by Statement Exhibit No. 15, on page 195, the last payment satisfying the same in full, was the sum of $153.13, made *January 9th*, 1875, and the $2,000 mortgage is dated *January 15th*, 1875. Now, how could a mortgage be given for or on account of another mortgage, which had been paid and satisfied in full, as heretofore shown, and upon which there was no balance due? Then, again, if $500 had been paid on the $2,500 mortgage, as claimed by appellant, that amount could have been credited. Why the necessity of a new mortgage on that account?

It is true, that the $2,000 mortgage was executed January 15th, 1875, and the $2,500 mortgage was cancelled of record January 16th, 1875, and was produced to the clerk

by the respondent, for cancellation, but that has no significance whatever as to its being given in payment of the $2,500 mortgage, and is easily explained, for any man with business principles after he had taken a mortgage would naturally get all the old uncancelled ones, and take them to the Clerk's Office himself for cancellation, so as to be sure of its being done, rather than to trust to the mortgagor doing it.

Then, again, a question may be raised as to the reason why the $2,000 mortgage was not credited on the books 10 of Mahnken & Moorhouse at the time it was given. It was credited July 24th, 1875, as of January 15th, 1875. The same thing happened with the $1,500 mortgage. executed by the appellant to Mahnken & Moorhouse (Exhibit No. 4) and which all parties agree was given on account of what was then due and owing by the appellant to Mahnken & Moorhouse, on book account, for groceries sold him. This last mortgage was dated Aug. 15th, 1878, and is not credited until Sept. 11th, 1878. This might easily occur- by the firm not giving credit until they got the same from 20 the Clerk's Office after recording, or from delay caused in getting searches to ascertain if the real estate was the same as represented, before giving credit.

The appellant, in his bill, claims that there was a premium of $500 included in the $2,500 mortgage, and that it was carried into the $2,000 mortgage, and that the respondent is entitled to receive upon his mortgage of $2,000 only the sum of $1,500 without interest. The Chancellor, in his opinion (p. 6, l. 5) on this branch of the case says: "The $2,500 mortgage was paid off by payments 30 "made directly thereon, before the $2,000 was given. "The last payment (which was of $153.13) was made Jan- "uary 9th, 1875. The $2,000 mortgage was given Janu- "ary 15th, 1875. When it was given there were "$2,548.58 due from the complainants to the defendants "on book account. No part of the money secured by "the $2,500 mortgage was in any way included in the "$2,000 mortgage. As just stated, the last payment on "account of the $2,500 mortgage was made January 9th, "1875. The bill was not filed until October 3d, 1882, 40

"nearly eight years after that payment. Recovery of the "premium paid upon the loan of $2,000 secured by that "mortgage, is barred by limitation. Moorhouse has "lived in this State ever since the mortgage was given. "*Bruce v. Flagg*, 1 *Dutch.*, 219."

Now in addition to what the Chancellor has well said on the subject of usury, we respectfully submit that if the court should differ from his Honor, the appellant is still not entitled to the relief prayed for in his bill, for the re-
10 covery of the alleged premium money, claimed to be included in the $2,500 mortgage, for the reason that he has an adequate remedy at law, as premium or usury money (if not barred by the statutes of limitation) can be recovered in a suit at law.

Brown v. McIntosh, 10 *Vr.*, 22.

Adams v. Randolph, 12 *Vr.*, 218.

After the $2,000 mortgage was given, credit was extended to appellant, and on August 15th, 1878, he owed Mahnken & Moorhouse a balance of $1.920.74 on book
20 account, and on that day executed to them another mortgage for $1,500 on account of said indebtedness, which was credited on the books of said firm, and for the purpose for which it was given there is no dispute; and the appellant testified at that time Mahnken & Moorhouse refused him further credit unless he executed that mortgage, p. 33, l. 40; then credit was again extended to appellant, and on April 27th, 1880, he owed them a balance of $964.14 on book account, which included $735.00 of interest on the two mortgages ($2,000 and $1,500) charged
30 up to his account. A settlement was then made, and note given by the appellant for said balance, as appears by Ledger B, p. 244, (Exhibit 11), which shows the account of appellant balanced by a credit of the note, and on said page also appears a memoranda in Mr. Harrison's handwriting (p. 108, l. 31), as follows, viz.: "April 27th, 1880. Demand note given to balance account to March 1st, 1880. Future account not to exceed $300. Bills to be paid promptly in 30 days, and $50 or more to be paid monthly on account of note."

40 Jansen, book-keeper, testified that he was present at

the settlement which was made by and between the appellant and Moorhouse, when the appellant examined the books and gave the note in settlement. He (Jansen), made a memorandum of settlement at the time, by Mr. Moorhouse's instructions, and appellant agreed to it, p. 73, l. 7. This memorandum is marked Exhibit No. 16, and is substantially the same as made by Harrison in the book. Day book Exhibit No. 5, page 711, shows a credit for the note which reads "J. E. Adams, Cr. By note, April 27, '80, on demand to close old acc't, $964.14," p. 189, l. 37. Appellant denies the settlement, but admits giving the note and an agreement made at the time, in substance about the same as the two written memorandums, p. 25, l. 23. Moorhouse also denies the settlement and says on his direct-examination, (p. 43, l. 29): "Q.—Did he (Adams) afterwards give you any note? A.—Yes, sir. Q.—What was the amount of the note? A.—$964.17. Q.—What was the date of that last note? A.—April 27th, 1880. Q.—Was there any settlement of accounts with Mr. Adams at the time this last note was given? A.—No, sir. You have reference to settlements on the Ledger (Mr. Alward), yes, sir. Q.—Was there any kind of a settlement at that time? A.—No, sir." On cross-examination (p. 51, l. 12), he says: "Q.—How came Mr. Adams to give the firm a note of $964,14, if it was not for a settlement at that time? A.—It was not for settlement, but we thought it would put it in better shape to have a note, although it did not balance the account as I recollect it. Q.—Do you know whether or not it balanced his accounts? A.—I don't think it did; if I could see the books I could tell." P. 53, l. 32. "Q.—At the time this $964.14 note was given, did Mr. Adams make any agreement about the payment of the same, and the payment of goods purchased by him thereafter? A.—Not that I remember. Q.—Did you take that note? A.—I think so; myself or my book-keeper. Q.—At the time that note was given, was there any agreement made by Mr. Adams or promise on his part, that he would not exceed in purchases the sum of $300 monthly, and would pay his future bills promptly in thirty days, when they

10 20 30 40

became due, or words to that effect? (Mr. Alward objects). A.—I don't remember any such agreement. Q.—Did Mr. Adams agree or promise to pay at that time $50 or more monthly, on account of the $964.14 note? A.—I think not."

Notwithstanding the denials of appellant and Moorhouse, the facts fully establish our claim; that there had been a settlement, and that appellant's credit was not good at that time with the firm. There are some entries on
10 both sides of the account after the date of the note, which is explained by the evidence of Jansen, on page 118, line 26, that the note was dated back to secure interest on overdue bills. He says, "Harrison and Moorhouse always figured in that way." E. A. Mahnken corroborates him, p. 108, l. 18.

After the note was given appellant continued to trade with Mahnken & Moorhouse, and although the firm used great efforts to collect of him the bills sold him on thirty days' time, yet he failed to carry out his agreement and
20 continued increasing his indebtedness to the firm, so that in October, 1880, they refused to sell him other than C. O. D., and from that date until April, 1881, (by Moorhouse's orders) the firm sold him in no other way (excepting one small bill of $15.00, in February, 1881) as conclusively shown by the testimony of appellant, (p. 34, l. 5,) Stephen Moorhouse, (p. 55, l. 35) Edward A. Mahnken, (p. 79, l. 2—p. 80, line 1—p. 94, l. 19—p. 105, l. 36) John H. Jansen, (p. 74, l. 5—p. 119, l. 1) and on March 19th he owed a balance on book account of $502.57.

30 On March 19th, 1881, (being the date of the $5,500 order,) there was due and owing to Mahnken & Moorhouse, from the appellant, as follows, viz.:

On Bond and Mortgage, dated January 15, 1875, for principal.....	$2,000 00
Interest due thereon to March 19, 1881, 6 years, 2 months and 4 days @ 7 per cent....	864 88
On Bond and Mortgage, dated August 15, 1878, for principal.....	1,500 00
Interest due thereon to March 19, 1881, 2 years, 7 months and 4 days @ 6 per cent....	$233 50

40

On note dated April 27, 1880, principal		$964 14	
Less interest on above mortgages, charged on book and included therein	$735 00		
Cr. cash on note May 6th, '80, $25, June 11th, 1880, $25..	50 00		
		$785 00	
			179 14
Interest due on said balance to March 19th, 1881, 10 months and 22 days			9 61
Balance of book account March 19th, 1881			502 57
Total, due March 19th, 1881			$5,289 70

About this time the firm considered the mortgages scanty security, and having no security whatever for the note and book account and interest due thereon, amounting to $~~744.00~~ 696.32, called upon the appellant to pay, or give collateral and additional security for his indebtedness in its various forms. The appellant, in compliance with that demand, obtained an order of which the following is a true copy, viz.:

"WASHINGTON, March 19, 1881.

SIR: After deducting your fees and incidental expenses in the prosecution of my claims against the District of Columbia, before the United States Court of Claims, and also the amount of eleven hundred dollars in acceptance now out, please pay to the order of Messrs. Mehnken & Moorhouse, of New York city, five thousand five hundred dollars, out of any money that may be awarded me by said Court of Claims in my suits now pending against said District of Columbia in said court. Value received and charge the same to the account of

Yours Respectfully,

WM. H. ADAMS."

"To

Allen C. Clark, Esq.,

Attorney at Law,

220 4½ Street, Washington, D. C."

And which has written across its face the following words and figures, viz: "Washington, District of Colum-

bia. Accepted, March 19, 1881, $5,500.00. Allen C. Clark." (Exhibit No. 21.)

The appellant claims that this order was given to Mahnken & Moorhouse, about the time it bears date, as actual payment of all his indebtedness, in every form, and that it was so accepted by them, and that the firm were to have an accounting with them, and pay him in cash, the balance due him between the amount of his indebtedness and the amount of the order.

10 But our insistment is, that it was given and accepted as collateral and additional security, and the facts and circumstances surrounding the same we submit bear us out in our conclusions.

The order upon its face shows—

That it was an exceedingly doubtful security, to say the least. That it is upon no existing fund

That its payment depended entirely upon a very uncertain contingency, viz.: the result of the lawsuits therein named.

20 The time of payment was extremely indefinite, as the suits might be kept in the courts for years.

That it draws no interest, while the bonds and mortgages, note and account do.

That it first provides for the payment of the attorneys fees and incidental expenses, and of $1,100 in acceptance now out, before Mahnken & Moorhouse could get a dollar, even if the suits were brought to a successful end, and those payments might take the whole fund for which the judgments might be recovered, for there is no evi-
30 dence whatever to show how much W. H. Adams claimed the District of Columbia owed him. Then if nothing left, or only a part, Mahnken & Moorhouse would have been out and injured.

Before going into the proofs on the subject, it is only necessary to ask the question, Would any sane man accept of such an order in actual payment of bonds secured by mortgages on real estate?

After the date of the note no interest was charged up to the account of the appellant on the books of either
40 firm.

From the time of the giving of the order, March, 1881, to April 8, 1882, the date of the articles of dissolution of Mahnken & Moorhouse, (Exhibit No. 17, see page 10,) credit was again extended to the appellant, and he increased his indebtedness so that on the latter date he owed the firm a balance of $1,121.11. Afterwards he continued to purchase from the firm of C. Mahnken & Co., the successors of Mahnken & Moorhouse, until August, 1882, when he permitted two checks to go to protest; then the latter firm closed his account and called upon him for a settlement of his whole indebtedness. He then owed C. Mahnken & Co., for goods purchased of them, a balance of $48.04, making a total indebtedness due from him on book account to both firms of $1,169.04, with interest due thereon.

At the time of the dissolution all the stock of goods, accounts, stocks, bonds, mortgages, and assets of every description were assigned over to the respondent, (see agreement on page 10,) and he, as soon as the new copartnership of C. Mahnken & Co., (consisting of the respondent, Edward A. Mahnken and James W. Longwell,) which was formed immediately thereafter, assigned all of the above assets to the new firm, who thereby became the owners of the two bonds and mortgages, note and account due and owing from the appellant, with the order as collateral and additional security, for a valuable consideration, and as the appellant had full notice thereof, and made no complaint whatever, although he had received numerous statements from both firms, which showed that the order was not credited on the books, one of which statements he produced, dated July 22, 1882, (Exhibit No. 22, copy on pages 193 and 194,) and also frequently examined the books of the two firms in person. We earnestly and respectfully submit that he is estopped, both in law and equity, and that is another reason why this court should not sustain his bill of complaint.

The appellant, as shown by himself, was a brother and silent partner in business of W. H. Adams, the maker of the order, in the contracting business in Washington, building sewers, laying pavements, &c., p. 24, l. 37. The

amount of the order was coming to him as part of his profits or money advanced, and part of the money he borrowed of Mahnken & Moorhouse was in the order, p. 28, l. 7. He just started in business with his brother and then withdrew, p. 41, l. 15. Was there about a month, interested, p. 41, l. 25. See his immense profits. He put in the business less than $2,000, and got an order for $5,500.

Your Honors will call to mind the excitement the whole
10 country was in concerning " Boss " Shepherd's sewer and pavement contracts, and the thorough overhauling the press gave him and his followers; and judging from the percentage of profits in this instance, this must have been one of the same kind, or identical therewith. We therefore insist that the testimony of any person connected with such jobberies should be carefully scrutinized, and is not entitled to the same weight as if he had not been connected therewith.

The appellant claims the order was given in actual pay-
20 ment of his indebtedness, and tries to sustain his claim by his own evidence, p. 21, l. 9: " Q.—Did you ever give Mahnken & Moorhouse an order on any one? A.—Yes, sir; I think it was in the year 1882. Q.—Then you don't remember when it was? A.—Well, I don't; I had not taken the date of the order. Q.—State the transaction and circumstances. A.—*I had a conversation with Mr. Moorhouse in regard to getting an order of W. H. Adams on his attorney, Allen C. Clark, in Washington, D. C., which was to be accepted by Allen C. Clark for* $5,500; *said order, if I*
30 *could get it, they would give me credit for the same.* I got that order and delivered it. Q.—Was there anything said about the difference between the account and the order? A.—The difference was to be adjusted, whatever there was; if there was anything due me, I was to have it, and anything due them they was to have it. The order was known to be more than the amount that I owed them on everything. I was anxious for a statement and settlement. *They gave me* $450 *in money on account of the order,* and promised a statement and credit of the order. This
40 $450 was on account of the *balance that was coming to me on*

account of the order. And on p. 22, l. 1, Q.—Did you give this order in payment of your indebtedness or only as collateral security? A.—I gave it in payment of my indebtedness, so understood by one of the firm and myself. After the firm had dissolved I got a statement of my account from them. This paper which I hold in my hand, (Exhibit 22, copied on pages 193 and 194,) is the statement which I received. I was not satisfied with it. I took it back and told Mr. Mahnken it was all wrong. At that time the lower credits, amounting to $690, were not on the paper. They were put on while I was there. (By referring to the above named statement, it will be seen that this was interest charged in the account, which had been calculated on the mortgages, and at that time deducted.) The order was not on at all. I have never seen the order since it was handed over to them. I asked Mr. Mahnken why they had not given me credit for the order. He said that Moorhouse had the order."

To show the untruthfulness of this statement it is only necessary to ask the question—Why should Mr. Moorhouse have the order? The firm had dissolved, and he had no interest whatever in the assets, and was not on good terms with the respondent, as hereafter shown.

The appellant testified that he made several demands on Moorhouse for a statement and his papers, pp. 28, 29, but never of Mr. Mahnken, p. 30, l. 6. On p. 30, l. 45, he was asked, "Q.—At the times you called upon Mr. Moorhouse what reasons or excuses did he give for not complying with your demands in giving up your bonds, mortgages, &c? A.—None. He told the book-keeper to fix up that account, as soon as he could, of Adams." Moorhouse is not asked about this statement, when on the stand, and Jansen, the book-keeper, tells an altogether different story.

The appellant says the bargain was made before the order was actually obtained, and the firm advised him to get the order and "they would give me credit for it, and money on account of it; they did give me $450 on account of it, after they had had the order," p. 28, l. 37, but Moorhouse testified that the bargain was made at the

time the order was given to the firm, and that the order was to pay the entire indebtedness of appellant, and that the agreement was "That we should cancel his mortgages and his indebtedness and pay him the balance in cash, the balance of the order." The firm paid him ($450) money, *in order to obtain the order.* "We agreed to give him the balance, after his indebtedness was discharged, in cash." "It was a part of the money we had agreed to give him on the order," pp. 45 and 46.

10 On p. 44, l. 20, he says "Mr. Adams owed us about $5,000, a portion of which was secured by a mortgage, and as we considered this mortgage of no value, there being no equity in the property for us, we wanted our account better secured." &c.; but on pp. 52 and 53, on cross-examination, he admitted that he knew very little about what premises the mortgages covered, or the prior encumbrances thereon, and nothing whatever about the value thereof. On p. 53 he further testified that the first payment on account of the order was made immediately 20 after it was given, and the last payment "several weeks —three or four weeks, probably"—thereafter, while the checks, exhibits No. 19 ($200) and No. 20 ($250) are dated respectively, March 22, 1881, and March 30, 1881. On cross-examination the appellant, on p. 28, l. 45, testified: "Q.—On the strength of what they say, they told you you had the order drawn up, signed and accepted, did you not? A.—My brother had that done. Q.—Then you did not see it until it came into your hands as it now is, did you? A.—I did not; it was mailed to me from 30 Washington. Q.—How long did you keep it in your possession? A.—A very few days. Q.—What did you do with it then? A.—*I took it to Mahnken & Moorhouse's office. I gave it to Mr. Moorhouse. I think Mr. Mahnken was not present.* Q.—Was there any one else present besides yourself and Mr. Moorhouse. A.—I don't recollect of any one but the book-keeper. I think the book-keeper was there. His name was Harrison, either his first or last name. They called him Harrison. There was no conversation took place between me and him, at that 40 time, relative to our business more than he would *give me*

credit for the order and render a statement soon and deliver up my papers." "Q.—You had read over this order, had you not, at the time? A.—Yes; I read it over with him; he was satisfied with it. Q.—And you knew the money was not due thereon until collected by Clark, when he gained those suits, did you not? A.—I knew what the order read, and read it over to him; understood it so, just as it read."

Moorhouse, on cross-examination, p. 54, l. 13, contradicts the appellant. "Q.—Who was the order received by for Mahnken & Moorhouse? A.—*The order was brought there (to the store) when I was sick at my house, and when I came down to the store, in a few days, Mr. Mahnken told me the order was in the safe. That was the first I knew of it, the first I saw the order*, although we had talked the matter over previously." Further, on p. 55, l. 14. "Q.—You have testified that Mr. Mahnken knew of the agreement at the time the order was received, about the order and how it was to be applied; how did he know it? A—He and I talked the matter over and he said that the order was perfectly good, and that the government would have to pay it. Q.—Where was it you informed him? A.—In our office, 174 Duane. Q.—Who was present at the time? A.—Well, the cashier and the book-keeper; there were a number of men in the office; I don't know as anybody was in hearing of our conversation. Q.—Was this before or after your sickness? A.—This was before." On redirect, p. 58, l. 33, he contradicts himself, and says *the conversation took place after he was sick and came back to the store.* That at the time of the dissolution "There was nothing said, specially, about the order, *but as I concluded there was no equity in it. I counted out and put it in as bad debts*, and consequently did not receive anything for it."

The stock book of Mahnken & Moorhouse, and of C. Mahnken & Co., (Exhibit No. 14), shows, that both the $2,000 and $1,500 bonds and mortgages, the note and book account of the appellant, were all entered therein as good assets, and the order was not mentioned or taken account of. The testimony of E. A. Mahnken on p. 106, and of Jansen pp. 72, 105 and 106, also show the same

thing, and that they were all passed over to, and taken by C. Mahnken & Co., as good assets. On pp. 134 and 135, the respondent contradicts the appellant as to the conversations between them in reference to the order, and testified that it was given as collateral and additional security, and was so understood and agreed upon. J. H. Jansen, on p. 75, l. 10, also contradicts both the appellant and Moorhouse, and was asked, "Q.—Did you ever hear Mr. Adams say that the order was given as additional
10 security? A.—I have heard Mr. Adams say that he would secure them, and the question was asked in what way, by Mr. Moorhouse; he said that he would turn this order in against the District of Columbia, on Allen C. Clark; Mr. Moorhouse accepted, I believe." "Q.—Before the order was given, you heard the conversation between Mr. Adams and Moorhouse; did you not? A.—Yes, sir. Q.—State the conversation as near as you can? A.—I can't state the conversation—that is, everything—but I know that Mr. Moorhouse was after Mr. Adams pretty
20 sharp, and told him that he wanted to be better secured, and Mr. Adams proposed to give him this *as additional security*. Mr. Moorhouse said he was not sufficiently secured by notes and mortgages, and Mr. Adams proposed to give him this order *as additional security*. What the exact words were I could not say exactly."

Jansen further testified, p. 74, l. 20, "Q.—How came the firm to give J. E. Adams further credit in April, 1881, if you knew? (Question objected to.) A.—Mr. Adams gave Mr. Moorhouse an order on Allen C. Clark
30 against the District of Columbia, *as additional security* for the amount he owed. (Order shown witness). Q.—Did you hear Mr. Moorhouse say anything about that order, and if so, what? (Question objected to). A.—Nothing more than to say *that he had received it as additional security*, and that we could credit Mr. Adams again on account of it. He might have said a good deal more, but I cannot remember just what he said; Mr. Moorhouse talked a good deal to Mr. Adams; he had him behind the desk a number of times, talking to him and wanting him to set-
40 tle up. *Q.—Did you hear Mr. Moorhouse speak of receiving*

this as additional security more than once? (Question objected to). *A.—Yes, sir; I have, I can't tell how many times; I have heard him more than once. Q.—At any time in Mr. Adams' presence? A.—Yes, sir; it was accepted from Mr. Adams as additional security, and so understood to be.*" On page 114 he further testified, that before the dissolution, the appellant was behind the desk in the office looking over his account on the books, "a number of times; I could not say; probably he was there every week I should think," *and never made any complaint about the order not being credited to him on his account.* Further on, p. 117, statement of July 22d, 1882, (Exhibit No. 15), was made at Adams' request, and handed to him in person, but he said nothing about the $5,500 order not being credited, and after the order was given, he (Jansen) sent him other statements, but he never made any complaint that the order was not credited. On p. 119, l. 25; after the order received they gave him further credit. On p. 120, l. 20. He was book-keeper at the time the order was given, and up to the time he left the employ of C. Mahnken & Co., in March or April, 1883, and was never requested by any one to give appellant credit for the order, or any complaint made by the appellant about it, although he generally visited the store once a week; the appellant went behind the desk aud looked at the books, and he heard Moorhouse demand money of the appellant more than once after the order was given.

This last witness has not been in the employ of the respondent since March or April, 1883, (p. 70, l. 30), and is therefore an entirely disinterested witness.

The appellant, on p. 24, l. 31, admits that a *few statements were sent to him*, but says on p. 25, l. 19, that he never looked over his account on their books.

E. A. Mahnken corroborates Jansen. From October, 1880, to April, 1881, goods were sold the appellant C. O. D., and at one time he saw some goods being sent which were not marked "C. O. D.," and on p. 79, l. 26, he says: "So I went to Mr. Moorhouse with it, (bill) and I asked him whether that was not to go C. O. D., and he told me 'No, it is all right; he has given me an order on Wash-

ington, and we have got *further security*,' and so of course I shipped the goods to him," and on cross-examination the same in substance, p. 94, l. 32. On direct, he further testified that the appellant would often look over the books with Moorhouse and the book-keeper, and he *never* heard him make any complaint about the order not being credited, p. 82, l. 21. After the order was given he heard Moorhouse demand money of the appellant more than once, p. 105, l. 28.

10 The respondent, on p. 135, l. 38, testified, "The custom of the house was to send out a statement to all the customers on the first of the month; that was the rule of the house." He never told appellant that Moorhouse had the order, and that was the reason he had not given him credit for it, or that he should have credit for it, p. 135, l. 47. On page 136, l. 17, he says: "What I did do, I called in the Fall and saw Mr. Adams. I told him, Mr. Adams, I am very much in want of money, and if you will raise the money you owe me, I will give up all 20 the mortgages and everything, and take off ten per cent. and make you a present of it, for I need it bad, for I have paid money out to Mr. Moorhouse, and I am short of money in my business, for I paid out too much cash money. Q.—Did Mr. Adams ever ask you why he had not received credit for the $5,500 order? A.—Never."

On cross-examination, p. 147, he further testified that the appellant promised, many times, to settle up as soon as he could get his money from Washington, and p. 147, l. 40, he was asked, "Q.—When was the last time he 30 said that? A.—I can't exactly give you the date. I think it was *a year ago last Fall, at Elizabethport; I offered to take off fifteen or twenty per cent., if he would pay me.*" "Q.—Give Mr. Adams' words, what he said? A.—I believe he said 'Old man, I will pay you if I had the money,' or something to that effect." P. 148, l. 17: "Q.—Have you given all of that conversation that you can remember? A.—The principal point was, I was after my money. *We were talking about that order on the District of Columbia.* I had not received one cent on it, and was very much in doubt 40 if I ever would; I told him I needed a good deal of mon-

ey to buy and pay for canned goods; I told him he ought to do something for me; I had waited long enough and needed it badly, and the money was long overdue, and that his account was running along too long, that I could not afford to have it run on so long. I don't know but I told him I had bought Moorhouse out, and had paid him a good round sum of money. Q.—Do you mean to say that you spoke those words to Mr. Adams on that occasion? A.—I know I did." On page 150 he further testified that the order was talked over between Moorhouse and himself, when he bought him out, at the time of the dissolution. And on re-direct, p. 153, l. 1, he says he went at that time to Elizabethport expressly to get a settlement with the appellant, to get money out of him, that he had no other business there.

The appellant was re-called in rebuttal, (see page 191), and testified as follows: "Q.—Did you hear Mr. Stephen Moorhouse say, in the presence of Mr. Jansen, that he had received the Washington order as additional security? A.—No, sir. Q.—While you were trading with Mahnken & Moorhouse, or with C. Mahnken & Co., did you ever hear any one say that? A.—No, sir. Q.—Cord Mahnken, in his direct testimony, says that he called on you at Elizabethport, and said to you, "I am very much in want of money, and if you will raise the money which you owe me, I will give up all the mortgages and everything, and take off ten per cent., and make you a present of it. Did he say that to you? A.—Nothing of the kind. Q.—At that time did you promise to pay Cord Mahnken any money? A.—No, sir."

The above is the whole of his direct examination on rebuttal.

On cross-examination, pp. 191 and 192, he admitted that the respondent was out to Elizabethport once, and once only, since the giving of the order, and when asked the question, "Was not your business between Mahnken & Moorhouse and yourself talked over between you at that time?" he declined to answer under advice of his counsel.

It will be noticed that the conversation between the respondent and the appellant is denied by the appellant as

having taken place at Elizabethport, on his rebuttal. There is nothing in the respondent's testimony to show where that conversation took place, and as the appellant swears that no such a conversation took place at Elizabethport, we have a right to assume it did take place somewhere else, but the appellant, on rebuttal, does not deny the conversation which the respondent testified took place in the lager beer saloon at Elizabethport, hereinbefore quoted, where the respondent offered to take off 15 or 20 per cent., and what was said in connection therewith.

We further submit that the facts and circumstances connected with this Elizabethport visit are in themselves very strong circumstances against the appellant's claim, and sustain the respondent's claim that the order was given as collateral and additional security.

As shown by the testimony, the respondent is a German, aged 64, had been a merchant, and had conducted a successful business in New York city for thirty-nine years. Prior to 1871, Stephen Moorhouse being then a young man, was clerking for the respondent. On April 1, 1871, he and James W. Longwell were taken in as partners by the respondent, and the firm name up to April 1, 1872, was C. Mahnken & Co. On April 1, 1872, a new co-partnership was formed by the respondent and Stephen Moorhouse, for ten years, under the name of Mahnken & Moorhouse; Moorhouse furnished no capital whatever, and received the first year one-third of the profits, and after that one-half. Previous to the expiration of the term the partners had disagreements and quarrels, and were not and are not on friendly terms, (and Moorhouse threatened to have a Receiver appointed to wind up the business,) as appears by the testimony of John H. Jansen, (pp. 119 and 120,) Edward A. Mahnken, (pp. 84, 102 and 103,) respondent, (pp. 130, 131 and 153) and Stephen Moorhouse, (pp. 47 and 56.) Jesse K. Furlong went to Moorhouse to get some information in regard to a claim and suit the late firm of Mahnken & Moorhouse had against Wilson & Co., and which the respondent was prosecuting, but he would give him none, p. 155, l. 24.

The respondent compelled Moorhouse to retire as they could not get along together, and this no doubt incensed Moorhouse, as he was loathe to give up his handsome income from the business.

The above facts show his feeling toward the respondent and affects his creditability as a witness, and if the appellant succeeds the respondent loses his whole claim, amounting now to over $7,100, (being the amount of the order with interest from its date,) while Moorhouse loses nothing, and has a sweet revenge. 10

By referring to a copy of the articles of dissolution (Exhibit No. 17) it will be seen that it was agreed and covenanted as follows, viz.: "And the said Cord Mahnken hereby agrees to *indemnify* and *save harmless* the said Stephen Moorhouse from all liability of whatever kind or character, by reason of said outstanding liabilities of said firm the said Stephen Moorhouse hereby *covenanting* that he has not, on *behalf of said firm, contracted any liability or incurred any obligation which he has not disclosed, and which does not appear upon the said books of account of the said firm*," and 20 the above covenant, on the part of Moorhouse, taken in connection with the interlineation of the words "stocks, bonds and mortgages," in the original articles of dissolution (see Exhibit No. 17 and explanation on page 154, l. 25) called at the time his (Moorhouse's) attention particularly to the bonds and mortgages in question, and he thus recognized them as valid existing evidences of debt, and there being no evidence whatever of other bonds and mortgages then held by the firm, makes inconsistent Moorhouse's story that the order was given as actual payment, as he would at once have said they were paid off 30 and should be surrendered to the appellant.

It is proved and not contradicted that the bonds and mortgages and note in question have never been surrendered to the appellant, but have been kept in the possession of the two firms of Mahnken & Moorhouse and C. Mahnken & Co., in their safe as available assets, and that they were all taken together with the balance due on the books in the account of stock of both firms as good assets. The appellant never demanded their surrender of the re- 40

spondent, nor ever complained that they were not delivered to him. And further that the order was never credited upon the books of either firm, which are weighty facts against the claim of the appellant.

The appellant's whole case rests upon his own testimony, partially corroborated by the testimony of Stephen Moorhouse, but upon comparing the two there are many contradictions, while the respondent is sustained by the testimony of Edward A. Mahnken, John H. Jansen, Jesse
10 K. Furlong and Henry Eggers, and the books and papers which are exhibits in the cause. In the testimony of the respondent's witnesses many facts and circumstances are proven which are not rebutted, but could have been if untrue by having recalled Mr. Moorhouse, and having asked the appellant when recalled as to their truthfulness. Then, again, why were not James Harrison and John G. Gerdes, who are the partners of Stephen Moorhouse (p. 47, l. 24) but who were for some years salesman for Mahnken & Moorhouse prior to their dissolution, called
20 upon to testify. They could, no doubt, have thrown some light on the subject, more especially Harrison, as he had been book-keeper, and the appellant testified (p. 29, l. 8) that he was present when he left the order with Moorhouse, and why were not the cashier and the book-keeper and the other men, who Moorhouse testified (p. 55, l. 25) were present in the office at the time he informed the respondent about the agreement with the appellant, as to the order, and how it was to be applied, called as witnesses to corroborate Mr. Moorhouse, or their absence ex-
30 plained? As heretofore shown (on pages 10 and 11 of this brief) there was due Mahnken & Moorhouse from the appellant, on March 19, 1881, $5,289.70, and after they paid him the $450 in cash he owed them $5,739.70, being $239.70 more than the amount of the order, when they could in a few minutes have figured up the exact amount due and not overpaid the order if it had been given as actual payment of appellant's indebtedness, and quoting the Chancellor: "It seems very improbable that the firm would have agreed not only to accept such an order
40 in satisfaction of his indebtedness to them and give up

the mortgage security which they held, but in addition to advance him $450 on account of a *merely supposed difference* between the amount of his indebtedness and the amount mentioned in the order." When the respondent refused the appellant further credit, and demanded of him payment of his indebtedness, we find him (see page 31, l. 12) *calling to see* Stephen Moorhouse *socially* at *his* place of business, several times, when the *matter was talked over ;* and then, and not till then did he claim of the *respondent* (see p. 30, l. 5) that the order was given as actual payment of his indebt- 10 edness, and demanded of him his mortgages, &c. The whole case, in our judgment, shows a conspiracy between the appellant and Moorhouse to cheat, wrong and defraud the respondent.

In conclusion we earnestly and respectfully submit that as there was no written evidence given at the time of the receipt of the order, or at any time thereafter, of any undertaking on the part of the respondent to accept the order as actual payment of the two bonds and mortgages, note and book-account, and to surrender to the appellant 20 his papers and his account receipted, and to pay in cash the balance of the order found to be due on an accounting, the burthen of proof is upon the appellant and he has failed by his proofs to sustain his bill in the Court of Chancery ; while on the other hand the respondent has, by his proofs, fully sustained his answer in said court, and therefore the decree of the chancellor should be affirmed with costs.

ACTON C. HARTSHORNE,

Of Counsel with the Respondent. 30

In Chancery of New Jersey.

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BETWEEN JEREMIAH E. ADAMS, *Complainant;* *and* CORD MAHNKEN et al., *Defendants.*	*On Bill, &c., for Relief.* *Decree of Dismissal.*

20

Upon reading the bill, answer, replication and proofs in the above stated cause, and hearing the arguments of the respective counsel, and it appearing that the complainant is not entitled to the relief sought for in his bill of complaint,

It is on this twentieth day of October, A. D. eighteen hundred and eighty-five, on motion of Acton C. Hartshorne, solicitor of the defendant, Cord Mahnken, ordered, adjudged and decreed that the said complainant's bill of complaint be dismissed with costs.

THEODORE RUNYON, *C.* 30

A true copy:

G. S. DURYEE,

Clk.

40

BETWEEN

JEREMIAH E. ADAMS,

Appellant;

and.

CORD MAHNKEN et al.,

Appellees.

On Bill, &c.

10

PETITION OF APPEAL.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of Jeremiah E. Adams, appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-first day October, A. D. eighteen hundred and eighty-five, wherein
20 the said Jeremiah E. Adams was complainant, and the said Cord Mahnken et al., were defendants, in this respect, to wit: That the said decree adjudges that the said complainant's bill of complaint be dismissed with costs. And your petitioner humbly appeals from that part of the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous, for that the said complainant is entitled to have the bonds and mortgages mentioned in his bill of complaint delivered to the complainant fully receipted, cancelled and discharged, and to have the accounts
30 of the defendants against the complainant fully receipted, and entitled to all the relief prayed for in the bill of complaint.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside, and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

ALWARD & PARROT,

Solicitors and of Counsel with Appellant.

A true copy from the original, filed November 17, 1885.

40 HENRY C. KELSEY,

Clerk.

N. J. COURT OF ERRORS AND APPEALS.

BETWEEN JEREMIAH E. ADAMS, *Appellant;* *and* CORD MAHNKEN, *Respondent.*	*On Appeal.* *Answer.*

10

The answer of the above-named respondent to the petition of appeal of the above-named appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true for answer thereto nevertheless, says and admits that a decree was on the seventeenth day of November last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced, and this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent.

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A. C. HARTSHORNE,
Solicitor for and of Counsel with Respondent.

30

True copy, filed Dec. 17, 1885.

HENRY C. KELSEY,
Clerk.

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OCTOBER TERM, 1885.

JEREMIAH E. ADAMS, *v.* CORD MAHNKEN and al.	*Bill for relief.* *On final hearing on pleadings and proofs.*

10

MR. J. ALWARD, for complainant.

MR. A. C. HARTSHORNE, for answering defendant (Mahnken.)

The Chancellor:

The object of this suit is to bring the defendants who from April, 1871, to April, 1882, were partners in the wholesale grocery business in the city of New York, under the firm of Mahnken & Moorhouse, to an account with the com-
20 plainant, who during that period was their customer, and bought goods of them to sell at retail in his store in Elizabeth in this State, in respect to certain business transactions which took place between them during the before mentioned period.

The bill alleges that about the 16th of August, 1872, the complainant borrowed $2,000 of the defendants on a usurious contract between him and them for the payment by him to them of a premium of $500 for the loan; that the payment of the $2,500 with interest at seven per centum per
30 annum, was to be secured by his bond and mortgage of real property of his in the city of Elizabeth; that the loan which was of $2,000 only, was made and the bond and mortgage for $2,500 were given accordingly; that in January, 1875, the complainant had paid up the interest on the bond and mortgage and $500 of the principal; that then a new bond and mortgage of the same property for $2,000 were given instead of the bond and mortgage for $2,500, and the last mentioned mortgage was cancelled of record; that the complainant afterwards, in August, 1878, on account of and in further dealings between him and the defendants, gave them another
40 mortgage (for $1,500 and interest), upon the same property and other land also in the city of Elizabeth; that after the

giving of the last mentioned bond and mortgage the complainant continued to deal with the defendant; that on or about the 30th day of March, 1881, he had paid up all the interest on the two mortgages of $2,000 and $1,500 respectively; that he was then desirous of paying his entire indebtedness to the defendants, and of redeeming his lands from the lien of those mortgages; that he was then the owner of an order given by one William H. Adams upon his attorney Allen C. Clark, of Washington, D. C., calling for the sum of $5,500, which order was accepted by Clark and was considered good; that the complainant wishing to dispose of that order and realize the amount due thereon, offered it to the defendants and they made due inquiry about it, and agreed with him that they would take it in payment of the mortgages and his further and other indebtedness to them, if any existed, and pay him the difference between the amount of the order and the amount which should be found due upon a proper statement of the account between him and them; and that as part payment of that difference they paid him on the 30th of March, 1881, $450, and promised to give him credit for the order on their books and state the account, and account to him for the balance of that difference and deliver up to him the bonds and mortgages receipted and cancelled, and execute to him discharges of the mortgages. The defendants dissolved their copartnership in April, 1882. Mahnken bought out Moorhouse's interest in the firm's property and assumed the payment of the debts. Mahnken has answered. Moorhouse has not. The former in his answer states that the $2,500 mortgage was paid off before the $2,000 one was given, and denies that the order was given in payment of the complainant's indebtedness, but alleges that it was given as additional security therefor. The only questions discussed upon the hearing were whether the $2,500 bond and mortgage were usurious, and whether the order was taken in payment of the complainant's indebtedness to the firm or merely as collateral security therefor.

That the loan of $2,000 was made upon an agreement that in consideration thereof the complainant should pay to the defendants a premium of $500 is established by the proof. It is urged, however, on the part of Mahnken that that mort-

gage was paid off in full before the $2,000 mortgage was given, and that the latter was given not for part of the money secured by the $2,500 mortgage, but for an entirely different indebtedness.

This claim is established by the evidence. The $2,500 mortgage was paid off by payments made directly thereon before the $2,000 mortgage was given. The last payment (which was of $150.13), was made January 9th, 1875. The $2,000 mortgage was given January 15th, 1875. When it was given there were $2,548.58 due from the complainant's to the defendants on book account. No part of the money secured by the $2,500 mortgage was in any way included in the $2,000 mortgage. As just stated the last payment on account of the $2,500 mortgage was made January 9th, 1875. The bill was not filed until October 3d, 1882, nearly eight years after that payment. Recovery of the premiums paid upon the loan of $2,000 secured by that mortgage is barred by limitation. Moorhouse has lived in this State ever since the mortgage was given. *Bruce* v. *Flagg*, 1 *Dutch.*, 219.

Nor is the claim that the order was given and accepted in payment of all indebtedness of the complainant to the defendants established. When that order was given (it is dated March 19th, 1881), the complainant owed the defendants a large sum of money (about $5,340), upon the two mortgages of $2,000 and $1,500 respectively, and upon a note of $964.14 payable on demand, given to them by him April 27th, 1880, on settlement, for a balance of account due them March 1st, 1880, and $502.57 for a balance of account due them from him, when the order was given. At the time when the note for $964.14 was given the complainant's credit with the firm of Mahnken & Moorhouse was not good. As conditions of further credit, it was then agreed between him and them that the balance of his indebtedness thereafter to be incurred should not exceed $300; that he should pay all bills promptly within thirty days after they were contracted, and should pay $50 a month upon that note. From about the first of November, 1880, until the time when the order was given, he was unable to purchase any goods from them on credit but was required to pay on delivery. From the time when the order was given to the dissolution of the firm, he again had credit, and at the latter date he owed them on

account for goods sold and cash advanced from August 18th, 1880, to August 16th, 1881, a balance of $1,121.11. According to the weight of the evidence, the order was given as additional security for his indebtedness to the firm. It was drawn by William H. Adams upon Allen C. Clark, his attorney, and accepted by the latter. It directed the drawee after deducting his fees and incidental expenses in the prosecution of the drawer's claims against the District of Columbia before the United States Court of Claims, and also $1,100, the amount of a previous acceptance then outstanding, to pay to the order of Mahnken & Moorhouse $5,500 out of any money that might be awarded to the drawer by the Court of Claims in his suits then pending against the District of Columbia in that Court. The claim mentioned in the order was for work done in Washington by William H. Adams (the complainant's brother), as contractor for certain municipal works there, and although the contract was made and the work done by him they were made and done on behalf of the complainant also who was a silent partner with him therein. The $5,500 were due to the complainant for profits and money advanced for the works; and part of the $2,000 borrowed of the defendants which had gone into the works was embraced in the $5,500. It will be seen that the draft was upon no existing fund. Whether it would have any value or not depended entirely upon the result of a lawsuit. The complainant and Mr. Moorhouse indeed both swear that the agreement between them (Mr. Mahnken appears to have been personally no party to it), was that the order was to be taken absolutely as satisfaction for the complainant's then indebtedness, and they also say that he was to receive from the firm the difference between the amount mentioned therein, $5,500, and the amount of that indebtedness. That indebtedness at the date of the order was over $5,340. They state that $450 were paid to him at about that date on account of that difference. The two sums of $5,340 and $450 together make an amount greater by nearly $300 than the amount mentioned in the order. It seems very improbable that the firm would have agreed not only to accept such an order in satisfaction of his indebtedness to them and give up the mortgage security which they held, but in addition to advance him $450 on account of a merely

supposed difference between the amount of his indebtedness and the amount mentioned in the order. On the one hand the complainant, who is an interested witness, and Mr. Moorhouse who, although he is disinterested, would seem to be unfriendly to Mahnken, testify to the existence of the agreement as alleged in the bill. On the other there is the evidence of the defendant Mahnken, who is interested, and of Mr. Jansen, the book-keeper of the firm, who is entirely disinterested, and of Edward A. Mahnken, son of the defendant Mahnken. Mr. Jansen testifies that before the order was given, Mr. Moorhouse in his presence pressed the complainant for payment, saying that they were not sufficiently secured by the mortgages and note, and said that he wanted to be better secured, and the complainant then proposed to give the order as additional security, and Mr. Moorhouse then accepted it as such. He also testifies that Moorhouse told him that he had received the order as additional security, and that the complainant was to have credit again on account of it. The order was never credited on the books of the firm, and the complainant was well aware of that fact but never complained of it. He also knew that he was charged on the books with the $450 advanced to him at the time when the order was given. He received numerous statements of account after the order was given from which as well as from his examination of the books, he was apprised of the fact that he was not credited with the order. He attempts to avoid the force of this fact by saying that he very seldom looked over the statements that he received, because although his home was in Elizabeth he was in business in Washington, and adds that he was "back and forth." His business in Washington, he says, was the business of contracting for making sewers, laying pavements, &c. He admits that from 1875 to the time of the commencement of the suit (October, 1882), he was in Washington but once. Edward A. Mahnken, who was a clerk of the firm, testifies that Moorhouse when he, Mahnken, asked him whether certain goods which he was about to send to the complainant, and which the latter had bought of the firm, should be so marked as that they should not be delivered without payment of the bill therefor, as had previously from October, 1880, been the method adopted by the firm in their dealings

with the complainant, answered "No; it is all right now, I have got more security; I have got an order on Washington." Mr. Mahnken, defendant, testifies that Moorhouse told him that the order was taken as collateral security for the payment by the complainant of his indebtedness to the firm. And here it will not be out of place to say that although Moorhouse swears that the order was left at the store of the firm during his absence at home by reason of illness, the complainant testifies that he gave it to Moorhouse himself at the store, and he thinks Mr. Mahnken was not present but the book-keeper was. The defendant Mahnken also testifies that after the dissolution he called on the complainant for payment of his indebtedness to the late firm, and offered to deduct fifteen or twenty per cent from the amount if the complainant would pay it, and that the latter said he would pay if he had the money. He says they referred to the Washington claim, and the complainant said that he had got nothing from it and doubted very much whether he ever would get anything; that as soon as he got the money he would settle up, but that there was no depending upon it. He also swears that Moorhouse told him that he had to give the complainant some cash, but did not say how much, to get the order. When the firm dissolved a written agreement of dissolution was signed by Mahnken and Moorhouse. By it all the assets were assigned to the former, and bonds and mortgages are specially mentioned, the words "stocks, bonds and mortgages" having been interlined before it was signed, and therefore the attention of Moorhouse was drawn to it. He thus recognized the bonds and mortgages given by the complainant as valid existing evidences of debt, for the firm does not appear to have had any other bonds and mortgages. He sold out all his interest in the assets, including them, to Mahnken for $40,000; the latter to pay the debts. There are other weighty reasons against accepting the complainant's version of the transaction under consideration. Not only were the bonds and mortgages and notes not surrendered, and the account receipted when the order was given, but there was no written evidence given of any undertaking by or on the part of the defendant to accept the order in discharge of all claims against the complainant or to surrender the bonds and

mortgages and note and receipt his account. He left the bonds and mortgages and note in the hands of the defendants after giving the order. He says, indeed, that he demanded them from Moorhouse, and was put off from time to time, but he not only took no steps to obtain them but never complained that they were not delivered to him. He never demanded them from Mahnken. When the relations of the parties to each other and the character of the order before adverted to, and the conduct of the parties are considered, it seems quite clear that the order was not accepted as satisfaction but merely as additional security, and that in order to get it as security Moorhouse advanced to the complainant for the firm $450. On the hearing, a motion was made on the part of the defendant Mahnken for leave to introduce evidence that the suit mentioned in the order has been decided adversely to the plaintiff therein, and so the order has proved to be utterly worthless. The decision upon that application was reserved until this time. The evidence would be irrelevant and immaterial. The motion therefore is denied. The bill will be dismissed, with costs.

In Chancery of New Jersey.

BETWEEN

JEREMIAH E. ADAMS,

Complainant,

AND

CORD MAHNKEN

AND

STEPHEN MOORHOUSE,

LATE PARTNERS, &c.,

Defendants.

ON BILL, &c.

ALWARD & PARROT,

Solicitors for Complainant.

ROBBINS & HARTSHORNE,

Solicitors for Cord Mahnken.

ELIZABETH, N. J.:
COOK & HALL, JOB AND LAW PRINTERS.

1884.

To the Honorable the Chancellor of the State of New Jersey :

Humbly complaining shows unto your Honor, your orator, Jeremiah E. Adams, of the City of Elizabeth, County of Union and State of New Jersey ; That your orator is a grocer, and for many years has carried on business in the City of Elizabeth. That he is now and for a long time past, has been seized of and entitled to certain lands and premises, situate, lying and being in the City of Elizabeth, Union County and of State of New Jersey. Particularly laid down, designated and described on map entitled " Map of the New Manufacturing Town of Elizabeth Port, New Jersey," (which map is on file in the Register's office of Essex County), as follows: First tract beginning at the corner formed by the most Southerly line of First street, intersecting the most Easterly line of Broadway ; thence Easterly along said line of First street 75 feet ; thence Southerly in a line parallel to said line of Broadway 75 feet to the dividing line between lots 5 and 7, in Block 76 as laid down on said map ; thence Westerly along said dividing line 75 feet to said line of Broadway ; thence Northerly along said line of Broadway 75 feet to the place of beginning.

The second tract is particularly described on said map as lot 45 in Block 64.

Your orator further shows that the defendant Cord Mahnken and Stephen Moorhouse were once partners, under the firm name of Mahnken & Moorhouse, and for many years conducted the business of wholesale grocers at 174 Duane street, in the City of New York, and for a long time your orator had dealings with said firm. That about the 16th day of August 1872, your orator was desirous of obtaining some money and was in pressing need of about the sum of two thousand dollars, and that he made application for a loan of $2,000, for the period of one year, to be secured by a bond of your orator and a mortgage on your orator's real estate, described as the first above mentioned tract. But the said defendant, Cord Mahnken, insisted that the loan should not be made unless the said bond and mortgage was executed conditioned for the payment of $2,500. And your orator being in pressing need of the said sum of $2,000, it was, therefore at or about that time corruptly, usuriously and illegally, and contrary to the form of the statute of New Jersey in such case made and provided, entitled, " An

Act against usury," approved April 10th, 1846, and the several supplements thereto, and also contrary to the statute of the State of New York in such case made and provided, entitled, "Of the interest of money," and the several supplements thereto, agreed by and between your orator and the said defendants, that if your orator would execute and deliver to the said defendants his bond and a mortgage upon the first above described tract of land conditioned for the payment of $2,500, with semi-annual interest, at the rate of seven per centum per
10 annum, then that the said defendants would advance and loan to your orator, the said sum of $2,000, and that in pursuance of such corrupt, usurious and illegal agreement, your orator did make, execute and deliver to the said defendants, the bond and mortgage on said person conditioned for the payment of $2,500 one year after date, with interest payable semi-annually at the rate of seven per centum per annum. And that further in pursuance of said corrupt, usurious and illegal agreement, the said defendants loaned and paid to your orator the sum of $2,000. Your orator further
20 shows that this transaction of the mortgage and the bonus of $500 was entered in the general account between your orator and the said firm of Mahnken & Moorhouse. And that your rator continued to deal with the said defendants, and on the 15th day of January, 1875, he had paid interest on $2,500 and had paid $500 of the principal. At this time the said mortgage of $2,500 was surrendered and cancelled, and your orator executed to the defendants another mortgage on the same premises for the sum of $2,000; said mortgage is dated the 15th day of January, 1875, and is registered January 16th, 1875, in Book 36 of Mortgages for Union
30 County, pages 215, &c., payable one year after date. The mortgage account and the grocer account were at this time mingled together. But your orator shows that the consideration of said mortgage was the above mentioned bonus of $500, and $1,500, the balance remaining unpaid of the aforesaid loan of $2,000, and that this last named mortgage was executed and delivered in place of the balance due on the aforesaid usurious mortgage of $2,500, and that in the entire transaction your orator was and is charged $500 bonus, in pursuance of the
40 aforesaid usurious contract, and your orator shows and insists that the said defendants are entitled to have and receive upon their said bond and mortgage only the sum of $1,500, without interest, according to the laws of the State of New Jersey.

Your orator shows that he resides in New Jersey and his place of business is in said State; that the defendants reside in New York and their place of business is in that State; that part of the business that lead to the above mentioned usurious contract was transacted in New York and part in New Jersey, and

the said defendants may insist that their business transactions are governed by the laws of the State of New York. Your orator insists that if said contract is governed by the laws of the last named State the said defendants are not entitled to recover anything upon their said mortgage. But your orator shows that the lands covered by said mortgage are situate in the State of New Jersey; that the mortgage was executed, delivered and registered in the State of New Jersey, and the above mentioned usurious contract was consummated in the last named State, and is governed by the laws of the State of New Jersey. 10

Your orator further shows that after executing said mortgage he continued to deal with the defendants, and on or about the 15th day of August, 1878, your orator became indebted to the defendants in the further sum of $1,500, and to secure the payment of this indebtednes your orator executed to the defendants, Cord Mahnken and Stephen Moorhouse, partners, as Mahnken & Moorhouse, of the City, County and State of New York, a bond and a mortgage conditioned for the payment of $1,500, with semi-annual interest three years after the date thereof. Said mortgage covered the first and second tracts above mentioned, is dated the 15th day of August, 1878, and was registered the 2d day of September, 1878, in Book 46 of mortgages for Union county, page 435. 20

Your orator further shows that after executing said mortgage, he continued to deal with the defendants, and about the 30th day of March, 1881, he had paid in full all the accrued interest on said mortgages; that on or about the 30th day of March, 1881, your orator was desirous of paying his entire indebtedness to the said defendants, and of redeeming said lands from the lien of said mortgages; and your orator was at that time the owner of an order given by one William H. Adams, upon his attorney, Allen C. Clark of Washington, D. C., calling for the sum of $5,500, which order was at that time accepted by said Clark, and considered good, your orator wishing to dispose of said order and realize the amount due thereon. He offered the same to the defendants, and thereupon the said defendants made due inquiry about said order and agreed with your orator to take said order in payment of said mortgages, and your orator's indebtedness to the defendants, if any existed, and to pay to your orator the difference between said order and the amount to be found due on a proper statement of the account; and in part payment of said difference the defendants on or about the said 30th day of March 1881, paid to your orator the sum of $450, promising that your orator would receive credit for said order upon their books; and that they the said defendants would state the account between themselves and your orator, and that 30 40

they would account to your orator for the difference between said order and the indebtedness of your orator, and that they would deliver to your orator said bond and mortgages receipted and cancelled, and execute to your orator discharges of said mortgages.

And your orator further shows that the said defendants neglected to render the statement and discharge said mortgages. That on or about the 10th day of April, 1882, the said Cord Mahnken bought out the interest of the said Stephen Moor-
10 house in the said firm of Mahnken & Moorhouse, and the said Conrad Mahnken became the owner of all the assets, and entitled to the books and evidences of indebtedness belonging to the said late firm; that at this time the account of your orator remained open upon said books, but the said defendants knew that your orator was not indebted to them, and in estimating the value of the firm's assets, your orator's account was considered balanced. That upon the dissolution of said firm the partnership books and the said bonds and mortgages passed under the exclusive control of the defendant Cord Mahnken; that the said Mahnken refuses to credit the said order upon his books,
20 or to render a just and true account to your orator, and refuses to surrender to your orator said bonds and mortgages receipted and cancelled. Your orator further shows that he has frequently applied to the said defendants. and asked for a statement of his account, showing all payments made by your orator and a surrender of said bonds and mortgages receipted and cancelled, and the payment of the balance due him. And your orator well hoped that they would have complied with such reasonable requests as in justice and equity they ought to have done. But now, so it is, may it please your Honor that the said defendants
30 combining and confederating with divers other persons at present unknown to your orator, but whose names, when discovered, your orator prays may be inserted in his bill of complaint with apt and proper words, to charge them as defendants, hereto refuse to comply with such reasonable request of your orator. The defendant, Stephen Moorhouse says that the said Adams gave, and the said firm of Mahnken & Moorhouse received said order to settle the said mortgages and your orators account, and that if the said Adams had attended to it at that time the mortgages and bonds would have
40 been given up, and your orator account receipted; that through negligence the said order was not at the time it was received by said firm credited upon the firm's books, and that by inadvertance your orators account was left open when the partnership was dissolved. That he the said Moorhouse has delivered to the said Mahnken all the books and papers of the late firm, and that the same, including your orator's said bonds and mortgages are now in the custody

of the said Cord Mahnken, and that he the said Stephen Moorhouse has no control over them; and the said Conrad Mahnken denies that he ever received said order from your orator in payment of his indebtedness; and denies that your orator is entitled to any credit for the same, whereas your orator charges the contrary of what the said Cord Mahnken says to be true.

All which actings, doings and pretences of the said defendants, and more especially of the said Conrad Mahnken, are contrary to equity and good conscience, and tend to manifest wrong, injury and oppression of your orator in the premises. In tender consideration whereof, and for as much as your orator is without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this honorable court where matters of this nature are properly cognizable and relievable. To the end therefor that the said Conrad Mahnken and Stephen Moorhouse and their confederates when discovered may without oath, to the best and utmost of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, your orator hereby waiving pursuant to the statute, the necessity of the answer of such defendants being put in under the oaths of said defendants or the oaths of either of them, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially they may in manner aforesaid answer and set forth a full, true and accurate account of all the dealings and transactions between your orator and themselves, showing the true consideration of said bonds and mortgages. And they have received from your orator in payment of his indebtedness, or to be paid for by said defendants particularly, that they give the date when they received the said order for $5,500 upon Allen C. Clark, the attorney of William H. Hadden, which member of the firm of Mahnken & Morehouse received said order, and what conversation passed between your orator and said member of the firm. Whether the said defendants before receiving said order did not make inquiry at Washington as to the value of said order, what such inquiry was and the result of such inquiry. Whether they did not receive said order after making said inquiry. Whether they did not receive said order with the agreement that they would apply so much thereof as necessary towards paying the indebtedness of your orator and pay your orator the difference, and whether they did not at the time of receiving said order, in pursuance of the above mentioned agreement, give to your orator the sum of $450 on account, and that said answers contain a correct copy of defendant's books showing the account of your orator.

And that an account may be taken between your orator and the said defendants, and if it shall appear that the order with interest from the time it was received by the defendants is more than sufficient to satisfy the amount due the defendants, then that the residue be paid over to your orator; and that your orator may be permitted to redeem the said premises. Your orator being ready and willing, etc., hereby offering to pay what, if anything, shall appear to remain due on said mortgages. And that the said defendants may be decreed to deliver up to your orator the said bonds and mortgages, fully receipted and cancelled, and to execute to your orator a discharge of said mortgages and deliver over to your orator all deeds and writings in his custody or power, relating to said mortgaged premises and to fully receipt the account against your orator.

And that your orator may have such other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orator the State's writs of subpoena, issuing out of and under the seal of the Honorable Court, to be directed to the said Cord Mahnken and Stephen Moorhouse, commanding them and each of them by a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein, as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator as in duty bound will ever pray, &c.

In Chancery of New Jersey.

Between JEREMIAH E. ADAMS, *Complainant,* and CORD MAHNKEN, *et. al.*, *Defendants.*	*On Bill, &c.*

The answer of Cord Mahnken, one of the defendants to the bill of complaint of Jeremiah E. Adams, complainant.

This defendant, for answer unto the bill of complaint of the complainant, or unto so much thereot as this defendant is advised, it is material or necessary for him to make answer unto, answering, says and admits that the said complainant is a grocer, and has carried on his business in the City of Elizabeth for many years, and that he has been for a long time the owner in fee of the two tracts of land and premises particularly set forth and described in the complainant's bill of complaint, and believes that the same are therein correctly described, and that the said complainant is still seized thereof. And this defendant in further answering, admits that he and Stephen Moorhouse, as partners, under the firm name of Mahnken & Moorhouse, conducted for many years, at 174 Duane street, in the City of New York, the business of wholesale grocers; and that the said complainant for a long time had dealings with said firm.

And this defendant, in further answering, admits that on or about the sixteenth day of August, in the year of our Lord one thousand eight hundred and seventy-two, the said complainant for value received, made and executed to this defendant, and the said Stephen Moorhouse, partners as Mahnken & Moorhouse, a bond and mortgage upon the first tract particularly set forth and described in the complainant's said bill of complaint, to secure the sum of two thousand five hundred dollars, with interest, and further answering, says that said mortgage

bears date the day and year last aforesaid, and was duly acknowledged according to law, by the said complainant, and recorded in the Clerk's Office of the County of Union, at Elizabeth, in Book 24 of mortgages on page 496, &c., but this defendant expressly charges and insists that said mortgage, and the bond secured thereby, have been paid and satisfied to this defendant, and the said Stephen Moorhouse, (then) partners, trading as Mahnken & Moorhouse, and that said mortgage has been duly cancelled of record, and is no longer a lien or encum-
10 brance upon the tract of land therein described, and that the said Mahnken & Moorhouse, (late) partners, as aforesaid, or this defendant, have no longer a claim against the said complainant for said bond and mortgage or any part thereof, and further charges and insists that said bond and mortgage, made and executed by the said complainant to this defendant and Stephen Moorhouse (then) partners, trading as Mahnken & Moorhouse, to secure the sum of two thousand five hundred dollars, dated August 16, 1872, has been wholly extinguished, and is utterly null and void, both at law and in equity.

20 And this defendant further answering, denies that the bond and mortgage aforesaid or the principal of the same or any part thereof, or any interest falling due thereon, or the payment of the principal of said bond and mortgage, or any payments on account thereof, or for, or on account of the interest due thereon, were ever entered in the general account of the complainant on the books of the said Mahnken & Moorhouse, but charges and insists that the same was an entirely separate and distinct transaction, and had nothing whatever to do with the store
30 account of the said Mahnken & Moorhouse against the said complainant.

And this defendant further answering, says, that the co-partnership lately existing between this defendant and Stephen Moorhouse, was dissolved by a writing under their hands and seals, of which the following is a true copy, viz.: "Agreement made and entered into this eighth day of April in the year one thousand eight hundred and eighty-two by and between Cord Mahnken and Stephen Moorhouse, both of the City and County of New York in the State of New York: Witnessseth,
40 that the co-partnership heretofore existing between the above named parties hereto, under the firm name of Mahnken & Moorhouse in the business of wholesale grocers, carried on at number 174 Duane street, in the said City of New York, is hereby in all things, this day dissolved by mutual consent.

And it is hereby agreed that the said Stephen Moorhouse retires and withdraws from the said co-partnership, and the business thereof, and hereby in consideration of the sum of forty thousand (40,000) dollars, lawful money of the United

States to him in hand paid by the said Cord Mahnken, the receipt whereof is hereby acknowledged has bargained and sold, and by these presents, doth grant, convey, sell, assign, transfer and set over unto the said Cord Mahnken, his executors, administrators and assigns, all his right title and interest and moiety in and to the stock in trade, goods, wares and merchandise stocks, bonds and mortgages, property, *assets* and effects of every description belonging to the said co-partnership wherever the same may be, together with all outstanding accounts, indebtedness, judgments and things in action due, owing and to become due and owing to the said firm, including all books and accounts, vouchers, bills, papers and documents of every kind, character and description of the business heretofore carried on by the said firm, together with the good will of the said business of the copartnership hereby dissolved, to have and to hold the same to the said Cord Mahnken, his executors, administrators and assigns forever. And the said Stephen Moorhouse doth hereby constitute the said Cord Mahnken, his attorney, irrevocable in the said Cord Mahnken's name or in the name of the said firm, to collect all debts due said firm ; to institute and prosecute at his own cost and expense suits for the recovery of said debts, and to execute all such acquittances as may be necessary, and generally to do all such acts and things as may be necessary and proper for the complete settlement of all the business and concerns of the said copartnership.

And the said Cord Mahnken hereby assumes the payment of all the liability and liabilities of the said firm hereby dissolved as the same now appears upon the books of account of the said firm hereby dissolved. And the said Cord Mahnken hereby covenants to pay and discharge the said debts, as they respectively mature, and from time to time exhibit to the said Stephen Moorhouse on demand evidences of such payments. And the said Cord Mahnken hereby agrees to indemnify and save harmless the said Stephen Moorhouse from all liability of whatsoever kind or character by reason of said outstanding liabilities of said firm, the said Stephen Moorhouse hereby covenanting that he has not on behalf of said firm contracted any liability or incurred any obligation which he has not disclosed, and which does not appear upon the said books of account of said firm.

It is hereby further mutually agreed and expressly understood that nothing herein contained shall limit the right and privilege of the said Stephen Moorhouse to enter into business of any kind on his own individual account.

In witness whereof the parties to this agreement have hereunto set their hands and affixed their seals the day and year first above written.

Signed, sealed and delivered in the presence of—the words "stocks, bonds and mortgage interlined after the word merchandise in the second line from the bottom of the first page, and the words "at his own cost and expense," interlined after the word prosecute in the eighteenth line of the second page of this agreement before its execution.

Cord Mahnken, (L. S.)
Stephen Moorhouse, (L. S.)

JESSE K. FURLONG,
JAMES A. SEAMAN.

And this defendant further answering, says that immediately upon the dissolution of the copartnership aforesaaid of Mahnken & Moorhouse, to wit: on the said eighth day of April, in the year of our Lord one thousand eight hundred and eighty-two, another copartnership was formed consisting of this defendant Edward A. Mahnken and James W. Longwell, under the name, style and firm of C. Mahnken & Co., and that said firm have, since said last above mentioned date, been carrying on the grocery business at said 174 Duane Street, in said city of New York.

And this defendant admits, that the said complainant continued to trade or deal with the said firm of Mahnken & Moorhouse up to the time of the dissolution of the said firm except as hereinafter stated, and says that he continued to deal with the present firm of C. Mahnken & Co. up to within a short time before the commencement of this suit.

And this defendant further answering says, that on the fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-five. the said complainant was indebted to the said firm of Mahnken & Moorhouse on book account for goods, wares and merchandise sold and delivered to him, the sum of two thousand five hundred and forty-eight dollars and fifty-eight cents, as nearly as this defendant can ascertain, and with a view of securing two thousand dollars thereof, and for the purpose of obtaining further credit, the said complainant made and executed to this defendant and Stephen Moorhouse, partners in trade as Mahnken & Moor-

house, a bond and mortgage for the sum of two thousand dollars, on account of said indebtedness to said firm, bearing date the day and year last aforesaid, and which said mortgage was after the excution thereof acknowledgd according to law and duly recorded in the aforesaid Clerks office in Book 36 of mortgages on page 245, &c.

And this defendant admits that said last mentioned mortgage covers the same premises as the fi st mentioned mortgage, but positively denies that the mortgage account and the grocer's account were at the date of the last mentioned mortgage, to wit: on January 15, 1875, mingled together, and further denies that the consideration of the said last mentioned mortgage for two thousand dollars, was a bonus of five hundred dollars and one thousand and five hundred dollars, the balance claimed by the said complainant to have remained unpaid on the aforesaid mortgage of two thousand five hundred dollars; but on the contrary charges it to be true that the said mortgage for two thousand dollars was given on account of the indebtedness then existing, by the said complainant to the said Mahnken & Morehouse, as hereinbefore set forth, and that there was no usury or bonus whatever charged or paid thereon or in said transaction, and that the said complainant is not entitled to any deduction from said bond and mortgage.

And this defendant further answering, admits that on or about the fifteenth day of August, in the year of our Lord one thousand eight hundred and seventy-eight, the said complainant became and was indebted to the said firm of Mahnken & Moorehouse, for goods, wares and merchandise, in the further sum of one thousand five hundred dollars, or thereabouts, over and above the interest charged upon the $2,000 mortgage aforesaid, and to secure the payment of this indebtedness, and for future indebtedness, and to obtain further credit from said firm, executed to this defendant, and the said Stephen Moorhouse, a bond and mortgage conditioned for the payment of one thousand five hundred dollars, with semi-annual interest, three years from the date thereof; that said mortgage covers the first and second tracts of land in the complainant's bill of complaint, and this defendant further says, that said bond and mortgage bears date the day and year last aforesaid, and that after the execution thereof, the said mortgage was acknowledged according to law, by the said complainant, and duly registered in the aforesaid Clerk's office, in Book 46 of mortgages, on page 335.

And this defendant, in further answering, says, that on or about the twenty-seventh day of April, in the year of our Lord, one thousand eight huhdred and eighty, the said complainant became and was indebted to the said firm of Mahnken & Moorhouse, for goods, wares and merchandise, sold and deliverəd by the said Mahnken & Moorhouse, to the said complainant, and

also for interest on the two thousand dollar bond and mortgage, and on the fifteen hundred dollars bond and mortgage hereinbefore set forth, charged to the general account of the said complainant, on the books of the said firm of Mahnken & Moorhouse, in the further sum of nine hundred and sixty-four dollars and fourteen cents, and that on said last mentioned day the said complainant and the said firm of Mahnken & Moorhouse had a settlement of all accounts between them, as shown by the books of the said firm of Mahnken & Moorhouse, and upon the conclusion of said settlement there was found to be due in accordance with said books, and after a full investigation thereof, from the said complainant to the said firm of Mahnken & Moorhouse, the said sum of nine hundred and sixty-four dollars and fourteen cents, and for which amount the said complainant did give a prommissory note, of which the following is a true copy, viz. :

$964.$\frac{14}{100}$. NEW YORK, April 27th, 1880.

On demand, after date, I promise to pay to the order of Mahnken & Moorhouse, nine hundred, sixty-four and $\frac{14}{100}$ dollars, at Irving National Bank, vrlue received, with interest.

J. E. ADAMS.

And this defendant, further answering, says, that after the settlement aforesaid, the said complainant continued to purchase goods, wares and merchandise of the said firm of Mahnken & Moorhouse, and became, and was further indebted to them in the sum of four hundred and eighty-seven dollars and fifty-seven cents on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and eighty, and that after said date, and until the month of April, A. D. eighteen hundred and eighty-one, the said complainant ceased to trade with the said firm of Mahnken & Moorhouse, or was refused further credit by them (excepting a small purchase of fifteen dollars, made on or about February 25, 1881); and that during said period, between October, 1880, and April, 1881, aforesaid, the said Mahnken & Moorhouse were pushing the said complainant for a settlement of his indebtedness to them, which consisted at that time of the bond and mortgage aforesaid of two thousand dollars; the bond and mortgage aforesaid of fifteen hundred dollars; the note aforesaid of nine hundred and sixty-four dollars and fourteen cents, and the book account aforesaid of four hundred and eighty-seven dollars and fifty-seven cents, with large arrears of interest on all said sums.

And further answering says, upon information and belief, that the premises covered by the mortgages aforesaid of two thousand dollars and fifteen hundred dollars, are covered by prior mortgages, and are a scanty security for the moneys intended to be secured thereby.

And this defendant, further answering, says, that the said complainant, in order to keep the said firm of Mahnken & Moorhouse from proceeding to collect from him the indebtedness aforesaid (in its various forms), and to gain further time for the payment thereof, and also to obtain further credit, did, in the month of March, A. D. eighteen hundred and eighty-one, cause to be drawn up, signed, accepted and delivered to the said firm of Mahnken & Moorhouse, as additional security for the indebtedness aforesai', and for cash advanced, as hereinafter set forth, and to secure the said firm of Mahnken & Moorhouse for future indebtedness by the said complainant made in the purchase of goods, wares and merchandise, an order, of which the following is a true copy, viz. :

WASHINGTON, March 19, 1881.

SIR :—

After deducting your fees and incidental expenses in the prosecution of my claims against the District of Columbia before the United States Court of Claims, and also the amount of eleven hundred dollars in acceptance now out, please pay to the order of Messrs Mahnken & Moorhouse, of New York city, five thousand five hundred dollars out of any money that may be awarded me by said Court of Claims in my suits now pending against said District of Columbia in said court. Value received, and charge the same to the account of

Yours Respectfully,

WM. H. ADAMS.

To

ALLEN C. CLARK,
Attorney-at-Law,
220 4½ Street,
Washington, D. C.

Endor ed across the face of said order as follows, viz. :
Washington, District of Columbia 5500\frac{00}{100}$.
Accepted, March 19, 1881.

ALLEN C. CLARK.

And this defendant further answering, says: That the said complainant, before he would deliver the order aforesaid, demanded of the said firm of Mahnken & Moorhouse an advance of four hundred and fifty dollars in cash, which demand the said firm of Mahnken & Moorhouse acceded to, in order to secure said order for the purposes aforesaid, and thereupon paid said sum of four hundred and fifty dollars to the said complainant, on or about the thirtieth day of March, in the year of our Lord one thousand eight hundred and eighty-one, and charged the same to the said complainant, in his general account, on the books of the said firm of Mahnken & Moorhouse.

And this defendant further says: That soon after the delivery of the order aforesaid, and upon the strength thereof, the said complainant commenced to trade or deal again with the said firm of Mahnken & Moorhouse, and continued so to do up to the date of the dissolution of said co-partnership, and also to trade or deal with the said firm of C. Mahnken & Co., until within a short time before the commencement of this suit, and that during said period he purchased of said firm goods, wares and merchandise to the amount of one thousand and
10 thirty-two dollars and forty-five cents; and that the said complainant owes to the two firms aforesaid on book account at this time (including the said four hundred and fifty dollars, advanced as aforesaid) the sum of one thousand one hundred and fifty-nine dollars and fifteen cents, with large arrearages of interest due thereon, and also owes to the said late firm of Mahnken & Moorhouse, the aforesaid note of nine hundred and sixty-four dollars and fourteen cents, with interest due thereon from the date thereof, excepting two payments made thereon, viz: May 6, 1880, cash $25.00, and June 11, 1880,
20 cash $25.00; and further says that said book account and said note are not secured in any other way than by the order aforesaid.

And this defendant further answering says: That by the agreement or assignment hereinbefore set forth at length, he is now, the owner and holder, both in law and equity of the aforesaid two mortgages, the aforesaid note and the aforesaid book account, and also of the order aforesaid given as additional security for the payment thereof, and that he has the possession of said two mortgages, note, order and books.

30 And this defendant further answering, says: Upon information and belief that the suits mentioned in the order hereinbefore set forth at length, are still pending and have not been settled or tried, and that the said Allen C. Clark, in said order named, refuses to pay the said order or any money on account thereof, until the determination of said suits, although often requested so to do, and that the collection of said order or any part thereof is doubtful, but upon the payment of said order or any part thereof to this defendant, he tenders himself ready and willing to credit the amount paid thereon and to make a full
40 accounting to the said complainant, and to pay him over whatever balance, if any may be found due him, after deducting his indebtedness aforesaid.

And this defendant further answering, denies that the said complainant had on or about the 30th day of March A. D. 1881, paid in full all the accrued interest on said two mortgages, but on the contrary charges it to be true, that the greater part of said interest, if not the whole thereof, has not been paid by the said complainant or any one for him, but was

charged up to the general account of the said complainant upon the books of the said firm of Mahnken & Moorhouse, and was carried into the aforesaid note given to balance the account of the said complainant.

And further admits, that it may be true, that one or the other of the firm of Mahnken & Moorhouse made inquiries as to said order and ascertained it had some value, and says that the aforesaid order was actually received by the said Stephen Moorhouse after consultation between this defendant and the said Moorhouse, relative thereto, and as to what it was to be given and accepted for; and further denies that the said firm of Mahnken & Moorhouse received said order with the agreement that they would apply so much thereof as was necessary towards paying the indebtdeness of the said complainant to the said firm of Mahnken & Moorhouse, and that they should have an accounting and pay the balance of said order (if any) over to the said complainant, but on the contrary this defendant charges it to be true, and insists that the said order was passed over and delivered by the said complainant to the said firm of Mahnken & Moorhouse as additional security, as hereinbefore set forth.

And this defendant further answering, says, that said order was never credited to the account of said complainant upon the books of the said firm of Mahnken & Moorhouse, nor was it ever the intention of the said firm so to do, until the same or some part thereof, was paid, and then only to credit the amount so paid; and further admits that at the time of the dissolution of the co-partnership of Mahnken & Moorhouse, this defendant became the owner of all the assets, and entitled to the books and evidence of indebtedness belonging to said late firm, and that at that time the account of the said complainant remained open upon said books, and says that it still remains open, and further denies that at that time the said firm of Mahnken & Moorhouse knew that the said complainant was not indebted to them, and in estimating the value of the firms assets the said complainants account was considered balance, but charges the contrary thereof to be true.

And this defendant further answering, says, that as to what the said Stephen Moorhouse says or will say, relative to the said order and to the other matters in question this defendant is not informed, except by the bill of the said complainant, but denies that the said Adams gave, and the said firm of Mahnken & Moorhouse received said order to settle the said mortgages, and the said complainants account, and further denies that if the said Adams had attended to it at that time the mortgages and bonds would have been given up and the said complainants account receipted; and further denies that through negligence the said order was not, at the time it was received by said firm,

credited upon the firms books, and that by inadvertence the said complainant's account was left open when the partnership was dissolved.

And that this defendant may have such further or other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience, and that thereupon he may be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

ROBBINS & HARTSHORNE,

10 *Solicitors for and of Counsel with Cord Mahnken, Defendant.*

A true copy,
G. S. DURYEE.
Cl'k.

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IN CHANCERY OF NEW JERSEY.

Between JEREMIAH E. ADAMS, *Complainant,* and CORD MAHNKEN, *et al.*, *Defendants.*	*On Bill, &c.*

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Depositions and proofs on part of the complainant, taken before me, Edward S. Atwater, a master and examiner in Chancery of New Jersey, at my office, No. 208 Broad street, Elizabeth, New Jersey, on Wednesday, June 6, 1883, at 10 A. M., in presence of Alward and Parrot, solicitors of complainant, and Robbins and Hartshorne, solicitors of defendant, Cord Mahnken.

EDWARD S. ATWATER,
Master and Examiner.

20

JEREMIAH E. ADAMS, the complainant, being duly sworn according to law, and examined by Judge Alward, deposes and says:

I am the complainant in this cause. I reside in this city. My business is grocer. I have been a grocer in this city since 1856. I am acquainted with the defendants in this cause, Cord Mahnken and Stephen Morehouse; their business is wholesale grocers in New York city. I have had dealings with them. I have borrowed money of them; it was in 1872. The amount I wished to borrow was $2,000 (two thousand dollars). I made application to the defendants for it, to Mr. Cord Mahnken. Mahnken & Morehouse were in partnership at that time. Mr. Mahnken said he would let me have the money if I would give him a bond and mortgage for $2,500. My application was to the firm to loan the money. I entered into an agreement upon the firm loaning me $2,000 to execute a mortgage for $2,500. The mortgage was executed and delivered; the mortgage was dated August 16, 1872. I now use a memorandum taken by me yesterday from the Union County Clerk's office. That mortgage was registered as mentioned in the bill of complaint.

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40

I received Mahnken & Morehouse's check for $2,000 for the money loaned by them on that mortgage. That is all I received for that mortgage. At that time I was buying groceries

of Mahnken & Morehouse; I continued to deal with them up to the time they dissolved.

That mortgage was cancelled by giving another mortgage on the 16th of January, 1875. I had an open account with Mahnken & Morehouse all the time between the giving of the first mortgage and its cancellation. During that time there was no settlement between Mahnken & Morehouse and myself, either of the mortgage, interest or grocery account. There was no settlement made when the old mortgage was cancelled
10 and the new one given.

When I executed the second mortgage, in January, 1875, I turned it over to Mahnken & Morehouse; I am not certain to which of them; I think both of them were there when it was turned over. The delivery of the new mortgage and the cancelling of the old was one transaction. I have been to the Clerk's office to see who cancelled the old mortgage. It was produced at the office for cancellation by Cord Mahnken.

Q. What was the consideration of this second mortgage?

A. $2,000; he gave me credit for it on his books. I sup-
20 posed he did.

Q. Was this second mortgage given on the grocery account, or on account of the balance that was due on the old mortgage?

[Objected to as leading.]

A. It was given to help settle up the old mortgage and the grocery account together. It was all one concern. I never had any settlement with them. I never took any receipt from the time it commenced—receipts as to settlement I say.

30 Q. What was your understanding as to the first mortgage, was that entered in the account or not?

[Objected to.]

A. I supposed it was.

[Counsel for defendant Cord Mahnken objects to all questions and answers relative to the mortgage of $2,500 the same
40 as if objections were made at each question and answer, for the reason and upon the grounds that the $2,500 mortgage has been paid and satisfied and cancelled of record, and is not in question in this suit.]

[Counsel for complainant consents that the objection be entered as if made to each question and answer.]

Q. State distinctly how that old mortgage was paid?

[Objected to.]

A. By giving another mortgage the same day, $2,000, or about the same day. I don't recollect of giving any money at that time or at the time of giving the mortgage, but I had previously been paying them money on account and dealing with them, several hundred dollars per month, and paying them money by check.

Q. Did you ever give Mahnken & Moorhouse an order on any one? 10

A. Yes, sir; I think it was in the year 1882.

Q. Then you don't remember when it was?

A. Well, I don't; I had not taken the date of the order.

Q. State the transaction and circumstances?

A. I had a conversation with Mr. Moorhouse in regard to getting an order of W. H. Adams on his attorney Allen C. Clark, in Washington, D. C., which was to be accepted by Allen C. Clark for $5,500, said order if I could get it, they would give me credit for the same. I got that order and delivered it.

Q. What was the agreement when you delivered them the order? 20

A. That they would give me credit for the same and render me a statement, and have a general settling up and turn over my mortgages and all my papers. That is all there is about it.

Q. Was there anything said about the difference between the account and the order?

A. The difference was to be adjusted whatever there was; if there was anything due me I was to have it, and if there was anything due them they was to have it. The order was known to be more than the amount that I owed them on everything. I was anxious for a statement and settlement. They gave me 30 $450 in money on account of the order and promised a statement and a credit of the order. This $450 was on account of the balance that was coming to me on account of the order.

[This last statement was in answer to a question worded as follows: "Do you mean to say that this $450 was on account of the balance that was due on account of the order?"]

Q. At this time was it or was it not understood that the order exceeded your entire indebtedness to the defendants of 40 every description?

[Objected to as leading.]

A. It was understood that it exceeded the amount.

Q. Did you give this order in payment of your indebtedness or only as collateral security?

[Objected to as leading.]

A. I gave it in payment of my indebtedness so understood by one of the firm and myself. After the firm had dissolved I got a statement of my account from them. This paper which I hold in my hand is the statement which I received. I was not satisfied with it. I took it back and told Mr. Mahnken that it was all wrong. At that time the lower credits amounting to $690 were not on the paper. They put it on while I was there. The order was not on at all. I have never seen the order since I handed it over to them. I asked Mr. Mahnken why they had not given me credit for the order. He said that Morehouse had the order.

Q. Has your counsel shown you a book stating that it was a copy from Mr. Mahnken & Morehouse's ledger?

A. He has. I looked to see whether I had credit for all the checks which I had given. The checks which I now produce were not credited. Fourteen checks on the First National Bank of Elizabeth, bearing date and of amount as follows:

January 24,	1873,	$1,000 00
May 23	"	30 00
July 18,	"	175 00
Aug. 22,	"	150 00
Sept. 5,	"	500 00
Oct. 31,	1874,	150 00
Nov. 6,	"	151 20
" 14,	"	150 90
" 27,	"	151 11
Dec. 5,	"	151 52
" 12,	"	151 72
" 19,	"	83 40
" 26,	"	100 00
Jan. 9,	1875,	153 13

[These checks are offered in evidence, and marked Exhibits A 1 to A 14 inclusive.]

Q. Did you or not find the first mortgage of $2,500 on this ledger?

A. No, sir; it is not in the book.

Q. These checks that were given, were they given between the date of its execution and its cancellation?

A. They were all given between the time of the mortgage being executed and cancelled.

Q. You have mentioned two mortgages; did you give Mahnken & Morehouse any other mortgage?

A. Yes, for $1,500. That was given on account of my indebtedness to them. That is one of the mortgages mentioned in the bill. I gave Mahnken & Morehouse a note for $964 14. That was on account of the indebtedness as well as the $1,500 mortgage.

Q. Were these given before the order? 10

A. They were.

Q. What were those fourteen checks given for?

A. On account, my grocery account.

[Cross-examined by Mr. Hartshorne.]

I came here in the fall of 1856, and have been in the grocery business ever since, but not in my own name all the time. I was in business with my father in the fall of 1856. I am not certain whether the name was William Adams alone. Soon 20 after we came here it was William Adams & Son. I came from Ulster county, New York State. I never was in the grocery business there. I could not say how long the firm of William Adams & Son existed. I could not tell when I first went into business for myself. Mr. Mahnken's books could tell you about as near as any evidence; I could not. My father is not alive.

[Foregoing examination objected to as irrelevant.]

I succeeded my father in the business I believe. I don't recollect how that was; he went out. My father died. I have had 30 the business ever since. I don't know but what it was before that. It may have been five or ten years before that I took the business.

Q. Do you mean to say that you cannot come within five or ten years of when you first started in the business?

A. Not here to-day, I could if I was home.

Q. Your memory then is defective?

A. No, sir; my memory is as good as yours or anybody else's.

Q. Since you first started in business in your own name have you conducted the same in your own name up to the present 40 time at your present place of business in Elizabeth?

[Objected to as having nothing to do with the case.]

A. I decline to answer.

Q. Last question repeated.

A. Yes, sir; I have.

Q. Can you give the dates when you purchased your real estate?

A. I could if I was home to look at my deeds. That is the only way I can give it to you.

Q. Please give us the mortgages upon your real estate, who held by and the amount of each, other than the ones given to Mahnken & Morehouse?

[Objected to.]

10

A. I don't care to answer that question; you can go to the Clerk's office at the Court House and examine the title without my answering the question.

Q. Do you refuse to answer?

A. No. I have got a mortgage on my corner property to the Washington Life Insurance Company $5,000; on same property Mr. Mahnken's mortgage covers and ahead of it; he knew that when he took it. The interest is not all paid up on that mortgage. I cannot tell up to what time. They have been taking orders from me on the city, and our city is in a
20 kind of a mixed up mess.

There is a mortgage of $3,000 on my property, 121 Broadway, Elizabeth; one vacant lot of this property is covered by the Mahnken $1,500 mortgage. These are all the mortgages outside of the Mahnken mortgages.

I think I traded with Mahnken & Morehouse when I first commenced business, and traded with them up to the time of their dissolution. I have traded a little with C. Mahnken & Co. I bought most all of my groceries of Mahnken &
30 Morehouse, and ran a large accouut there.

Mahnken & Morehouse sent me a few statements of my account, but not as a rule. I don't think I ever asked them for statements of my account until this order business came up. I very seldom looked over the statements that I did receive. I was in business in Washington, and was not home to examine my affairs. My home was here in Elizabeth; I was back and forth. I was in the contracting business in Washington, building sewers, laying pavements, etc.

40 William H. Adams is my brother. I was there with him and interested with him. I was a kind of silent partner with him. The business was done altogether in his name.

Q. You knew that this $2,500 mortgage was satisfied and cancelled of record in January, 1875, did you not?

A. I know it now; I saw it on the record yesterday—saw that it had been cancelled.

Q. Was that the first that you knew of it?

A. When he took that $2,000 mortgage he said he would get the other one cancelled.

Q. At the time you gave the $2,000 mortgage, did you not know that you owed Mahnken & Morehouse over $2,000 on book account?

A. I did not know how much.

Q. You knew you owed them a large amount, did you not?

A. Yes.

Q. Did you have a settlement with them at that time?

A. I don't recollect of any. 1

Q. You were frequently at that store?

A. I used to go to their store occasionally.

Q. Did you use to look over their books at all?

A. No, sir.

Q. Did not they occasionally call your attention to the amounts that you owed them, and to the books and ask for a settlement?

A. They never called my attention to the books, they used to call on me for money.

Q. Do you say that you have never looked over your account in the books of Mahnken & Moorhouse? 2

A. I don't recollect of looking or examining into my account on their books.

Q. Have you ever had any settlement with the firm of Mahnken & Moorhouse?

A. I do not recollect of any settlement. There was a note drawn up once which they spoke about as a settlement. I never considered it a settlement; that note of $964.14. I could not say whether I had a statement from them when that note was given. 3

Q. How came you to sign or give that note if you had not had a statement or a settlement?

A. Well I was glad to do at a cost anything to keep them quiet. I was owing a good deal of money.

Q. At that time you were hard run?

A. I would not have signed a note if I was not. I kept on trading with them after that.

Q. At that time did you make any agreement with Mahnken & Moorhouse as to the purchasing of goods and your future payments?

A. It appears to me that there was some talk about paying up sharper; that was about what it amounted to.

Q. Did you agree not to exceed in purchases the sum of $300 monthly and to pay the bills promptly in 30 days when due?

A. I think I did.

Q. Did you not agree to pay $50 or more monthly on account of the note?

A. I don't recollect.

Q. Did you not agree to pay the interest on your mortgages when due promptly?

A. When, at time note was given?

Q. Yes.

A. No, sir; I don't recollect about that.

Q. Well, did you at any other time?

A. I don't think I did. I supposed the interest was charged upon their book account, in fact the bookkeeper told me so.

10 Q. What bookkeeper?

A. Their bookkeeper. I think it was James Harrison.

[After recess examination resumed.]

Q. When this $2,000 mortgage was given who was the business transacted with?

A. I am not certain whether it was Mahnken or Moorhouse or both.

20 Q. Do you remember who you delivered the mortgage to?

A. I think they were both present when I left the mortgage at the store. I could not say which one I handed it to.

Q. Was there anything said at that time as to what the mortgage was given for?

A. No, sir.

Q. Was that the same day the mortgage was executed?

A. I could not say whether it was the same day or a day or two after.

Q. Did you have a settlement that day of any kind?

A. No, sir; I think not.

30 Q. Did you make any payment that day?

A. I certainly could not say whether I did or did not.

Q. Did you take up the old $2,500 mortgage when you delivered the $2,000 mortgage?

A. No, sir.

Q. You are quite positive that that business was transacted in New York and not here in Elizabeth, are you not?

A. To the best of my knowledge the mortgage was left over there in the office.

40 Q. At that time did you make a demand for the $2,500 mortgage?

A. No, sir.

Q. If the $2,0 0 was given to take up the $2,500 mortgage why did you not demand and take up the $2,500 mortgage and have it cancelled yourself?

A. It was not offered to me and I did not ask for it.

Q. Is that the way you usually do business when you pay off an obligation not to demand it?

A. It was about the way I did business with Mahnken & Moorhouse after I got in their debt or got behind so much.

Q. You have stated in your direct examination that you were given credit on the books of Mahnken & Moorhouse for the $2,000 mortgage, how do you know that?

A. I saw it on this book, a copy of their books.

Q. Did you know it before you saw that book you speak of?

A. I always supposed that they had given me credit for it.

Q. What led you to suppose so?

A. They always claimed to give me credit for my checks and mortgages. 10

Q. Was there any way in which you were led to suppose it?

A. I am not sure, I think it was on that last statement we had here.

Q. Did not you see it on some of the former statements of your account that they had sent you?

A. I am not certain.

Q. Did you ever see the $2,500 mortgage credited upon any statements of your account that had been sent you?

A. I think not. 20

Q. You have testified in your direct examination that you gave an order of W. H. Adams on his attorney Allen C. Clark, of Washington, D. C., for $5,500 to Mahnken & Moorhouse, please give us the wording of that order as near as you can?

A. I could not give it to you as it was written.

[Counsel for complainant calls on counsel for defendant to produce the order.]

[Counsel for defendant produces it.]

Q. Give the substance of it? 30

[Question objected to as the proper substance of the order is the order itself.]

A. It is drawn up similar to a draft and accepted similar to an accepted draft.

Q. Look at this order and see if it does not read to pay the amount thereof out of any money that may be awarded me by said Court of Claims in my suits now pending against the District of Columbia in said Court? 40

[Objection made as the order speaks for itself.]

[Paper shown witness, he says:]

A. That is the order. The words you ask are in it.

Q. You have stated heretofore that you were interested with William H. Adams in his business transactions in the District

of Columbia, now is this one of those business transactions in which you were interested?

A. I was interested in furnishing him with funds.

Q. Last question repeated.

A. I don't understand the question. The upper part of it I do and I have answered it.

Q. Before giving this $5,500 order of William H. Adams to Mahnken & Moorhouse, had you any interest whatever in the sum therein named?

10 A. That order, the amount of that paper you have there, was coming to me from William H. Adams as part of my profits or money advanced. But of the $2,000 was in that that I borrowed of Mahnken & Moorhouse.

Q. This order represented indebtedness due William H. Adams and yourself from the District of Columbia, did it not?

A. Due William H. Adams, not me, I took it from William H. Adams.

Q. Well then it was due William H. Adams from the District of Columbia?

20 A. Yes. It bears date March 19, 1881.

Q. In this order it speaks of suits now pending against the District of Columbia, you knew of those suits at that time, did you not?

A. I knew that they were in the Court of Claims. Allen Clark was the only attorney that practiced before that Court. Those suits are still going on, waiting their turn. They have not been tried, settled or compromised in any way. Allen C. Clark, the attorney mentioned in this order, has not received the money or any part thereof mentioned in this order from

30 those suits.

Q. Then this order is not due and payable until the money is collected?

[Objected to as being a question of law.]

A. No, sir; as it reads there.

Q. This bargain that you have testified to in your direct examination as to Mahnken & Moorhouse receiving this order

40 was before you actually obtained the order, was it not?

A. Yes, they advised me to get the order.

Q. What else did they say?

A. That they would give me credit for it and money on account of it. They did give me $450 on account of it after they had had the order.

Q. On the strength of what you say they told you, you had the order drawn up, signed and accepted, did you not?

A. My brother had that done.

Q. Then you did not see it until it came into your hands as it now is, did you?

A. I did not. It was mailed to me from Washington.

Q. How long did you keep it in your possession?

A. A very few days.

Q. What did you do with it then?

A. I took it to Mahnken & Moorhouse's office. I gave it to Mr. Moorhouse there. I think Mr. Mahnken was not present.

Q. Was there any one else present besides yourself and Mr. Moorhouse?

A. I don't recollect of any one but the bookkeeper. I 10 think the bookkeeper was there. His name was Harrison, either his first or last name. They called him Harrison. There was no conversation took place between me and him at that time relative to our business more than that he would give me credit for the order, and render a statement soon and deliver up my papers.

Q. You had read over this order had you not at that time?

A. Yes, I read it over with him; he was satisfied with it.

Q. And you knew the money was not due thereon until collected by Clark when he gained those suits, did you not?

A. I knew what the order read and read it over to him; 20 understood it so, just as it read.

Q. This order is dated March 19, 1881, did you at any time thereafter make a demand on Mahnken & Moorhouse for the bonds and mortgages and note and statement of your account?

A. After they had had the order some time I did.

Q. When?

A. Some time after they had had the order; months after they had the order, about the time they gave me the $450, I asked them for a statement and my papers.

Q. At the time they gave you the $450 was the first time 30 you made the demand for the statement and the papers, was it not?

A. When I first left the order I asked for my statement.

Q. Then it was the next time, being some months after you gave them the order that they paid you the $450?

A. I don't know how long it was. It was about the time I got the $450.

Q. Give the time as near as you can, was it one week, one month or one year afterwards?

A. They gave me two checks, one for $200 and one for $250, 40 making the $450.

Q. When was the next time after that you demanded your papers from Mahnken & Moorhouse, if you demanded them at all?

A. Several times after, I could not give the date, I asked for my statement.

Q. Of whom did you make the demand when you got the $450 ?

A. Of Mr. Stephen Moorhouse, in his office at Mahnken & Moorhouse's, at the store. He was the only man of the firm that I ever spoke to about the order.

Q. Did you ever make a demand of Mr. Mahnken for your papers, for your mortgages and note, etc.?

A. No, sir; the only time I spoke with Mr. Mahnken was when I took this statement back to him. He said Moorhouse had the order, that is why he had not given me any credit. That was after the firm was dissolved.

Q. Did not he say at that time that the order was not to be credited until paid and that it was given as additional or collateral security for your indebtedness, or words to that effect?

A. He said a good many things, I don't recollect it at all.

Q. But you don't say that he did not say it?

A. I don't say that he did not say it. I left him and have never been in the office since.

Q. You knew Mr. Mahnken before Mr. Moorhouse went into partnership with him?

A. Yes.

Q. And you traded with Mr. Mahnken before Mr. Moorhouse went into partnership with him?

A. Yes.

Q. You also knew that Mr. Mahnken was the head man of the firm of Mahnken & Moorhouse, did you not?

A. I alwas done my business with Mr. Moorhouse.

Q. Question repeated.

A. I knew he was the oldest. Mr. Moorhouse always did the inside business pretty much so far as I have known them.

Q. When you gave this first mortgage of $2,500, you went to Mr. Mahnken then, did you not?

A. Yes, but he told me he had to advise with Mr. Moorhouse before he would let me have it.

Q. Now from March 19th, 1881, until you commenced this suit, you say you called upon Mr. Moorhouse several times for your bonds and mortgages, etc., and did not succeed in getting them, why did you not call upon Mr. Mahnken previous to your going back with that statement, as you knew he was the senior member of the firm, and ask him for the papers?

A. I had done all my business with Moorhouse and I had confidence in him. I did not see any use of going to Mr. Mahnken. He was very seldom in when I was there, generally across town buying goods.

Q. At the times you called upon Mr. Moorhouse what reasons or excuses did he give for not complying with your demands in giving up your bonds, mortgages, &c.?

A. None. He told the bookkeeper to fix up that account as soon as he could, of Adams.

Q. Did you ever complain to him of his negligence in not delivering up those papers?

A. No, I would not if he had kept them six months longer. He had always been kind to me. I do not remember at what time Mahnen & Moorhouse dissolved partnership. I got a printed notice of the dissolution at the time. I knew that Moorhouse subsequently went into the same kind of business with other parties under the firm name of Stephen Moorhouse 10 & Co.

Q. You have traded with Stephen Moorhouse & Co. since then, have you not?

A. I have not bought a dollar's worth of them.

Q. Since the firm of Mahnken & Moorhouse dissolved, you have been to see Mr. Moorhouse, have you not?

A. I have called on him two or three times since he has separated from Mahnken.

Q. In reference to the business connected with this suit, have you not? 20

A. No, sir; I have called to see him sociably, and we talked over this matter when I was there. I did not go a purpose to see him.

Q. If you did not a purpose to see him, what did you go for?

A. To call on him as a particular friend; he always has been a friend of mine and I have called on him a good many times, not there slone, but when he was with Mahnken & Moorhouse, socially I called to see him when I did not go a purpose to buy goods.

Q. You called to see him several times at the store of Stephen Moorhouse & Co., did you not? 30

A. Two or three times I called to see him at his new place of business.

Q. And you and he talked over this order, the mortgages, note and accounts, did you not?

A. I talked over about the order.

Q. After you had been to Mr. Mahnken's you then sent your counsel, Mr. Alward, to him, did you not?

A. I did.

Q. You say that these checks, Exhibits A 1 to A 14 have not been credited to you on Mahnken & Moorhouse's books of account? 40

A. According to the book Mr. Alward showed me.

Q. From August, 1872, to January, 1875, according to that book, Mr. Mahnken's mortgage for $2,500 was paid off by you?

[Objected to because mortgage does not appear on the book.]

A. It don't show on this book at all. The mortgage has been cancelled of record.

Q. It therefore must have been paid off?

A. That is what you say, I think it was paid off by the $2,000 mortgage.

Q. The $2,500 mortgage is not now an existing lien against your property?

A. The records say it is cancelled. It must be so.

10 Q. Do you owe the $2,500 mortgage, or any part thereof?

A. No.

Q. Were not checks, Exhibits A 1 to A 14, paid by you to Mahnken & Moorhouse, or some of them, on account of the $2,500 mortgage?

A. Some of them I think were.

Q. Were not all of them?

A. No.

[Checks shown witness.]

20

Q. Please select from them which ones were not paid on account of the $2,500 mortgage?

A. I could not select any of them which were or were not.

Q. How is it then that you can testify that all the checks were not paid on the mortgage?

A. I think I said that these were not credited on the book that Mr. Alward brought.

Q. All that you paid to Mahnken & Moorhouse you paid by check, did you not?

30 A. I think I did. I don't recollect of paying them any money.

Q. You sometimes dated your checks ahead, did you not?

A. Occasionally.

Q. And some of those checks you would not have the money to meet and would write or send to Mahnken & Moorhouse to send you a check to meet your checks, would you not?

A. No, sir; I never sent to them that I know of.

Q. Did you not telegraph to them to send down their check to meet your check on one or more occasions?

40 A. I have no recollection of that, I may have telegraphed them to hold my check.

Q. Did any one ever come out to Elizabeth from Mahnken & Moorhouse's store and bring the firm's check to meet your check that you had given them?

A. I do not recollect of any such transaction.

Q. Did not Mr. Edward A. Mahnken bring out here once a a check of that kind?

A. I have no recollection of it at this time.

Q. You have let some of your checks to Mahnken & Moorhouse go to protest, have you not?

A. Yes, sir.

Q. And would take those protested checks up by giving Mahnken & Moorhouse another check, would you not?

A. I generally sent them a certified check whenever there was one protested.

Q. You used to exchange checks with Mahnken & Moorhouse, did you not?

A. I don't recollect of ever exchanging checks with them. 10 It may have been. I don't recollect of it.

Q. You frequently gave notes on account of amount due Mahnken & Moorhouse, did you not?

A. I very seldom gave them a note, not a negotiable note. I may have given them a note payable in New York once or twice. I never made any business of giving notes to them.

Q. Did you not on several occasions get Mahnken & Moorhouse's checks to take up notes which you had given them payable in the bank?

A. I don't recollect of ever getting Mahnken & Morehouse's 20 check to take up my note payable in the bank.

Q. You owe Mahnken & Moorhouse a balance on open account, do you not?

A. I think there is a few dollars due me.

Q. I am speaking without taking the order into consideration, if the order was not in existence then there would be a balance due them on open account, would there not?

A. I contend that the order is to my credit. Mr. Moorhouse told me it ought to be so and was so.

Q. You owe C. Mahnken & Co. a balance on open account, 30 do you not?

A. I don't know how that is, they have got it all mixed up with those old and new.

Q. At the time you gave this $1,500 mortgage on account of your indebtedness to Mahnken & Moorhouse, did you not look over their books, or had a statement given you by them showing that you were indebted to them in about that amount?

A. I did not look over their books. I don't recollect of seeing a statement at that time.

Q. Mahnken & Moorhouse refused to give you further credit 40 unless you executed that mortgage, did they not?

A. I think they did.

[Statement heretofore examined on shown witness.]

Q. That $690 at the bottom of it there was interest on the $2,000 and $1,500 mortgages charged you on the books of Mahnken & Moorhouse, was it not?

A. I certainly don't know. When this statement first came it was not on. I took it back to the store myself. Those credits of $690 were put on while I was there at the store but I don't know that they were taken from the books.

Q. From October, 1880, until April, 1881, did not the firm of Mahnken & Moorhouse refuse to sell you any more goods upon credit, excepting a small bill of $15, obtained February 25, 1881?

A. I think s . I bought of them and traded and paid for what I got.

10

[Note dated April 27, 1880, for $964.18, shown witness.]

Q. Is that you signature?

A. Yes, sir.

[The order in question, dated March 19, 1881, for $5,500 on Allan C. Clark, shown witness.]

Q. Are you acquainted with the signature of William H.
20 Adams and Allan C. Clark?

A. Yes, sir.

Q. That is William H. Adams' genuine signature, is it not?

A. Yes, sir.

Q. The signature of Allan C. Clark to the acceptance is his genuine signature is it not?

A. Yes, sir.

[Adjourned to Wednesday, June 13, 1883, at 10 A. M.]

June 13, 1883, at 10 A. M., examination resumed in pres-
30 ence of same counsel as before.

Re-direct:

Jeremiah E. Adams, the witness, being re-examined by Mr. Alward, deposes and says:

Q. In your cross-examination to the question "did you take up the old $2,500 mortgage when you delivered the $2,000 mortgage" you answered "No, sir;" what did you mean by that answer?

40 A. I did not take it up from the office the day I left the $2,-000 mortgage.

Q. What do you understand by taking up?

A. Taking it up from their office or from Mr. Mahnken's that day.

Q. Did you or not pay the $2,500 mortgage when you delivered the $2,000 mortgage?

A. I did not leave any more money there on that day.

Q. What did you leave the $2,000 mortgage there for?

A. To be credited to me on occount of the $2,500 mortgage.

Q. What was the consideration of the $2,000 mortgage?

A. Two thousand dollars.

Q. What do you mean by that?

A. I mean that I got credit for 2,000. 10

Q. On what account?

A. On account of the $2,500 mortgage and the book account.

Q. Was the $2,000 mortgage given in place of the $2,500 mortgage?

[Objected to as leading.]

A. It was.

Q. Did you ever look on this book to see on what date 20 the $2,000 mortgage was credited?

A. I have not.

Q. Do you remember the date when the $2,000 mortgage was given?

[Witness referring to a memorandum says:]

A. It was dated January 15, 1875.

Q. Look at the book and see when it was credited?

A. June 15, 1875. 30

Q. Do you know why it was not credited until that date?

A. No, sir.

Q. Did Mahnken and Moorhouse ever say anything to you why it was not credited until that date?

A. No, sir.

Q. When you gave Mahnken and Moorhouse a check did you specify on what account it should be credited?

A. No, sir.

Q. Did you know whether they were keeping the $2,500 mortgage account separate from the grocer account at the time 40 the $2,500 mortgage was uncancelled?

[Objected to.]

A. No, sir.

Q. At that time had they said anything to you about keeping it separate?

A. No, sir.

Q. Have you footed up the amount of the checks marked Exhibits in this cause from A 1 to A 14?

A. Yes, sir.

Q. Do you know whether they are less or more than the amount that was due on the $2,500 mortgage?

A. More.

10 Q. Have you ever received credit for the difference between the two?

A. No, sir.

Q. At whose suggestion was the $2,500 mortgage cancelled and the $2,000 mortgage given?

[Objected to as incompetent and immaterial.]

A. Cord Mahnken's.

Q. What reason did he give to you?

20 A. No reason.

Q. At that time did you owe Mahnken and Moorhouse for anything besides the mortgage and grocer account?

A. Yes, sir.

Q. What else?

A. Some book account besides; I have always owed them book account.

Q. Did you owe him any book account besides the grocer account?

A. That is the book account—all one thing.

Q. What do you mean by saying you owed him at that time

30 besides the mortgage account and grocer account?

A. The account was not balanced up; there was something due him at that time.

Q. For what?

A. For groceries and a note.

Q. What dealings have you had with Mahnken and Moorhouse from the beginning of your dealings with them until the present time?

A. I bought groceries and provisions and borrowed money.

40 Q. Anything else?

A. That is all.

Q. The question heretofore asked "At that time did you owe Mahnken and Moorhouse for anything besides the mortgage and grocer account" (being read witness he is asked), do you understand that question?

A. No, sir.

Q. What did you think it meant when you answered "Yes, sir?"

A. I though it meant whether there was anything due them.

Q. Is that what you meant by your answer "Yes, sir," that there was money due them?

A. Yes, sir.

Q. Do you owe them for anything besides the grocer account and the mortgage for money loaned?

A. No, sir. 10

Q. And did you ever?

A. No, sir.

Q. At the time you executed the mortgage for $2,000 to Mahnken and Moorhouse did you owe them for anything besides the mortgage and grocer account?

A. No, sir.

Q. Do you understand that question now different from what you did when you answered "Yes, sir?"

A. Yes, sir.

Q. You did not understand it when you answered "Yes, 20 sir?"

A. No, sir.

Q. What was your understanding at this time as to whether the $2,500 mortgage was on the books of Mahnken and Moorhouse?

[Objected to.]

A. My understanding was that it was on the books.

Q. Did you understand the $2,000 mortgage was to go on the books in any different sense from what the $2,500 mort- 30 gage had been on the books?

[Objected to as irrelevant and incompetent.]

A. No different.

Q. At the time you got the order of William H. Adams, did you in your own right have any claim against the District of Columbia?

[Objected to.] 40

A. No, sir.

Q. To whom was that money due from the District of Columbia?

A. To William H. Adams.

Q. Did you or not have any interest in that order except as you received it from William H. Adams?

[Objected to.]

A. Just as I received it from William H. Adams.

Q. Were any of the checks marked Exhibits A 1 to A 14 given to take up protested checks or notes?

A. No, sir.

10 Q. In your cross-examination you said the suits of William H. Adams are still going on in the Court of Claims against the District of Columbia, how do you know that?

A. His lawyer told me so.

Q. When did you inquire?

A. I was there in October or November last.

Q. Have you inquired since?

A. No, sir.

Q. Have you applied to get a copy of this order, either there or to your brother, William, or in any place in Washington?

20

[Objected to as irrelevant and incompetent.]

A. I asked his lawyer; that is the time I referred to and that is the last time.

Q. What was the occasion of asking for a copy of this order?

A. I thought I might need it in this suit.

Q. Since you gave that order to Mahnken and Moorhouse have you made any other inquiry about these suits except to

30 get a copy of that order?

[Objected to as leading and otherwise incompetent.]

A. I don't know as I understand the question, read it to me again; I asked Clark if they were moving with them.

Q. Is that at the time you asked for a copy of the order?

A. Yes, sir.

Q. Have you inquired about the suits on any other occasion since you gave the order?

A. No, sir.

40

[Counsel for defendant, Cord Mahnken, objects to all the above testimony which is not a proper and legal rebuttal to the cross-examination, and counsel for complainant consents that these objections shall have the same force and effect as if made to each question and answer.]

Re-cross-examination by Mr. Hartshorne :

Q. You were examined in this case on Wednesday last, were you not?

A. Yes, sir.

Q. You and your counsel have been over the testimony taken at that time since that date, have you not?

A. I have not looked at it only at this table, the day we were all here.

Q. Has not your counsel read part of it over to you since then?

A. No, sir.

Q. Has not your counsel since that time informed you what you then testified to?

A. No, sir.

Q. Nor any part of what you testified to?

A. No, sir.

Q. You and he have talked the case over since then?

A. No, sir.

Q. Do you mean to say that you have not talked the subject matter of this suit, or in other words the facts connected with this case or some parts of them over with your counsel since you testified on the sixth of June?

A. I have not.

Q. Were you not in the office of your counsel this morning, in his rear room, with the evidence or your counsel's memorandums before you talking over the case?

A. No, sir; I left my store at half-past nine o'clock, and it takes twenty-five minutes to come up here, and we were a little delayed by a fire, and I was not in his office two minutes before I saw Mr. Hartshorne come in.

Q. You were standing or seated at a table there, were you not, which?

A. I was standing or walking, I don't known which; I was on my feet; I had not taken my hat off yet.

Q. You saw these memorandums in Mr. Alward's office, did you not, this morning?

A. I saw papers lying on his desk; I did not read any or examine any; I did not have time to if I wanted to.

Q. Did your counsel read to you or quote to you or say anything to you about the evidence heretofore taken at that time?

A. No, sir.

Q. You say in your re-direct examination in reference to the $2,000 mortgage in answer to the question "Look on the book and see when it was credited," and your answer was "June 15, 1875," what book is that you refer to?

A. It is a book copied from Mahnken and Moorhouse's ledger.

Q. Did you copy that book yourself?

A. No, sir.

Q. Then you can't swear that it is a copy at all from their books, can you?

A. No, sir.

Q. At the time the $2,500 mortgage was satisfied there was interest due thereon, was there not?

10 A. I don't know.

Q. Had you ever paid or made any special payment or payments of interest thereon?

A. I had made some payments on it.

Q. What?

A. I don't recollect.

Q. Were not some of the checks Exhibits A 1 to A 14 given in payment of protested checks or notes or in exchange of checks?

A. No, sir.

Q. You are positive about that?

20 A. Yes, sir.

Q. Have you ever borrowed money of Mahnken and Moorhouse other than that which was secured by the $2,500 mortgage?

A. No, sir.

Q. Have not you obtained from Mahnken and Moorhouse accommodation loans for a few days?

A. No, sir?

Q. On your testimony this day, you answered "his lawye-
30 told me so" to a question as follows: "in your cross-examinar tion you said the suits of William H. Adams are still going on in the Court of Claims against the District of Columbia, how do you know that;" what is that lawyer's name?

A. Allen C. Clark.

Q. From the year 1872 until 1875 inclusive, you visited Washington, District of Columbia, frequently, in relation to your business there, did you not?

A. Yes.

Q. After 1875, up to the commencement of this suit, you
40 continued your visits frequently there, did you not?

A. No, sir; I have not been there but once since.

Q. What year was it you severed your business connections as silent partner with your brother, William H. Adams, which was carried on in the District of Columbia?

A. I don't know.

Q. Give the date as near as you can.

A. There was never any papers drawn; I withdrew very soon after I went there.

Q. When was it you went there?

A. I think 1872.

Q. Did your brother, William H. Adams, continue the business after you withdrew?

A. It was never in anybody else's name but William H. Adams.

Q. Last question repeated? 10

A. Yes, sir.

Q. Have you any interest there with your brother at the present time outside of this order for $5,500?

[Objected to as not proper subject of cross-examination.]

A. No, sir.

Q. What business was that which your brother carried on in which you were interested?

A. I did not finish anything; no business; we just started and then I withdrew.

Q. What business was it that you started in?

A. Contractors. 20

Q. Contracting what?

A. Building sewers.

Q. Anything else?

A. No, sir.

Q. How long were you interested with your brother in the District of Columbia?

A. There was no paper signed. I was there about a month interested, expected to be but I did not.

Q. About when was it you went there, and became interested?

A. I went there, I think, in 1872.

Q. You say you went to Washington and became interested with your brother in 1872, and were so interested about one month, now has the District of Columbia owed your brother the amount of this order of $5,500 in which you are interested ever since that time? 30

[Objected to.]

A. I think not.

Q. When was that $5,500 due? 40

A. When he gave it to his lawyer, when he put his claims in their hands.

Q. When was that?
A. I don't know.
Q. When was the work done which this order represents?
A. I don't know.
Q. Can't you come within a year or two of it?
A. No, sir. I don't know what work it was on account of.

Sworn and subscribed before me }
June 13, 1883. }

J. E. ADAMS.

10 EDWARD S. ATWATER,
Master and Examiner in Chancery.

July 28, 1883, 10 A. M., examination resumed in presence of Mr. Alward, for complainant, and Mr. Hartshorne, for defendants.

STEPHEN MOORHOUSE, a witness produced on part of
20 complainant, being duly sworn according to law, and examined by Mr. Alward, deposes and says:

My business is wholesale grocer. My place of business is corner Duane and West Broadway, New York. I was in partnership with Cord Mahnken as wholesale grocers at 174 Duane street, New York City. The partnership commenced 12 years ago last April, that is in April, 1871. We dissolved partnership in April, 1882. I was acquainted with Jeremiah E. Adams, the complainant in this cause. The firm had business with him. That business was the selling of groceries. In August, 1872, our firm loaned him some money.

30 Q. How much?
A. Two thousand dollars.
Q. What did you take to show for that?
A. We took a mortgage for $2,500.
Q. Did you pay him more than $2,000 for the $2,500?
A. No, sir.
Q. Has that mortgage been cancelled?
A. Yes, sir.
Q. Do you remember the date when?
A. No, sir; I do not remember the date.
Q. How was that mortgage paid?
40 A. Well as near as I can remember it was charged on the ledger, and as checks were paid in small amounts they were credited upon the ledger until they reached that sum and then the mortgage was cancelled.

Q. Did Mr. Adams give any other mortgage on the same premises at the time the $2,500 mortgage was cancelled?

[Objected to as leading.]

A. Yes, sir; he did.
Q. How much was that mortgage?
A. $2,000.
Q. For what indebtedness was that $2,000 mortgage given?
A. To balance the ledger account.
Q. Of what was the ledger account composed?

[Objected to as the ledger itself is the best evidence.] 10

A. Of the mortgage and goods sold.
Q. In what way did Mr. Adams get credit for the $2,500 mortgage over and above the $2,000 you actually loaned him?
A. He got credit by checks which were paid in on the regular ledger account for goods sold.
Q. In the cancellation of the $2,500 mortgage how much was Mr. Adams charged with on account of the principal of that mortgage?
A. $2,500.
Q. Then he was charged with $500 more than he actually 20 received?
A. Yes, sir.
Q. Did Mr. Adams ever give another mortgage to your firm?
A. Yes, sir.
Q. How much was that?
A. $1,500.
Q. What was that on account of?
A. It was on account of goods sold.
Q. Did he afterwards give you any note?
A. Yes, sir. 30
Q. What was the amount of the note?
A. $964.17.
Q. What was the date of that last note?
A. April 27, 1880.
Q. Was there any settlement of accounts with Mr. Adams at the time this last note was given?
A. No, sir. You have reference to settlements on the ledger?
(Mr. Alward.) Yes, sir.
Q. Was there any kind of a settlement at that time? 40
A. No, sir.
Q. Did your firm ever take from Mr. Adams an order on a party at Washington?
A. Yes, sir.
Q. Do you remember the date?
A. No, sir.
Q. Can you give anywheres near the date?

A. Yes, sir. About three years ago, as near as I can get at it, I guess.

Q. Was it before or after that last note that has been mentioned was given?

A. It was after.

Q. What was the amount of the order?

A. $5,500.

[Counsel for complainant called for the order and counsel
10 for defendant produced it. It is dated March 19, 1881. A copy of it is set out in the answer of Cord Mahnken.]

Q. Is that the order to which you refer?

[A paper shown witness.]

A. Yes, sir.

Q. What were the circumstances that led to your firm taking that order?

20 A. Mr. Adams owed us about $5,000, a portion of which was secured by a mortgage, and as we considered this mortgage of no value, there being no equity in the property for us, we wanted our account better secured, whereupon Mr. Adams agreed if we would cancel his mortgage and give him a sum of money, that he would give us this order, which we considered worthy its full value.

Q. Did you have more than one mortgage of Mr. Adams at this time?

A. Yes, sir.

30 Q. What was this order to pay?

A. To pay the entire indebtedness of Mr. Adams.

Q. What was the agreement between your firm and Mr. Adams at the time you accepted this order?

A. That we should cancel his mortgages and his indebtedness and pay him the balance in cash, the balance of the order.

Q. By that do you mean that you were to cancel the entire indebtedness of Mr. Adams to your firm?

[Objected to.]

40

A. Yes, sir.

Q. Did Mr. Mahnken know of this agreement at the time?

A. Yes, sir.

Q. About that time did your firm pay Mr. Adams any money?

A. Yes, sir; we did.

Q. What was that for?

A. It was by agreement that we were to do that in order to

obtain the order. We agreed to give him the balance after his indebtedness was discharged in cash.

Q. Was this part of that indebtedness?

A. Yes, sir.

Q. What was this money paid Mr. Adams a part of?

A. It was a part of the money we had agreed to give him on the order.

Q. Was it a part of the balance due him on account of the excess of the order beyond his indebtendess?

10

[Objected to.]

A. It was.

Q. You are one of the defendants in this cause, are you not?

A. Yes, sir.

Q. Have you filed any answer in the cause?

A. No, sir.

20

Cross-examined by Mr. Hartshorne :

Q. In April, 1871, you went into partnership with Mr. Mahnken; previous to that time what were you doing?

A. I was in the same business—wholesale grocer.

Q. Where?

A. Well, I was at 315 Greenwich, corner Greenwich and Reade.

Q. How long previous to April, 1871, was that?

A. Well, it was just previous to it.

30

Q. Were you not clerking for Cord Mahnken, or the firm in which he was a partner just previous to that?

A. Yes, sir.

Q. What was the name of that firm?

A. It was C. Mahnken at that time.

Q. How long were you clerking for him?

A. Well, a number of years; I can't tell; probably between five and ten years.

40

Q. Where was C. Mahnken doing business in April, 1871, just previous to the partnership being formed between you and him?

A. At 313 and 315 Greenwich street.

Q. Then, when you have testified that you was in business at 315 Greenwich street, you were not in business for yourself but as clerk?

A. As clerk; yes, sir.

Q. Previous to your connection with the firm of Mahnken and Moorhouse in April, 1871, had you ever been in business for yourself, either alone or with any one else?

A. That date is very far back; I don't think that in 1871 I was in partnership as Mahnken and Moorhouse.

Q. Previous to your connection with the firm of Mahnken and Moorhouse, had you ever been in the grocery business for yourself, either alone or with any one else?

A. Yes, sir.

10 Q. When was that?

A. The year previous.

Q. Who were you in partnership with?

A. C. Mahnken and James W. Longwell.

Q. What was the firm name?

A. C. Mahnken and Co.

Q. How long were you connected with that firm?

A. One year.

Q. Previous to your connection with tho old firm of C.
20 Mahnken and Co., had you ever been in business either alone or with any one else?

[Counsel for complainant objects to this as not a proper cross-examination and having nothing to do with this case.]

A. I have been in business ever since I was fifteen years old.

Q. From the time you were fifteen years old until you be-
30 came connected with the firm of C. Mahnken and Co., were you not all the while clerking?

A. Yes, sir.

Q. When you connected yourself with the firm of Mahnken and Moorhouse, how much capital did you put in the business?

[Counsel for complainant objects to the question, and states to the witness that he is not obliged to answer, in reference to
40 his private matters unless he sees fit, and Mr. Alward further says that he has no objection to the question being answered.]

A. I furnished $8,500 about; I think $100 more than that.

Q. Was that in cash?

A. Yes, sir.

Q. When you dissolved with C. Mahnken, how much money did you take out of the business with you?

A. I took $40,000.

Q. At the time of the dissolution of the firm of Mahnken

and Moorhouse, you and Mr. Mahnken had had differences, had you not?

A. What kind of differences—differences of capital?

Q. You had disagreements, had you not?

A. No serious ones.

Q. Sufficient to cause a dissolution, were they not?

A. No, sir; our partnership expired.

Q. At or about the time of the dissolution of the partnership of Mahnken and Moorhouse, did you not threaten to have a receiver appointed? 10

A. No, sir.

Q. There were disputes between you and Mr. Mahnken at that time, were there not?

A. No, sir; everything was arranged in an amicable manner, and we shook hands and separated pleasantly.

Q. Soon after the dissolution of the partnership you formed another co-partnership, did you not?

A. Yes, sir.

Q. Under what name? 20

A. Stephen Moorhouse and Company.

Q. Who are your partners?

A. James Harrison and John G. Gerdes.

Q. Both of those men were connected with the firm of Mahnken and Moorhouse at the time of the dissolution as clerks or book-keepers, were they not?

A. Yes, sir.

Q. Mr. Harrison and Mr. Gerdes as what?

A. Both as salesmen.

Q. How long after the dissolution of the partnership of 30 Mahnken and Moorhouse was the co-partnership formed of Stephen Moorhouse and Co?

A. About two days.

Q. And your present place of business is only a few doors above the old stand?

A. Well, it is a couple of blocks.

Q. C. Mahnken and Co. occupy the old stand 174 Duane street, do they not?

A. I think so; yes, sir.

Q. At the time of the dissolution of the partnership of Mahnken and Moorhouse who came in possession of all the 40 books of account and other evidences of indebtedness of the said firm?

A. C. Mahnken.

Q. Who was to pay all the outstanding obligations of the firm?

A. C. Mahnken.

Q. Had you any interest whatever directly or indirectly in the assets of the said firm of Mahnken and Moorhouse, in whatever shape they may have been, or in the indebtedness due from the firm?

A. Not at that time.

Q. Have you had any since?

A. No, sir.

Q. What was your branch of the business when connected with said firm, state fully?

10 A. Well my branch was to do half the work, but I did it all. I had no particular branch.

Q. You attended to the selling?

A. Yes, sir.

Q. You looked after the line of credit the firm was giving?

A. Yes, sir.

Q. You kept a run of your customers?

A. Yes, sir.

Q. And about the amount of credit each was receiving?

A. Yes, sir.

Q. Was your place while at business in the store?

20 A. It was.

Q. You kept the run of everything that was going on there?

A. Yes, sir.

Q. You had full control of the books and the credit given to your customers?

A. I had no special control any more than a man in business would exercise.

Q. You were daily looking over the books?

A. I looked over the books, I can't say whether I did it

30 daily.

Q. You kept a run of the business from the books did you not?

A. Yes, sir.

Q. In connection with your partner, C. Mahnken, you had full control of the books, did you not?

A. Yes, sir.

Q. How long was Mr. Harrison, your present partner, a bookkeeper for Mahnken & Moorhouse?

A. I don't remember the exact time.

40 Q. He was bookkeeper before he was salesman, was he not?

A. Yes, sir.

Q. Please state as near as you can when Mr. Harrison left off bookkeeping for the firm and commenced to act as salesman?

A. A year or two ago.

Q. It was after the order for $5,500 was given by Mr. Adams, was it not?

A. I don't remember.

Q. Who did the salesmen, when they were in doubt as to

the responsibility of a customer, ask whether they should let him have the goods or not?

A. Sometimes Mr. Mahnken and sometimes myself, and occasionally a man who had charge of the ledger, named Jansen.

Q. Did you not have almost exclusive charge of the credit department?

A. I had no more charge than my partner, Mr. Mahnken.

Q. You were consulted more than he on that branch, were you not?

A. I think I was.

Q. Do you know whether the $2,500 mortgage of J. E. Adams was charged to his account on the books of Mahnken & Moorhouse? 10

A. I think it was.

Q. That $2,500 mortgage was paid off by J. E. Adams in small payments, was it not?

A. I think it was.

Q. The whole amount thereof was liquidated and the mortgage cancelled of record, was it not?

A. The mortgage was cancelled. If the mortgage was charged in the account these payments went to balance the ledger account which included that mortgage. 20

Q. Mr. Adams was making payments on account of that $2,500 mortgage, was he not?

A. I presume he was.

Q. At the time the $2,000 mortgage was given did not J. E. Adams owe the firm of Mahnken & Moorhouse on book account over or more than the sum of $2,000?

A. He did.

Q. You are well acquainted with Mr. Jeremiah E. Adams?

A. Yes, sir.

Q. How long have you known him? 30

A. Between 10 and 15 years.

Q. Is not the custom in the grocery business for each member of the firm and the salesmen to have what they call their own customers?

A. Salesmen usually have their own customers. Members oftentimes don't have any customers or anything to do with them. It is not the custom.

Q. When partners act as salesmen they have their own customers, do they not?

A. Sometimes.

Q. You acted as salesman for Mahnken & Moorhouse, did you not? 40

A. I occasionally sold goods.

Q. Was not Jeremiah E. Adams one of your customers?

A. No, sir. Mr. Adams purchased goods of Ahrens & Mahnken, the firm I was with before I went with them.

Q. After you went with C. Mahnken, or C. Mahnken & Co., Adams followed you there and purchased goods of them?

A. He did not follow me. He was a customer of Mr. Shipman, who was formerly salesman for Ahrens & Mahnken, and afterward the company of C. Mahnken.

Q. Did he trade with C. Mahnken or C. Mahnken & Co. before you went there as a clerk?

A. No, sir; that would have been impossible. I went with
10 the firm of C. Mahnken & Co. as soon as they were in existence.

Q. Did he trade with C. Mahnken or any firm with which he was connected before you went with him?

A. Yes, sir.

Q. All his financial business that he had in connection with the firm of Mahnken & Moorhouse was transacted through you, was it not?

A. No, sir.

Q. Were not you the one that was carrying him alone and extending the firm's credit to him?

20

[Objected to as immaterial.]

A. Not exclusively.

Q. Did not Mr. Mahnken object to giving him so much credit?

A. No, sir; not until it was too late, and then we were both of the same opinion.

Q. When was that?

A. Well it was about the time he had this large line of goods that he owed us this amount of money.

30 Q. Was not Jeremiah E. Adams considered by all the salesmen and others connected with the firm of Mahnken & Moorhouse as your customer?

A. Well I can't tell the thoughts of the salesmen, but I don't think there was any reason for them to think so.

Q. After taking this $2,000 mortgage you extended Mr. Adams credit, did you not?

A. Yes, sir.

Q. The two thousand dollar mortgage was credited on the books of the firm, was it not?

A. I presume it was.

40 Q. At the time that Jeremiah E. Adams gave to Mahnken & Moorhouse the $1,500 mortgage, he then owed the firm that amount, did he not?

A. Yes, sir.

Q. And that mortgage of $1,500 was given to secure that

much indebtedness due and owing from Jeremiah E. Adams to Mahnken & Moorhouse, was it not?

A. Yes, sir.

Q. Was not that indebtedness the firm's book account against him?

A. Yes, sir. I think it was.

Q. Was not the $2,000 mortgage given by Jeremiah E. Adams to Mahnken & Moorhouse to secure that much indebtedness due and owing by him to the said firm at that time on book account?

A. Yes, sir; I think it was.

Q. How came Mr. Adams to give the firm a note for $964.14 if it was not for a settlement at that time?

A. It was not for settlement, but we thought it would put it in better shape to have a note, although it did not balance the account as I recollect it.

Q. Do you know whether or not it balances his accounts?

A. I don't think it did; if I could see the books I could tell.

Q. While a member of the firm of Mahnken and Moorhouse you had full access to all the books and papers belonging to or in anywise connected with the firm, had you not?

A. I had.

Q. Do you remember of seeing this $2,000 mortgage and this $1,500 mortgage there frequently?

A. I don't remember seeing them—not frequently.

Q. You have seen them often then?

A. I have seen them once—whether oftener I could not say.

Q. They were kept right in the safe in the office there, were they not?

A. I think they were; there was a drawer there where we usually kept those things in the safe.

Q. You frequently went into that safe?

A. Yes, sir.

Q. And you could have looked at them if you had felt so disposed?

A. I could.

[Counsel for complainant requests witness to sign the testimony, the cross-examination not being concluded.]

STEPHEN MOORHOUSE.

Adjourned to Wednesday, Aug. 1, 1883, 9:30 A. M.

Wednesday, Aug. 1, 1883, at 10 A. M., pursuant to adjournment, the examination was resumed in presence of Mr. Alward for complainant, and Mr. Hartshorne for defendant.

STEPHEN MOORHOUSE, the witness, being further cross-examined by Mr. Hartshorne, deposes and says :

Q. At the time this $5,500 order was given how much was Jeremiah E. Adams indebted to Mahnken and Moorhouse?
10 Q. How much on book account?

[Objected to on the ground that books themselves are the best evidence.]

A. I don't recollect.
Q. How much on note?
A. That I can't say without seeing the books.
Q. How much upon bond and mortgage?

20 [Witness refers to a statement heretofore examined on and produced by Jeremiah E. Adams.]

A. Three thousand five hundred dollars.
Q. Does that consist of one or two mortgages?
A. Two mortgages; one for $2,000 and one for $1,500.
Q. Do you know the premises they cover?
A. Yes, sir.
Q. What premises does the $2,000 mortgage cover?
A. It is on the corner he is doing business in.
30 Q. What premises does the $1,500 mortgage cover?
A. His dwelling,
Q. Any vacant lot in with it?
A. I don't know.
Q. Then you don't know positively what they do cover, any more than what you have stated?
A. No more than I have stated; no, sir.
Q. Do you know the value of the premises covered by those mortgages?
A. No, sir.
40 Q. Do you know the prior incumbrances on said premises?
A. I know there were prior incumbrances; I don't remember the exact amount.
Q. Do you know what it consisted of?
A. It was a mortgage.

Q. Only one or more than one?
A. I don't remember.
Q. In your direct examination you spoke of paying Mr. Adams at about the time the order was given some money, how much was it?
A. It was between $400 and $500.
Q. Do you know the exact amount?
A. I think $450.
Q. How was that money paid?
A. It was paid in several amounts. 10
Q. And at different times?
A. Yes, sir.
Q. How many amounts was it paid in?
A. I don't remember.
Q. How long after the order was accepted by Mahnken and Moorhouse was the first amount paid?
A. I think immediately after, but it would require a wonderful memory to keep those small items in one's head without any reference.
Q. How long after was the last amount paid? 20
A. Several weeks—three or four weeks probably.
Q. Was there any more than two amounts paid?
A. I think that was all.
Q. Was it not the custom of Mahnken and Moorhouse to send out bills for goods sold to their customers with the goods or soon thereafter?

[Mr. Alward objects to the custom.]

A. We usually sent them soon after. 30
Q. That was the regular practice, was it not?
A. Yes, sir.
Q. At the time this $964.14 note was given, did Mr. Adams make any agreement about the payment of the same, and the payment of goods purchased by him thereafter?
A. Not that I remember.
Q. Did you take that note?
A. I think so, myself or the book-keeper.
Q. At the time that note was given, was there any agreement made by Mr. Adams, or promise on his part that he 40 would not exceed in purchases the sum of $300 monthly, and would pay his future bills promptly in thirty days when they became due, or words to that effect?

[Mr. Alward objects to all this examination of this witness as not a proper cross-examination.]

A. I don't remember any such agreement.

Q. Did Mr. Adams agree or promise to pay at that time $50 or more monthly on account of the $964.14 note?

A. I think not.

Q. The order for $5,500 is dated March 19, 1881, how long after that was it that the same was received by Mahnken and Moorhouse?

A. Well, it was a short time; I don't remember how short a time.

10 Q. Two or three days afterwards?

A. I can't say as to date.

Q. Who was the order received by for Mahnken and Moorhouse?

A. The order was brought there (to the store) when I was sick, at my house, and when I came down to the store in a few days Mr. Mahnken told me the order was in the safe—that was the first I knew of it; the first I saw the order, although we had talked the matter over previously.

[Counsel for defendant objects to last part of answer as volun-
20 teered. Counsel for complainant replies that he thinks it a direct answer.]

Q. Was the order always kept in the safe after that?

A. I presume so.

Q. You did not take it out of the safe and carry it around with you on your person or give it to any one else?

A. No, sir; I did not.

Q. Was it or not in the safe with the bonds and mortgages of Mr. Adams?

30 A. We only had one safe in the store; that is where it was put with the bonds and mortgages of Mr. Adams, where we keep all valuable papers.

Q. The bonds and mortgages of Mr. Adams and the order were kept together in the safe in one drawer or pigeon hole?

A. We had two drawers in which we kept our valuable papers in the same safe.

Q. Was not the bonds and mortgages of Mr. Adams and this order kept together in the same drawer?

A. Well, that I could not say, because there were two drawers
40 they might have been separated.

Q. How was the money paid to Adams that you claim was paid on account of this order?

A. I think it was in cash, or a portion of it at any rate.

Q. Was it paid before your return to the store after your sickness or after your return?

A. I think it was paid after.

Q. Was any part of it paid before?

A. It might have been, as I remember Mr. Adams wanted some money to go to Washington with to obtain this order.

Q. You dissolved partnership with Mr. Mahnken April 12, 1882?

A. I think that was the date.

Q. From the time the order was given until the partnership was dissolved between you and Mr. Mahnken, the order, bonds and mortgages and note of J. E. Adams remained in the safe at 174 Duane street, did they not? 10

A. As far as I know they did.

Q. You have testified that Mr. Mahnken knew of the agreement at the time the order was received about the order and how it was to be applied, how did he know it?

A. He and I talked the matter over, and he said that the order was perfectly good, and that the Government would have to pay it.

[The last part as to what he (Mahnken) said objected to by Mr. Hartshorne as incompetent.] 20

Q. Where was it you informed him?

A. In our office, 174 Duane.

Q. Who was present at the time?

A. Well, the cashier and the book-keepers; there was a number of men in the office; I don't know as anybody was in hearing of our conversation.

Q. Was this before or after your sickness?

A. This was before.

Q. Mr. Adams after the order was received continued to trade with Mahnken and Moorhouse until the dissolution, did he not? 30

A. I think he did.

Q. Previous to the order being received, the firm of Mahnken and Moorhouse had refused him any more credit, had they not?

A. We had refused to increase his account.

Q. From October 30, 1880, until March 19, 1881, all he purchased was for cash, excepting one small bill of $15, was it not? 40

A. I don't remember.

Q. Between those dates you sold him for cash, or C. O. D., did you not?

A. That I could not say.

Q. Did you not at one time between those dates find fault with an expressman for not collecting money for goods sent to J. E. Adams from Mahnken & Moorhouse C. O. D.?

A. It is possible, but I don't recollect of any such occurrence.

Q. Adams used to let the checks he gave the firm go to protest occasionally, did he not?

A. Yes, sir.

Q. You have advanced money to J. E. Adams by exchang-
10 ing checks with him, have you not?

[Objected to by Mr. Alward as leading.]

A. I don't remember of so doing.

Q. At the time of the dissolution of the copartnership was a statement made up of your assets and liabilities?

A. There was no statement made up, it was so arranged on the books that we knew just what they were.

Q. After this order was given, did you not repeatedly ask J. E. Adams for payments on account of his indebtedness?

20 A. I think not.

Q. Are you and Cord Mahnken, your former partner, on friendly terms?

A. I know of no reason why we should not be. He has never called to see me since I left and I have had no time to see him; when I have met him in the street we have recognized each other with a nod of the head.

Q. You meet him frequently, do you not?

A. I have probably seen him not more than three or four times since I have been away.

30 Q. You have never held any conversation with him since your dissolution?

A. We separated on Saturday. I stopped in Monday morning. Since that we have had no conversation.

Q. Previous to your dissolution and about that time, did not harsh and unpleasant words pass between you and him?

A. I have at times reprimanded him and he has also me, as most any partners in business would naturally do.

Q. Since your dissolution have you not been applied to testify in behalf of Cord Mahnken on lawsuits of the old firm
40 of Mahnken & Moorhouse?

A. I think not.

Q. Did not the firm of Jackson & Furlong, lawyers of New York City, or one of them apply to you to testify in a case against Wilson & Company for a debt due and owing to Mahnken & Moorhouse?

A. They never asked me to testify; they merely asked me my opinion and I gave it to them.

Q. Who applied?
A. Mr. Furlong.
Q. Did you not tell him that you knew nothing about the case and that under the circumstances Mr. Mahnken should not have applied to you or expect anything from you, or words to that effect?

[Objected to as incompetent.]

A. I did not. 10
Q. Have you any interest whatever, direct or indirect, in the prosecution of this suit, or in the final decision or result thereof?
A. No, sir; none whatever.
Q. When did you first hear about this suit being contemplated or begun?
A. Several months ago.
Q. The bill was filed October 3, 1882, did you hear anything of it previous to that date?
A. I think not.
Q. From whom did you first hear of it?
A. It was, I think, Mr. Alward, either Mr. Alward or Mr. 20 Adams.
Q. Which one was it, or was it both?
A. I have seen them both.
Q. Which one first?
A. I don't remember which one first.
Q. Where did you see Mr. Adams in reference to it?
A. In my store.
Q. Did he come to see you specially on that business?
A. He did not say so. I have no way of knowing.
Q. Did he have any other business with you at that time? 30
A. No other special business; no, sir.
Q. Then he either came to see you on that business or to make a social call?
A. Yes, sir.
Q. Did Mr. Adams come to see you at your store more than once since the dissolution?
A. Yes, he has stopped in several times.
Q. Was the business connected with this suit always talked over then?
Q. You talked over this business more than once did you 40 not?
A. With Mr. Adams I think only once.
Q. Did not Mr. Adams come to see you before Mr. Alward did?
A. That I can't say. Since the dissolution he called to see me before Mr. Alward did.

Q. On this business?
A. No, sir; not on this business, I don't think.
Q. How many times did Mr. Alward call?
A. Two or three.
Q. Always on this business?
A. I think so.

Re-direct:

01 Q. Were you and Mr. Mahnken equal partners?
A. Yes, sir.
Q. In your cross-examination you stated that you furnished $8,500 to the concern, what did Mr. Mahnken put in?
A. Mr. Mahnken did not put in anything, he was $10,000 worse off than nothing in the business.
Q. Did he have any assets when you started?
A. We formed a partnership; the concern owed large amounts of money. I did not know the state of affairs until I got in. When I discovered the condition the business was in, I told
20 Mr. Mahnken we had better give a note for this money which I had borrowed of my mother, the consequence of which was that he signed a firm note.
Q. Previous to the commencement of this partnership did Mr. Mahnken have stock in the store?
A. Yes, sir.
Q. Did he put that stock in the partnership?
A. He did.
Q. How were the debts of Mr. Mahnken paid?
A. They were paid out of the profits of the business.
Q. What was the proportion between the stock that Mr.
30 Mahnken put in and the debts that he owed, or which was the greater?
A. The debts he owed.
Q. In your cross-examination you have stated that after you were sick and came back to the store, Mr. Mahnken called your attention to the order, do you remember the conversation between you and Mr. Mahnken at that time?
A. He told me that Mr. Adams had left an order, had left the order, and as he considered it perfectly good that the Government would certainly have to pay it, that we had better accept it.
40 Q. Did he agree to accepting it on the terms you have stated?
A. Yes, sir.
Q. When you and Mr. Mahnken dissolved was there anything said about that order?
A. There was nothing said specially about the order, but as I concluded there was no equity in it, I counted out and put it

in as bad debts, and consequently did not receive anything for it.

[All the re-direct examination objected to as not proper. it being irrelevant, incompetent and illegal. This objection, by consent of counsel, to have the same force and effect as if made to each question and answer.]

Re-cross :

10

Q. This $40,000 that you received was not paid you on any basis of assets and liabilities, was it?

A. Yes, sir, it was. I had a credit of $48,000 to my account after deducting bad debts. Then I deducted half of Mr. Adams, which was between $2,500 and $3,000, which I considered of no value, and then as we had some doubtful accounts, I threw off $5,000 more.

Q. Is the account you speak of on the books of Mahnken & Moorhouse?

20

[Objected to as obscure.]

A. Mr. Adams account is on the books.

Q. Is your account wherein you state you had credit for $48,000 on the books of Mahnken & Moorhouse?

A. It is.

Q. And that account appears just as you have stated it?

A. That account is just as I state it.

Q. When was it that the $8,500 was furnished to Mahnken & Moorhouse as your capital in the business?

30

A. It was when we first entered into business; that was about 11 years ago last April.

Q. At the time of the formation of the firm of Mahnken & Moorhouse?

A. Yes, sir.

Q. How long after that was it that you found out and discovered the condition the business was in?

A. Very shortly, I don't remember exactly.

Q. You are positive it was after you entered into the co-partnership of Mahnken & Moorhouse?

40

A. Yes, sir.

Q. Was this $8,500, or thereabouts, money belonging to your mother?

A. It was.

Q. And Mahnken & Moorhouse gave their note to her for it?

A. Yes, sir.

Q. Did the firm of Mahnken & Moorhouse pay her interest regularly thereon?

A. They did.

Q. Was that money all furnished to Mahnken & Moorhouse in cash or its equivalent?

A. Cash or checks.

Q. Did they, Mahnken & Moorhouse, or not assume obligation for a part of that money?

A. In what respect?

10 Q. Last question repeated.

A. I don't understand the question in that shape.

Q. What is your mother's name?

A. Mrs. Mary A. Kattenhorn.

Q. Did she first loan this money to the firm of Mahnken and Moorhouse or to you individually?

A. To Mahnken and Moorhouse; she intended loaning it to me; she gave me the money which I placed in the business.

Q. And then afterwards got Mahnken and Moorhouse's note for it, payable to her order?

A. Mr. Mahken made a firm note.

Q. Was this some time after your connection with the firm 20 of Mahnken and Moorhouse, or shortly after?

A. Shortly after.

Q. Please state how you furnished any capital as partner in the firm of Mahnken and Moorhouse when Mahnken and Moorhouse gave their note to your mother for the money furnished by her?

A. If I had not furnished it nobody else would—only one way of furnishing money I know of—that it is to get it.

Q. You had no money of your own to put in the business, had you?

A. No, sir.

30 Q. Just previous to entering into the co-partnership of Mahnken and Moorhouse, had you not been a partner for one year of the firm of C. Mahnken and Co?

A. Yes, sir.

Q. Did you furnish any capital in the business of that firm?

A. I don't positively remember, although I may have borrowed some money of my mother and put it in occasionally.

Q. Did you borrow it yourself individually, if it was borrowed? 40

A. I don't remember.

Q. Do you remember of the firm of C. Mahnken and Co. borrowing any money of your mother?

A. They may have done so; I don't remember.

Q. During the year you were a partner of C. Mahnken and Co., were you not giving the business your personal attention in and around their place of business?

A. Yes, sir.

Q. At that time what interest had you in the firm of C. Mahnken and Co.?

A. I had an eighth interest and a salary.

Q. A salary of what?

A. I think it was $1,000.

Q. Had you access to the books and papers of said C. Mahnken and Co.? 10

A. I had, but I never looked at anything except the order books.

Q. What interest had you in the firm of Mahnken and Moorhouse when you first entered into the co-partnership?

A. We entered into a ten years' partnership, and I was to have a third interest the first year and equal after.

Q. C. Mahnken is an old merchant, is he not?

A. He has been in business a good many years I guess. 20

Q. How many?

A. I could not say.

Q. As long as you have known him?

A. Yes. sir.

Q. How old are you?

A. I am thirty-six.

Q. As far as you know, has C. Mahnken or any firm that he has been connected with ever failed?

30

[Objected to as having nothing to do with the case.]

A. No, sir.

Q. Can you state about how much stock there was in the the store at the time Mahnken and Moorhouse took possession?

A. No, sir.

Q. Did your mother loan the firm of C. Mahnken and Co. any money the year you was a partner?

A. I think she did; I can't state positively. 40

Q. Did your mother ever have more than one note of Mahnken and Moorhoose?

A. I can't say.

Q. At the time of the existence of the firm of C. Mahnken and Co. your mother was a widow, was she not?

A. I don't think she was.

Q. Her name was Moorhouse at that time?

A. I don't think it was, posssibly; she was married—possibly she was married that year.

[Paper marked Exhibit D 1 for identification shown witness, he is asked :]

Q. Is not that the note that Mahnken and Moorhouse gave to your mother for $40,000 cash lent them?

10 [Paper marked Exhibit D 2 for identification, he is asked :]

Q. Is not that the note that Mahnkin and Moorhouse gave to your mother for $8,587.07?

A. This is not the note spoken of in there? (pointing to testimony.)

Q. That is a note once held by your mother against Mahnken and Moorhouse, is it not?

A. Yes, sir.

Q. Is the body of that note in your handwriting?

20 A. No, sir; the signature is in my handwriting.

Q. Was not this note for $8,587.07 with interest paid by Cord Mahnken after the dissolution of the firm of Mahnken and Moorhouse out of his own funds to your mother?

A. It was paid at the time of the dissolution out of the funds, as the funds were changing from Mahnken and Moorhouse into C. Mahnken's hands.

Q. Was it then paid by C. Mahnken?

A. I think it was then paid by C. Mahnken.

30 Q. Was it paid after the articles of dissolution of Mahnken and Moorhouse were signed?

A. It was done at the same time.

Q. What was this note given for?

A. It was given in exchange for the other note.

Q. Another note held by your mother against Mahnken and Moorhouse?

40 A. Yes.

Q. Was there more than one note besides this given by Mahnken and Moorhouse to your mother?

A. I don't remember.

Q. Did not the first note given by Mahnken and Moorhouse to your mother include this $4,000 in Exhibit D 1 for identification, loaned by your mother to C. Mahnken and Co.

A. I do not recollect.

Q. Was this $4,000 in Exhibit D 1 ever paid by C. Mahnken and Co. in cash or its equivalent to your mother?

A. I don't remember.

Q. The $8,587.07 owing by the firm of Mahnken and Moorhouse to your mother with interest thereon at the time of the dissolution of the co-partnership of Mahnken and Moorhouse was not a part of the $40,000 you received from the firm's assets, was it?

A. No, sir.

Q. You received $40,000 over and above all indebtedness of the firm of Mahnken and Moorhouse?

A. Yes, sir.

STEPHEN MOORHOUSE. 10

Taken and subscribed before me, August 1, 1883.

EDWARD S. ATWATER,
Master and Examiner in Chancery.

20

It is admitted that the record of the $2,500 mortgage recorded in Book 24, page 496, shows the following words: "Cancelled January 16, 1875. Produced by Cord Mahnken."

Counsel for defendant calls on counsel for complainant for the $2,000 mortgage, which he produces, to wit: mortgage 30 made by Jeremiah E. Adams to Mahnken and Moorhouse, dated January 15, 1875, recorded January 16, 1875, Book 36, of mortgages, page 245, Union County, marked Exhibit 15, on part of complainant.

Counsel for defendant at request counsel for complainant produces mortgage of $1,500 dated August 15, 1878, made by Jeremiah E. Adams and wife to Cord Mahnken and Stephen Moorhouse, recorded September 2, 1878, in Book 46, of mortgages, page 335, marked Exhibit 16, on part of complainant. 40

Counsel for complainant offers in evidence Statute of New York, entitled "Of the Interest Money" and the several supplements to it.

[Objected to by counsel of defendant.]

But the defendants that in the argument any authorized copy of the New York statutes be used, provided the statute is legal and competent.

August 1, 1883. Testimony declared closed on part of complainant.

EDWARD S. ATWATER,
Master and Examiner.

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IN CHANCERY OF NEW JERSEY.

Between JEREMIAH E. ADAMS, *Complainant*, and CORD MAHNKEN, et. als., *Defendants.*	*On Bill, &c.*

Examination of witnesses, &c., in a cause depending in the Court of Chancery of the State of New Jersey, wherein Jeremiah E. Adams is complainant and Cord Mahnken and others are defendants, taken on the 12th day of February, A. D. 1884, before Holmes W. Murphy, Master and Examiner in Chan- of said State at the office of Robbins & Hartshorne, in Freehold, New Jersey, in the presence of A. C. Hartshorne, Esq., of counsel for Cord Mahnken, defendant, and of Joseph Alward, Esq., of counsel for complainant. 10

Edward A. Mahnken, a witness produced on the defendant, Cord Mahnken, being duly sworn according to law on his oath, says: 20

I reside in the city of New York, and am a partner of the firm of C. Mahnken & Co., the other partners are Cord Mahnken and James W. Longwell; my place of business is 174 Duane street, New York City ; the firm has been in existence since April, 1882; the name of the firm doing business at 174 Duane street previous to that time was Mahnken & Moorhouse; that firm consisted of Cord Mahnken and Stephen Moorhouse; they are the defendants in the present suit as I understand; they carried on business in the firm name of Mahnken & Moorhouse, from April, 1872 to April, 1882 ; they carried on business during that time at 174 Duane street; I knew the complainant, Jeremiah E. Adams ; he was one of the customers of the firm of Mahnken & Moorhouse and of C. Mahnken & Co.; he had a running account with them; that is, he purchased goods on credit ; he purchased of Mahnken & Moorhouse since they started, about the time of their starting ; I am well acquainted with the books of Mahnken & Moorhouse and of C. Mahnken & Co.; I was a clerk of the firm of Mahnken & Moorhouse for a number of years previous to my going into the partnership ; I was with them as a clerk 30 40

when they started in 1872; I remember that there were mortgages given by Jeremiah Adams and wife to Mahnken & Moorhouse, but never saw them till I took possession of the papers; I took possession of the papers in April, 1882; I had access to the safe when I was clerking for Mahnken & Moorhouse; their valuable papers were kept in the safe.

Q. Now don't you remember of seeing in that safe prior to April, 1882, bonds and mortgages of Jeremiah E. Adams?

10

[The complaintant objects to the question as leading.]

Complainants' counsel asks for a ruling from the rule master under rule 218. The master decides that said rule does not apply to this case as the whole of the complainants' testimony was taken and closed last August before rule 218 was made. Appeal.

HOLMES W. MURPHY,
Examiner, Feb. 12, 1884.

20

A. Yes, sir; I have seen them; I remember that there was a twenty-five hundred dollar mortgage; I have been over the cash books of Mahnken & Moorhouse for the purpose of seeing how that mortgage was paid off.

[Book shown witness marked Cash Book, 1872, 1874, M. & M.]

This is the cash book of Mahnken & Moorhouse; on page 102 under date of January 24, 1873, I find an entry "To cash from J. E. Adams on account of bond and mortgage, 1000.00;" I also find the following entries therein:

30

On page 214, September 5, 1873, "To J. E. Adams, on acc. of bond and mortgage, $500.00. On page 410 under date October 31, 1874, "To J. E. Adams for note on acc. of mortgage 150.00; on page 414 under date November 6, 1874, "To J. E. Adams for note on acc. of mortgage 151.20."

On page 416, under date November 14, 1874, "To J. E. Adams, on account of mortgage, 150.90" on page 420 under date November 21, 1874, "To J. E. Adams. on acc. of bond and mortgage 151.11."

40

On page 426, under date of Dec. 5, 1874, "To J. E. Adams, on acc. of bond and mortgage, 151,52."

This is the cash book of Mahnken & Moorhouse, from July 1, 1872, to December 15, 1874, inclusive.

This book is marked No. 1, for Defendants, for identification. Cash book from Dec. 16 1874 to October 14, 1876, inclusive shown witness. Witness says:

This is the cash book of Mahnken & Moorhouse during that time, and upon which appear the following entries:

10

On page 2, under date of Dec. 16, 1874, "To J. E. Adams, on acc. of bond and mortgage, 151.52." On same page under date of Dec. 19, 1874, ' To J. E. Adams, on acc. of bond and mortgage, 83.40." On page 6, under date of Dec. 28, 1874, "To J. E. Adams, on acc. bond and mortgage, 100.00." On page 10, under date of January 9, 1875, "To J. E. Adams on acc. of bond and mortgage 153.13."

I am well acquainted with these two cash books and know them to be the cash books of Mahnken & Moorhouse, for the time named therein.

20

Q. To what do all the enteries on the left hand column of these two cash books refer?

A. To cash received by Mahnken & Moorhouse, both by money and check; all the entries I have testified to appear on the left hand column of these books.

Q. To what do the entries to which you have just testified refer?

A. It says here to money received on bond and mortgage from J. E. Adams.

Q. Did Mahnken & Moorhouse hold any other mortgage against J. E. Adams which remained unpaid during these payments, than the twenty-five hundred dollar mortgage?

30

A. No, sir.

Q. Have you examined the general account of J. E. Adams on the books of Mahnken & Moorhouse from August 1, 1872, to January 14, 1875?

A. Yes, sir.

Q. Did you find any credits on said books given on the account of J. E. Adams for any of the amounts you have just testified to from the cash books?

40

[Question objected to by complainant's counsel, as incompetent.]

A. I found them on no other books but the cash books.

[The last cash book shown witness is marked by me, No. 2, for identification on part of defendant.

Q. Did you make out a statement of how the twenty-five hundred dollar mortgage was paid by Jeremiah E. Adams to Mahnken & Moorhouse?

A. Yes, sir.

10 [Statement shown witness.]

[This is the statement: Interest is calculated and credits given as I have testified to from the cash books. The result from this statement is that it pays this twenty-five hundred dollar mortgage. I figured it out. It does not pay it exactly. I make it out that there is due on it just three dollars and twelve cents.

[The counsel for complainant requests that the master shall
20 put down, that the witness with the assistance of Mr. Hartshorne revised his calculation and made erasures and announced that it was the same result as before.]

[The witness says: I made all the erasures which appear on this statement.]

Q. Who discovered that there was a mistake in it?

A. I did; the mistake was that I had figured the interest to the 25th of December, 1874, and had neglected to take off a credit of one hundred dollars of that date, and then went on
30 and figured the interest till the time the mortgage was paid; it was a clerical error of mine in not giving credit for the $100, of December 25, 1874; the whole thing appears on this statement just as the alterations were made; I calculated the interest from an interest table.

Q. Is it correct as far as you know?

A. Yes, sir; I calculated interest at the rate of seven per cent. per annum; this statement is all in my handwriting.

Q. When was it made out by you?

A. Last night; at request of Mr. Hartshorne; I cannot
40 exactly account for the difference of three dollars and twelve cents.

Q. Is it not a difference in calculation of interest?

A. When interest is calculated that way and runs along for several years it is very likely to be.

[Statement marked Exhibit No. 3 on part of defendants for identification.]

[Bond and mortgage from Jeremiah E. Adams to Mahnken & Moorhouse for two thousand dollars, dated January 15, 1875, shown witness.]

Q. What were they given for?

[Counsel for complainant objects to this question, as it does not appear that the witness knows.]

A. They were credited on our ledger on payment of book account; that is, it should have said on ledger of Mahnken & Moorhouse. 10

Q. Did you know or not whether J. E. Adams was indebted to Mahnken & Moorhouse at that time over two thousand dollars on book account?

A. I knew he was indebted to a large amount, but I could not say how much exactly; he was indebted for merchandise bought and delivered.

20

[Bond and mortgage from Jeremiah E. Adams to Mahnken & Moorhouse, for fifteen hundred dollars, dated August 15, 1878, shown witness.]

They appear on the books also in payment of accounts.

Q. Was not Jeremiah E. Adams indebted to the firm of Mahnken & Moorhouse at that time to the amount of fifteen hundred dollars in book account? 30

[Question objected to as incompetent.]

A. Yes, sir; he was indebted to about that amount; after that date Mahnken & Moorhouse continued to give him credit.

Q. On or about April 27, 1880, did Adams and Mahnken & Moorhouse have a settlement?

A. I cannot say; Mr. Jansen can testify better as to that.

40

[Note dated April 27, 1880, for $964.14, payable on demand with interest, and given by J. E. Adams to Mahnken & Moorhouse, shown witness.]

Q. Do you know what this note was given for?

A. It appears on the ledger to balance the account of about that time; J. E. Adams has received credit for that note on the

account of J. E. Adams on the books of Mahnken & Moorhouse.

[Note marked No. 4 for identification for defendant.]

Q. After that note did Adams continue to deal with Mahnken & Moorhouse?

A. Yes, sir.

10

[It is agreed between the counsel of the respective parties that the book marked Exhibit B 1 on part of the defendant, Cord Mahnken, shall be used in evidence in lien of the ledgers of Mahnken & Moorhouse, and that complainant's counsel shall have the priviledge to compare this book with the ledgers, and inspect the ledgers.]

[By consent the further examination of the witness, Edward A. Mahnken, is postponed until after the examination of the
20 next witness.]

JOHN H. JANSEN, a witness produced on the part of the defendant, being duly sworn according to law, on his oath says: I reside in Etna, New Jersey; I have lived there since the first of December; I have lived in the township for a year or over; I was in the employ of C Mahnken & Co., as bookkeeper, and was also bookkeeper for Mahnken & Moorhouse at 174 Duane street, New York City; I first went with Mahnken
30 & Moorhouse in April or March, 1880, and continued in their employ till the firm dissolved; I left C. Mahnken & Co. in the Spring of 1883, probably along in March or April; the firm of Mahnken & Moorhouse consisted of Cord Mahnken and Stephen Moorhouse; I know Jeremiah E. Adams; he made purchases of and kept a running account with Mahnken & Moorhouse; he ran an account while I was there with C. Mahnken & Co.

[Book marked Ledger A to L., M. & M., shown witness.

40

Q. Whose account is on page 145?

A. J. E. Adams, the complainant in this suit; that account starts on the 6th day of May, 1880.

Q. Is there any balance brought over to this account?

A. No, sir.

Q. Why was that?

A. It was I suppose because the account had all been balanced up previous to that, and there was no balance to be

brought forward; this account was transferred to the new ledger, folio 631.

[Book marked No. 5 for identification for defendant.]

[Another book marked Ledger A to L., M. & M., shown witness.]

This book and the last book are the ledgers of Mahnken & Moorhouse; I know them to be such, I have seen them often in their store, their place of business; I have as book-keeper for them made entries in these books; there are all my entries on page 631; the account on page 631 is the account of Jeremiah E. Adams. The balance brought to this ledger from folio 145 of ledger No. 5, for identification, is $1,121.11. 10

[Last book marked No. 6, for identification for defendant.]

The date of the first item on Book No. 6, for identification, is April 19, 1882; the year 1882 has been left out; it should have been put in; the firm of Mahnken & Moorhouse dissolved on the 7th day of April, 1882, I think; on referring to the memorandum of the dissolution, I find it is April 8, 1882; the firm of C. Mahnken & Co. kept right on with the same old ledger of Mahnken & Moorhouse until they were used up; I made up regular balances, but the balances were not carried down at the dissolution; I made up a regular balance-sheet of Mahnken & Moorhouse's affairs; there was an account of stock also taken at that time. 20

30

Q. At the time of the dissolution, in April, 1882, how much was owing Mahnken & Moorhouse on book account by J. E. Adams?

A. $1,121.11, by the ledger.

Q. What else did Adams owe Mahnken & Moorhouse at that time?

A. He owed them a C. O. D. bill of $41.74.

Q. How did he come to owe that bill of C. O. D.?

A. He had ordered the bill through the Elizabethtown Express, to be sent C. O. D., and the money had not been returned yet when we took account of stock; he also owed a note of $964.14; I take this from the book; there was a mortgage also of $2,000, and also another of $1,500. 40

Q. From what book are you taking these amounts?

A. From the stock books of C. Mahnken & Co., taken on the 8th day of April, 1882, at the time of the dissolution; this

book and the goods therein mentioned went into the hands of C. Mahnken & Co.

[At this point complainant's counsel objects to all answers taken from the stock book of C. Mahnken & Co.]

Q. Was that or not the stock and accounts of Mahnken & Moorhouse?

10 A. It was previous to that date, but after that date it belonged to the firm of C. Mahnken & Co.; Mr. Mahnken bought out the interest of Mr. Moorhouse in the business, and in all the assets of the firm.

Q. Do you know this to be the stock book of stock and assets of Mahnken & Moorhouse, taken in April, 1882, and also the stock book of C. Mahnken & Co., after that date?

A. Yes, sir.

Q. How do you know it?

A. The entries are all in my handwriting, and my sig-
20 nature is to each stock taken; the other stock was taken in October, I think; we took account of stock twice a year, in April and October.

Q. Can you explain how the date on page 99 happens to be dated April 15, 1882?

A. No, I can not.

Q. Are you or not positive that the account of stock signed by you on page 99, and dated April 15, 1882, is the same account of stock and assets made at the dissolution of the firm of Mahnken & Moorhouse?

30 A. I am satisfied that that is the account of stock taken after the dissolution, yes, sir.

Q. On what pages do the entries of J. E. Adams, to which you have just testified, appear on this book?

A. On pages 35, 36 and 37.

[Complainant's counsel objects to all or any answers given from C. Mahnken & Co.'s books.

40 Q. Just after the dissolution of the partnership of Mahnken & Moorhouse, did C. Mahnken & Co. open a new set of books?

A. No, I have already testified to that—that we kept right on with the old books.

Q. Please state whether or not in the account of stock and assets taken in April, 1882, the order of Jeremiah E. Adams of $5500 on Allen C. Clark was taken in account or mentioned therein in any way?

[Complainant's counsel objects to the witness refreshing his memory from a book written up after the dissolution.]

A. It was not; it was not taken in stock or mentioned in any whatever; this answer is not taken from the book, but I know it of my own knowledge.

[Book marked No. 7 for identification for defendant.]

Q. You have stated that J. E. Adams commenced a new account on May 6, 1880. What was done with the old account?

A. The old account was balanced up by a note given by Mr. Adams. 10

[Exhibit No. 4, for identification, shown witness.]

This is the note—the note is for $964.14.

Q. Who was that settlement made by and between?

A. It was made between Mr. Moorhouse and Mr. Adams, and the note was drawn up by Mr. Harrison; I was then present at the store at the time of the settlement, at 174 Duane street. 20

Q. State how they came to a settlement at that time. Did they examine any books, papers or anything of that kind?

A. Yes, sir; Mr. Adams was behind the desk looking at the ledger, and the settlement was urged upon him by Mr. Moorhouse. He wished him to give a note to balance the account, which he did do.

Q. Did you make a memorandum at that time of what Mr. Adams was to do?

A. Yes, sir; I did it through instructions from Mr. Moorhouse. 30

[Paper shown witness.]

This is the paper, it is a memorandum.

Q. What were Mr. Moorhouse's instructions at that time?

A. Mr. Adams wished to open up a new account; Mr. Moorhouse instructed me then in the presence of Mr. Adams to open up a new account with Mr. Adams, and not to let that account exceed three hundred dollars; all bills to be paid promptly when due, thirty days time. Mr. Adams also agreed 40

to pay those bills when due and also to pay fifty dollars a month on the note. Mr. Adams continued to trade then with Mahnken & Moorhouse; he continued right along till after the dissolution.

Q. Did or not the firm refuse to sell Mr. Adams any more goods on account of his large indebtedness to them?

A. They did refuse; that was some time after; I think that was in 1880, from the first of November, 1880, to February, 1881; I cannot tell how much was sold in February, 1881; Adams bought goods and paid cash for them; there was charged on the books in February, 1881, fifteen dollars; the next charge of goods sold is on the 18th of April; he then
10 commenced to run on account again.

Q. Through whose instruction was Mr. Adams refused credit from November 1, 1880, to April 18, 1881?

A. From Mr. Moorhouse's instructions; I heard Mr. Moorhouse give the instructions.

Q. How came the firm to give J. E. Adams further credit in April, 1881, if you knew?

[Question objected to by complainant's counsel, and asks for a ruling by master, which master declines to give for reasons before stated. Appeal, Feb. 12, 1884, H. W. Murphy, Ex.]

20 A. Mr. Adams gave Mr. Moorhouse an order on Allen C. Clark against the District of Columbia, as additional security for the amount he owed; that order I think was for $5500; I have seen the order, but not for a year or more; it was in my hands a number of times.

[Paper marked No. 8 for identification for defendant, and shown witness.]

This is the order.

Q. Did you ever hear Mr. Moorhouse say anything about
30 that order, and if so, what?

[Question objected to.]

A. Nothing more than to say that he had received it as additional security, and that we could credit Mr. Adams again on account of it; he might have said a good deal more, but I cannot remember just what he said; Mr. Moorhouse talked a good deal to Mr. Adams; he had him behind the desk a number of times talking to him and wanting him to settle up.

Q. Did you hear Mr. Moorhouse speak of receiving this as additional security more than once?

[Question objected to.]

A. Yes, sir; I have, I can't tell how many times; I have heard him more than once.

Q. At any time in Mr. Adams' presence?

A. Yes, sir; it was accepted from Mr. Adams as additional security, and so understood to be.

Q. Did you ever hear Mr. Adams say that the order was given as additional security? 10

[Objected to as leading.]

A. I have heard Mr. Adams say that he would secure them, and the question was asked in what way, by Mr. Moorhouse; he said that he would turn this order in against the District of Columbia on Allen C. Clark; Mr. Moorhouse accepted it, I believe.

Q. After the order was given, did you hear Mr. Adams say anything about it being given as additional security? 20

A. I do not know that I have.

Q. Before the order was given you heard the conversation between Mr. Adams and Mr. Moorhouse, did you not?

[Objected to as leading.]

A. Yes, sir.

Q. State the conversation as near as you can? 30

A. I can't state the conversation—that is, everything—but I know that Mr. Moorhouse was after Mr. Adams pretty sharp, and told him that he wanted to be better secured, and Mr. Adams proposed to give him this as additional security; Mr. Moorhouse said he was not sufficiently secured by notes and mortgages, and Mr. Adams proposed to give him this order as additional security; what the exact words were I could not say, exactly.

Q. After this order was received by Mr. Moorhouse, was Mr. Adams in behind the desk looking over his account? 40

A. At one time he was and afterwards was in the office; he had the books, note and papers in there with him.

Adjourned to Friday, the 15th inst.

JEREMIAH E. ADAMS, *v.* CORD MAHNKEN.	Before H. W. MURPHY, *Master.*

FREEHOLD, N. J., February 15, 1884.

EDWARD A. MAHNKEN, resumed the stand for further direct examination.

By Mr. Hartshorne:

[Ledger marked Exhibit No. 6, for identification, shown witness.]

In your last examination you were asked about Mr. Adams continuing to deal with Mahnken & Moorhouse after his settlement by note. State up to what time he continued to deal with Mahnken & Moorhouse and C. Mahnken & Co.

A. The last entry here is August 12th, 1882.

Q. What was the balance due from Mr. Adams to Mahnken & Moorhouse and C. Mahnken & Co., on August 17th, after the payment on that day?

A. $1159.15.

[Objected to, as the ledger is the only evidence of that.]

Q. That balance you took from the ledger—the book itself?

A. Yes, sir.

Q. How many payments did Mr. Adams make after he stopped purchasing?

A. There are two.

Q. Give the dates and the amounts?

A. August 14th, $55.05; August 17th, $54.59.

Q. After the dissolution of Mahnken & Moorhouse what disposition was made of their books?

A. They remained with C. Mahnken & Co.

Q. What use did they make of them?

A. We carried them right on, made entries in them the same as Mahnken & Moorhouse did.

Q. Whose entries?

A. C. Mahnken & Co's. entries.

Q. Did you continue right on with those books until they were all used up?

A. That would signify that all the books were full, all used up, but we kept on those books until April, 1883, I think; then we started new ledgers.

Q. What was done with the balance on page 631, of Ex. No. 6?

A. That was carried to Folio 61 in—this is the ledger, of course; I will have to describe that; it is a book that we keep of all overdue accounts, accounts that are very much overdue and all accounts that are bad in judgment, and all accounts that we never get, also are entered in that ledger.

Q. What is it called?

A. We call it the black ledger.

Q. Was that amount transferred to that ledger?

A. Yes, sir.

Q. And does it still remain upon that ledger?

A. Yes, sir.

Q. When was the dissolution of Mahnken & Moorhouse; when did it take place?

A. I think it was on the 8th of April, 1882. 20

Q. What became at that time of the books of account and the stock, etc.?

A. They remained with C. Mahnken.

Q. What became of them then? What did C. Mahnken do with them?

A. We went right on and used the books up; we continued to enter orders and go on with the business the same as before.

Q. Was it or not carried into the concern of C. Mahnken & Co?

A. Yes, sir; you mean the accounts. 30

Q. Yes, the accounts?

A. Yes, sir.

Q. Have you ever examined the account of J. E. Adams on the books of Mahnken & Moorhouse, for the purpose of ascertaining whether or not the $2 500 mortgage was charged or any payments on said mortgage entered therein?

A. I cannot answer that question in that way, because when you speak of the books there were more books; there are no entries in the ledger, but there are credits of cash in the cash 40 books which I have testified to.

Q. You have examined those books?

A. Yes, sir.

Q. Did you ever find anything in the general account of J. E. Adams in reference to that $2,500 mortgage?

A. You mean on the ledger.

Q. Certainly, Adams account on the ledger?

A. No, sir.

Q. Did you find any entries of any kind on any of the books of Mahnken & Moorhouse, excepting what you have heretofore testified to, as being entered on their cash book?

A. That is on account of what?

Q. In regard to the mortgage?

A. No; there is nothing there, only the entries on the cash book—credits on the cash book.

Q. I show you book Ex. No. 7; this first stock and assets taken in April, 1882, whose stock and assets was it?

10 A. That was, well now, if the firm of Mahnken & Moorhouse had continued, it would have been Mahnken & Moorhouse; it shows the profits of the last six months of the existence of that firm.

Q. Was not that the basis upon which the sale was made by Mr. Moorhouse of his interest to Mr. Mahnken?

A. This book?

Q. This stock?

A. This stock; no, sir.

Q. Was not that the account of stock taken at the time of the
20 dissolution of the firm of Mahnken & Moorhouse?

A. This was taken; the stock was taken on a Saturday, and I think it was on the Saturday before Mr. Moorhouse left—no, it was taken the Saturday afterwards and then this book was written off from this stock and sheets; but Mr. Moorhouse had already left the concern; he had sold out to my father when this trial balance was struck.

Q. I am not speaking of when the trial balance was struck, I am speaking of the time the stock was taken, was Mr. Moorhouse still a partner in that concern or was it at the time the
30 basis of his going out?

A. No, sir.

Q. Then did Mr. Moorhouse sell out his interest without any stock being taken at all?

A. Yes, sir.

Q. And the stock and assets of the concern of Mahnken & Moorhouse was no basis for the sale from Mr. Moorhouse to Mr. Mahnken?

A. The stock and assets was no basis for the sale.

Q. Not as here taken?

40 A. No; not as here taken; of course the assets I suppose entered into the agreement.

Q. Mr. Cord Mahnken had no other means of knowing in April, 1882, what the stock and assets of Mahnken & Moorhouse consisted of, excepting as taken in this book, and his general knowledge of them?

[Objected to as leading.]

[Objection sustained.]

Q. Had Mr. Mahnken any other means of knowing in April, 1882, what the stock and assets were, than by this account?

A. That is the only means of knowing.

Q. After October 28th, 1880, was Mr. Adams refused credit by Mahnken & Moorhouse?

A. It was about that time.

Q. State what you know about that? 10

A. I was, at that time, I had charge of the floor outside, and when I had any doubts as regards the responsibility of anybody, I used to ask Mr. Moorhouse whether it was all right to send them the goods; so Mr. Moorhouse instructed me to send no more goods to J. E. Adams, except "C. O. D." and I sent them that way, and then the expressman did not return the "C. O. D." monies fast enough, and I spoke to Mr. Moorhouse about it one time and Mr. Moorhouse said—

[Objected to.] 20

[Objection overruled.]

Then Mr. Moorhouse, when the expressman called again told him that unless he brought these monies for goods back in time, that he would have to hold him responsible for them; that went along some time and then there was another order from Mr. Adams and it was not marked "C. O. D." so I went to Mr. Moorhouse with it and I asked him whether that was not to go "C. O. D." and he told me "No, it is all right, he has given me an order on Washington and we have got further security," and so, of course, I shipped the goods to him. 30

[Complainant's counsel objects to the conversation between Mr. Moorhouse and the witness, except so far as it may be used to contradict Mr. Moorhouse in his testimony in this cause. The master admits the testimony for the purpose of showing the contradiction of Mr. Moorhouse.]

Q. From what date up to what date was it that credit was refused by the firm? 40

A. From this book it shows from the 28th of October, 1880, to the 30th of March, with one exception.

Q. No, is that right?

A. No; until the 18th of April, 1881; what was the question in regard to goods or cash or what?

Q. In regard to goods sold—crediting him with goods sold?

A. Then it goes from the 28th of October, 1880, to the 18th of April, 1881, with one exception.

Q. What exception is that?

A. February 25th, 1881.

Q. How much?

A. $15.

Q. During those dates did the firm of Mahnken & Moorhouse sell Mr. Adams or not?

10 A. Yes, sir.

Q. How did they sell him?

A. C. O. D.

Q. When did they commence selling him on credit again after that?

A. On the 18th of April, 1881.

Q. And continued up to what time—how long?

A. To the 12th of August, 1882.

Q. State, if you know, the reason why the firm gave Mr. Adams further credit in April, 1881?

20 A. Well, Mr. Moorhouse told me that it was on account of having received that order on Washington.

[Complainant's counsel objects to the answer.]

THE WITNESS.—I could not know Mr. Moorhouse's ideas, unless he told me.

Q. Do you know or not whether there are other mortgages ahead of the $2,000 and the $1,500 mortgage?

A. Do I know that there was?

30 Q. Yes?

A. Only from a search that I had made; that is all.

Q. That is good enough. Was there or was there not?

A. There was

Q. More than one mortgage?

A. I could not recollect exactly as to that; I was satisfied at the time to know that there was some ahead of it, and I did not bother any more about it.

Q. Did you take any means to ascertain whether or not the two mortgages spoken of were scanty security?

40 A. I inquired of the lawyer that made the search and he told me they were scanty security.

Q. Did the firm of Mahnken & Moorhouse or C. Mahnken & Co., take any other security for the note of $964 and the book account now due and unsettled, other than the order on Washington.

[Objected to as leading.]

[Objection overruled.]

A. Did they take any other security besides the order?

Q. Yes. Did the firm of Mahnken & Moorhouse or C. Mahnken & Co., take any other security for the note of $964 and the book account now due and unsettled, other than the order on Washington?

A. Does that mean the book account after the note was given?

Q. Yes? 10

A. None that I know of.

Q. Mr. Adams' account still remains open on the books, does it not?

A. It remains open on that black ledger.

Q. Where is that amount carried from, from the other ledger?

A. It is carried from the other ledger; yes, sir.

Q. State whether or not the order of $5500 has ever been credited to Mr. Adams' account, in any shape or manner, on the books of Mahnken & Moorhouse or C. Mahnken & Co., or 20 entered in any way, shape or manner, on the books of either of the said firms?

A. It has not.

Q. I show you Ex. B. 1, on the part of the defendant. Look over that account of J. E. Adams and see if you find any charges where Mr. Adams let his checks go to protest?

A. Yes, sir; there are lots of them; here is one.

Q. You find lots of them there?

A. Yes, sir.

Q. Running all through the account?

A. Did you say checks? 30

Q. Yes?

A. I find 45; it appears to run all the way through.

Q. How were those checks taken care of?

A. These protested ones?

Q. Yes?

A. They were not taken care of; they came back.

Q. After they came back?

A. Do you mean by that, how were they paid?

Q. Yes?

A. They were charged up on the ledger, check and protest, 40 and when Mr. Adams came there he would make payments on account, and it would go to the credit of it.

Q. By checks?

A. Sometimes and sometimes cash.

Q. Do you know whether Mr. Adams used to pay bills by giving checks dated ahead?

A. I don't know of my own knowledge, but I heard that he did.

Q. Do you know whether he got checks from the firm to take up checks or notes of his due in the bank?

A. Yes, sir.

Q. More than once?

A. I could not say how many times; I know once I took a check from Mahnken & Moorhouse out to Elizabethport to him; Mr. Moorhouse sent me out there with it.

Q. What was it for?

A. To meet some of his paper.

Q. That was coming due?

10 A. I could not say whether it wa- a check or a note; I was given a check and told it was for Mr. Adams; I knew from what I heard in the office it was to meet some obligation of his, to Mahnken & Moorhouse.

Q. Did the firm of Mahnken & Moorhouse and C. Mahnken & Co., use to exchange checks with Mr. Adams?

A. How do you mean, exchange checks?

Q. He came in and got their check and gave his check, but two or three days ahead?

A. Yes, sir.

Q. You have seen that more than once, havn't you?

20 A. I think I have.

Q. After this $5500 order was given have you seen Mr. Adams behind the desk looking over his account in the books of Mahnken & Moorhouse.

A. Yes, sir.

Q. State as near as you can how many times you have seen him there, since the order?

A. I could not say that; I would see Mr. Adams come in there very often, and sometimes he would look at his account and then again he would not; it would be impossible for me to know that every time.

30 Q. Did you ever hear Mr. Adams make any complaint about the $5500 order not being credited to his account?

A. I did not.

Q. When Mr. Adams looked over the books as you have spoken of, who did he generally look over them with?

A. Himself and Mr. Moorhouse and the b ok-keeper.

Q. I show you Ex. No. 8, for identification. You have seen that order before?

A. Yes, sir.

40 Q. Where was that order kept by Mahnken & Moorhouse?

A. In the safe.

Q. With what?

A. With other papers, mortgages and some chattel mortgages and bills of sale of other parties.

Q. Then was it or not kept with the mortgages ?
A. They were all kept there together.
Q. Was it there in the safe at the time Mahnken & Moorhouse dissolved ?
A. It was mislaid at that time.
Q. Where was it afterwards found ?
A. I could not say exactly ; I believe my father found it.
Q. Did the firm of Mahnken & Moorhouse have correspondence with Allen C. Clark, of Washington, in reference to this order? 10
A. Yes, sir—did the firm of Mahnken & Moorhouse?
Q. Yes, the firm have correspondence with him ?
A. I could not say.
Q. Did C. Mahnken & Co., have correspondence with Allen C. Clark ?
A. Yes, sir; C. Mahnken & Co., had correspondence.
Q. Did you go to Washington in reference to it?
A. Yes, sir.
Q. Went to see who ?
A. Mr. Clark. 20
Q. You did see him ?
A. Yes, sir.
Q. When were you there ?
A. I could not give you the date exactly.
Q. Can you refresh your memory by that?
A. On the 20th of October, 1883.
Q. You saw Mr. Clark that day ?
A. No; I went there twice; Oh, yes, this was the last time I was there; yes, that day I saw him.
Q. You were there once previous to that, were you not ? 30
A. Yes, sir.
Q. What did you go there for then?
A. I went on the same errand.
Q. What was it?
A. In regard to this order.
Q. To find out what?
A. I wanted to find out whether the order was good for anything.
Q. Did you ascertain or not, whether Mr. Allen C. Clark 40 had collected any money on William H. Adams' claim against the District of Columbia ?
A. He said he had not.
Q. Did you find out when said claims of William H. Adams, against the District of Columbia, would probably be collected ?
A. He did not know when.
Q. Who have you reference to by "He?"

A. Allen C. Clark; he said he expected a hearing in December.

Q. Were you present at any conversation between Mr. Moorhouse and Mr. Mahnken, just before the dissolution of their co-partuership, in April, 1882?

A. Yes, sir, some.

Q. Were or not at that time Mr. Moorhouse and Mr. Mahnken on friendly terms?

A. Just before the dissolution?

10 Q. Just before the dissolution.

A. Well, I don't think they were; they used to have a good many hard words.

Q. About what?

A. It would be about various things, and about this dissolution.

Q. Before the agreement was made, when Mr. Mahnken purchased Mr. Moorhouse' interest in that stock and assets, did you hear Mr. Moorhouse make threats of any kind?

A. Hear Mr. Moorhouse make threats?

20 Q. Yes, of any kind to Mr. Mahnken?

A. I don't know what you mean by that; I don't understand that.

Q. About throwing the matter into the Courts or having a receiver appointed?

A. No, sir; I did not hear that; I was not in the office at the time; I have heard them talk so before together; I want to be sure what you mean.

Q. Have you ever heard them quarrel?

A. Yes, sir.

30 Q. Before the dissolution?

A. Yes, sir, repeatedly.

Q. Are they on friendly terms now?

A. I think not.

Cross-examination by Mr. Alward:

Q. You are the son of Cord Mahnken?

A. Yes, sir.

40 Q. You stated that you were a clerk for them; at what time did you go in the store?

A. I first went to work there when the firm was C. Mahnken & Co., and they moved from Greenwich street around to this place in Duane street; my father built that house, and I worked for them a time, and then I went with Lillianthal for awhile.

Q. What time did you go with Mahnken & Moorhouse?

A. I was not there very long, and I went back again to Mahnken & Moorhouse.

Q. What year was that?

A. As near as I can remember, I think it was in 1872.

Q. How old were you at that time?

A. I was then 17 years old.

Q. What were your duties at that time?

A. At the time I worked for them?

Q. Yes?

A. I had to do everything; I shipped goods, carried out goods and anything that came along to do. 10

Q. How long did you continue to occupy that position?

A. Well, I held that position right straight along.

Q. Until they dissolved?

A. Oh, no; until their business commenced to increase, and then we had to get more men, and I was put on the road then, for a short while; that is, I traveled along the shore down here in New Jersey about three days in a week and the rest of the time I spent in the store, and they had to get a shipping clerk.

Q. No matter about that, but what year did you go on the road? 20

A. I can't tell you that.

Q. Can't you fix it?

A. No, sir, it would be impossible.

Q. Isn't there something by which you can fix it by?

A. No, I don't think there is; there is no way that I could remember that, for I did not fix those dates in my mind.

Q. What time did you cease to go on the road in that way?

A. That I could not say.

Q. Can't you fix the date when you commenced, or when you stopped?

A. No, sir; I never paid any attention to it.

Q. How many years were you on the road that way? 30

A. I could not tell you at all; I have not got the slightest recollection of how long I was on the road; I know they had a salesman there that beat them, and when they caught him they took him off, and I went over his ground for awhile.

Q. After you went off the road, you went back in what position, the same as at first?

A. Then I sold goods and shipped goods and delivered them.

Q. How long did you continue to do that?

A. That I don't know.

Q. Up to the time of the dissolution? 40

A. Yes, sir.

Q. You were shipping goods and selling goods up to the time of the dissolution?

A. Yes, sir, of course, shipping goods; they had a shipping

clerk too, and such goods as customers bought from me or Mr. Moorhouse, or anybody that was engaged in any other way, they would hand me the book and I would deliver them.

Q. Who did you receive instructions from?

A. Mr. Moorhouse, generally.

Q. Mr. Moorhouse and your father?

A. Very soldom from my father; I might say hardly ever from him.

Q. Who else was there over you, between you and the firm?

A. Nobody.

10 Q. No one between you and the firm?

A. No, sir.

Q. Did you have anything to do with the keeping of the books?

A. Not with keeping the books.

Q. Anything to do with collections?

A. Occasionally.

Q. Anything to do with sending out bills?

A. No.

Q. Where was the safe?

20 A. In the office.

Q. The inner office?

A. That back office was not built at that time.

Q. Who had access to the safe?

A. The firm and book-keeper and myself.

Q. Was there a combination lock on it?

A. Not on that first safe there was not.

Q. Who had charge of the key?

A. That I could not say; I know that Mr. Moorhouse had a key; I think my father had too, but I don't know.

Q. Did you ever go to the safe?

30 A. Yes, sir.

Q. When was the first that you went to the safe?

A. I could not tell you that.

Q. When you first went in the store?

A. I went to the safe s often it would be impossible to recollect when I first went there.

Q. Do you remember whether you had access to the safe when you first went there?

A. Yes, sir.

Q. Did you all the time you were there?

40 A. Yes, sir.

Q. Did you ever see that $2500 mortgage?

A. I did not.

Q. You never saw it?

A. No, sir.

Q. When was the first you ever heard of it?

A. I heard it spoken of in the office.
Q. When?
A. I could not give you the date.
Q. Can't you tell me how long ago?
A. I could not; this odious affair was spoken of so often I could not place the conversation that I overheard about it.
Q. Did you ever hear the $2500 mortgage spoken of before the dissolution?
A. Yes, sir.
Q. How long before the dissolution? 10
A. A good while before.
Q. Who spoke of it?
A. Mr. Moorhouse and my father.
Q. Was that before the $2000 mortgage was given?
A. I think it was; yes, sir.
Q. How did they come to speak of it?
A. That I could not say how they came to speak of it; they often talked matters over there, and when I was in the office I would hear it, of course; they had no private office for the transaction of their private business, and they spoke of it right 20 in the office, and anybody who was in there heard it, of course.
Q. What did they say about it?
A. That I could not tell you now; it is so long ago.
Q. Can you tell anything they said about it?
A. Only that it was mentioned, and the amount of the mortgage was mentioned.
Q. $2500?
A. Yes, sir, and that is all that I can tell you about it.
Q. That is all you heard said about it?
A. Yes; that is all that I remember; I could not at this time give you an account of all the conversation that occurred 30 years ago.
Q. Do you know when it was cancelled?
A. No, sir.
Q. Do you know whether it is cancelled now?
A. I was told so by the lawyer who made that search.
Q. Is that the first that you had been told it was cancelled?
A. That is the first I remember of being told of it.
Q. How long ago was that?
A. That was after Mahnken & Moorhouse dissolved.
Q. You had no knowledge of that mortgage being cancelled 40 before Mahnken & Moorhouse dissolved?
A. No, sir.
Q. Do you remember when the $2000 mortgage was given?
A. I don't know the date.
Q. You don't know the circumstances of its being given at the time it was given?
A. No, sir.

Q. When did you first hear of that mortgage?

A. I could not place the date of that either.

Q. Was that before the dissolution?

A. Yes, sir.

Q. How long?

A. I can't say; you see these things were spoken of so often that it is impossible for me to tell when I heard them.

Q. When was the first time you ever saw the $2000 mortgage?

10 A. I have seen both of those mortgages often.

Q. When was the first time?

A. That I could not tell you, for I didn't make any point of remembering those dates; I did not suppose there would be any trouble about it

Q. How did you come to see it?

A. I saw them sometimes when my father and Mr. Moorhouse was looking over the papers; they would take them out and spread them out there, and, of course, I would see them.

Q. How many times do you remember of seeing them before

20 the dissolution?

A. I could not give you the exact number of times.

Q. Do you remember of seeing them more than once before the dissolution?

A. I think I did; yes, sir.

Q. You said in your direct examination you never saw these mortgages until you took possession of them in 1882?

A. I never saw the mortgages?

Q. You said that in your direct examination; is what you said then true?

30

[Objected to, unless the whole testimony in that same connection is given.]

[Objection overruled.]

A. What I meant by that was that I did not have the mortgages to open and look through them, and examine them until after the dissolution.

40 Q. I repeat the question—is that true or not what you said then?

A. I have answered that already.

Q. Why did you say that in your direct examination?

A. Why did I?

Q. Yes?

A. Probably because I did not understand the question properly.

Q. Do you know why you said it?

A. I don't know; no.
Q. Do you know where the $2500 mortgage is now?
A. I do not.
Q. When did you first see the $1500 mortgage?
A. What do you mean by seeing the mortgage?
Q. I want to know the first time you saw it?
A. You may ask when I first saw that book, and you might refer to what was inside of it, and I have not seen the inside of it.
Q. When did you first see the outside of the mortgage?
A. When I saw the other, the $2000 one, at various times. 10
Q. Were they together the first time you saw them?
A. I could not say that they were right together; they were laying there on the desk where I could see them.
Q. You saw them both at the same time, the first time you saw either of them?
A. I can't say exactly as to that either; that is going into details that a man would not be likely to remember.
Q. Did you hear anything about the $2000 mortgage before you heard of the $1500 mortgage?
A. I can't say as to that either. 20
Q. Did you hear of either of the mortgages before you heard of the note of $964.14?
A. I think I did, but about the note I knew very little.
Q. You knew very little about the note?
A. Yes, sir.
Q. The note and mortgages were kept together?
A. That I could not say.
Q. You didn't know when the $2000 mortgage was given then?
A. Not of the date; no, sir. 30
Q. Did you know of the time when it was given?
A. I told you I didn't know it at the time.
Q. Is this $2000 mortgage entered in the ledger of Mahnken & Moorhouse?
A. I think it is.
Q. Look and see at what date it is entered?
A. It was entered on the 15th of June.
Q. What year?
A. 1875.
Q. Are you sure that date was the 15th of June? 40
A. That is what the book says.
Q. Do you know whether that book agrees with the mortgage?
A. I didn't keep this book.
Q. Do you know why it was entered on that day?
A. I do not.

Q. Ever hear your father say why it was entered on that day?

A. I don't know why it was entered.

Q. Did you ever hear your father say why?

A. No, sir.

Q. Or Mr. Moorhouse?

A. No, sir.

Q. Never heard anyone say why it was entered on that day?

A. No, sir.

10 Q. Is the $2500 mortgage entered on any book of Mahnken & Moorhouse?

A. No, sir.

Q. No book whatever?

A. I could not find it.

Q. Are the payments on that mortgage entered on any book?

A. In the cash book that you saw.

Q. Entered anywhere else?

A. Not to my knowledge; no, sir.

Q. Is the money that was paid for that $2500 mortgage 20 entered on any of the books of Mahnken & Moorhouse?

A. You just asked me that.

Q. I asked you if the money was paid for it; Mahnken & Moorhouse paid some money for it, didn't they?

A. For what?

Q. The $2500 mortgage?

A. That I don't know.

Q. You don't know the consideration of it, then?

A. No, sir.

Q. On the books of Mahnken & Moorhouse did you find 30 where they had taken credit for the money they paid for that mortgage?

[Objected to on the ground that the witness has not been examined as to the consideration of that $2500 mortgage at all.]

[Objection overruled.]

A. I don't recollect of any; there are lots of entries there 40 too; it don't say they were for money loaned to Mr. Adams or for the mortgage; it don't say anything about it.

Q. Are not their books kept so that it would show what they paid for it?

A. Their books are kept so it would show all their business transaction, but I don't know how it would affect this mortgage; of course, they never credited the mortgage up, and if they had credited it they certainly must have charges to balance it, otherwise the books would never balance.

Q. If Mahnken & Moorhouse loaned Mr. Adams $2500, and took that mortgage, on what book would it be entered?

A. It would not be necessary to enter it at all.

Q. Would it not be necessary if they loaned partnership money?

A. Not necessarily; that is, it would not be entered as a loan to Mr. Adams at all.

Q. What entry would be made?

A. They could charge it up to themselves as having drawn so much money, but that would not show what the money was drawn for; there is no way of telling that. 10

Q. Are there any entries on the book where the firm drew money?

A. Of course they have drawn money.

Q. As partners?

A. All the money they drew is charged to them; their expenses and everything they have to draw money to live on.

Q. That is charged to them individually?

A. Certainly.

Q. Are there any charges to them where the firm of Mahnken & Moorhouse— 20

A. There is no such account; they each had a separate account.

Q. Then if Mahnken & Moorhouse loaned $2500, would not there be some entry of that loan made in the firm books?

A. That I don't know.

Q. What are the names of the books of Mahnken & Moorhouse?

A. You mean all the books?

Q. Yes, give them all?

A. You mean the books for the transaction of their business?

Q. Yes. 30

A. There is an order book, a day book, a ledger, a cash book, of course, the check book; you don't care about them, do you?

Q. Yes.

A. The check book, a bank book, a note book, cash sales book, a receipt book.

Q. Any other?

A. A shipping receipt book and a liquor book; I guess that is about all.

Q. Is there a journal?

A. That is the day book; we use single entry. 40

Q. Then in what book are the transactions first entered?

A. In the order book, where a man buys goods.

Q. And from there, where?

A. In the day book.

Q. And then where?

A. From the day book into the ledger.

Q. Where are the entries taken that are in the cash book?

A. Where the cash is all for merchandise, it is credited in the cash book and from there into the day book, and then into the ledger.

Q. Are any of the entries in the cash book made originally there—the first entry made in the cash book?

A. What entries?

Q. Any of the entries in the cash book?

A. I don't understand you.

10 Q. When cash is paid, what book is it first entered in?

A. The cash book.

Q. If the firm of Mahnken & Moorhouse should loan $2500 of the partnership money, in what book would that be entered?

A. That would depend a good deal on how it was done and all about it.

Q. If Mahuken & Moorhouse paid money for merchandise, where would that be entered?

A. That would be entered in the cash book.

Q. If they paid a debt, where would it be entered?

20 A. It would depend on what kind of a debt it was.

Q. If it was a firm debt?

A. For merchandise?

Q. Yes.

A. It would be the same thing.

Q. If they paid off a firm debt it would be entered in the cash book?

A. It would depend on what the debt was.

Q. If it was any firm debt?

A. If it was a debt for merchandise it would be entered in

30 the cash book.

Q. Did the firm of Mahnken & Moorhouse have any debts besides firm debts?

A. Yes, sir; they would be entered in the cash book.

Q. Every bill that they paid would be entered in the cash book?

A. Yes, sir.

Q. Then, if they loaned money, would not that be entered in the cash book?

A. Not necessarily.

40 Q. If they deposited money in bank, would not it be entered in the cash book?

A. Yes, sir.

Q. Then if they loaned money, why would not that be entered in the cash book?

A. Because they have loaned money in this way; they have loaned money at times and taken a man's check for it; they do not enter that because they have got the check, and the same

way if they have loaned money on a mortgage, they carry the mortgage, they do not enter it; it would not be necessary to enter it.

Q. How would their cash account balance at night?

A. Balance with the mortgage—count the mortgage in.

Q. Count the mortgage as cash?

A. Or the check, whatever it happens to be; carry it in that way.

Q. Do they have any entry made at night, of how much cash is on hand?

A. The cashier is supposed to balance his cash every night.

Q. Then would those mortgages be in every night's balance? 10

A. I don't know how the cashier fixes that; I suppose he fixes that to suit himself.

Q. When goods are sold for cash where is the entry made?

A. On the cash ticket.

Q. What is that?

A. That is a little bunch of papers that we have hanging outside the door, and they are numbered from 1 to 300.

Q. What are done with those?

A. That is where the entries are made when the goods are sold. 20

Q. Do you keep those cash tickets?

A. Yes, sir.

Q. For how long?

A. I don't know; there is any quantity laying around.

Q. Do you store them away?

A. Yes, some are, and a good many are destroyed.

Q. Are those cash sales entered on any book?

A. On the cash sales book.

Q. And the name of the person to whom they are sold?

A. No, sir. 30

Q. What is the entry?

A. Just "1 barrel of sugar, $10" or "1 tub of butter, $10," or whatever it happens to be, and the ticket goes to the cashier and the man walks into the office and pays for it and it is stuck on a file.

Q. These cash tickets are taken in how?

A. As cash.

Q. They are entered on the cash book?

A. As cash sales for the day.

Q. That is the only entry that is made of those cash sales? 40

A. That is all.

Q. Do these appear on the day book or the ledger?

A. No, sir.

Q. Was there any account on those books of Mahnken & Moorhouse called a "mortgage account?"

A. No, sir.

Q. Where interest would be paid on a mortgage, what would that be entered in?

A. It would go through to the ledger as cash received; you will find in this book some entries, interest on mortgages, and one thing and another.

Q. Did Mahnken & Moorhouse hold many mortgages?

A. They have held several.

Q. Is the interest on these always credited on the cash book?

10 A. There is one that I remember in particular, that was I think paid up, interest and all.

Q. And ouly one entry?

A. Yes, sir; he paid the interest when he paid the mortgage; I think that was a mortgage for $900.

Q. Do you remember when the $964 note was given that was spoken of?

A. No, sir; I think I testified to that out of this book, and said so at he time.

Q. You said from October 28th, 1880, to April 18th, 1881,

20 you didn't give Mr. Adams credit?

A. Yes, sir.

Q. Who told you not to give him credit?

A. Mr. Moorhouse, as far as giving credit was concerned; Mr. Moorhouse had all to do with that, and he told me when I sent goods to Mr. Adams to send them C. O. D.

Q. When did he tell you that you need not send them C. O. D.?

A. The day that I asked him about that order; I could not give you the date of it when I answered that question; from

30 March to April, 1880—no, from October to April 18th; I said then I took it out of this book; these dates show that.

Q. How did you come to ask him about the order?

A. Because it was not marked C. O. D.; he gave me the order and told me to give it to the expressman, and then I asked him, says I, "Is this to be C. O. D.?" and he said "No, it is all right now, I have got more security, I have got an order on Washington," and then he turned around to go in the office; I remember that a well as if it was yesterday.

Q. Didn't he say the old account was paid?

40 A. No, sir.

Q. Did he say any other words besides "I have got more security, an order on Washington?"

A. That is all.

Q. Was that the first you knew of the order from Washington?

A. I think it was; yes, sir.

Q. You don't know when it was left there?

A. No, sir.
Q. You don't know who left it there?
A. No, sir.
Q. Was this the first you ever heard about the order?
A. Yes, sir.
Q. When was the first you saw the order?
A. I could not tell you that; it was after the firm dissolved.
Q. You said the order was mislaid at the time they dissolved?
A. I think it was; yes, sir. 10
Q. Did you hear any inquiry about it at that time?
A. I can't tell exactly how that came about, but I think it was about the time this suit was commenced.
Q. Was that the first you had heard?
A. I think it was between the time you called there, the first time you called in the office one day; I think it was between then and the time the suit was commenced that we hunted for the order.
Q. You had never seen the order before that time?
A. No, sir.
Q. Was there anything said about the order at the time of 20 the dissolution?
A. Not in my hearing; no, sir.
Q. Hadn't you heard the order spoken of from the time that you say Mr. Moorhouse spoke of it and the time you say that I called there?
A. I could not say as to that; there may have been some conversation about it that I overheard, but I did not pay much attention to it.
Q. Did you see any memorandum copied in the books of Mahnken & Moorhouse in reference to that order? 30
A. Not to my knowledge.
Q. Nor on a piece of paper?
A. None whatever that I know of.
Q. What was the date that I called there?
A. I could not tell you that either.
Q. Do you remember the conversation that took place between you and myself at that time, and your father joining?
A. I remember some of it.
Q. Didn't you tell me that the order was in the safe? 40

[Defendants' counsel objects to any conversation that took place between the parties, as not a proper cross-examination.]

[Objection withdrawn.]

A. If I am not mistaken the order was found in the safe afterwards; I don't remember whether I told you so, but still

I cannot deny it; I don't know whether I did or did not, but I think the order was found afterwards.

Q. Didn't I ask you to let me see the order after you told me it was in the safe?

A. Yes, sir; you asked me to let you see the order and the books; of course I didn't know you; I asked you who you were, and then Mr. Jansen asked you if you wanted to pay the account.

Q. That was your father?

A. I think it was Mr. Jansen; you will find, I think, that Mr. Jansen testified to it too; I asked you who you were and you said "You will find out who I am;" then, of course, I got on my dignity, and I said you could not see anything there.

Q. Did I not, previous to that, hand you my card and tell you that I was Mr. Adams' attorney?

A. I think you handed me a card after that.

Q. Didn't I before?

A. I think not; you came there with a satchel and I didn't know who you were; I was willing to give you any information in my power, but the thing was brought about in such an unpleasant way that I got a little angry over it; I suppose that is due to my temper.

Q. After April 18th, 1881, did you sell much goods to Mr. Adams on credit?

A. He bought goods off and on; I could not give you the amount; the books will show that.

Q. Not as much as he did before?

A. I could not say.

Q. When Mr. Adams paid a check on account, where was that check entered?

A. In the cash book.

Q. When he paid it on account, would it not be entered anywhere else?

A. Of course, in the ledger.

Q. And when a check went to protest where would the protested check be entered?

A. It would be charged back again on the ledger.

Q. Charged on the day book first?

A. Yes, sir, and then entered in the ledger; sometimes they charged the check book on the order book.

Q. And so all the protested checks will appear on the ledger, will they?

A. Yes, sir.

Q. What became of the protested check after that?

A. Sometimes they were returned and sometimes we kept them.

Q. Have you all of Mr. Adams' protested checks?

A. I could not say that we have them all; we have some.

Q. Many of them?

A. Quite a number.

Q. You said that you knew that Mr. Adams got checks to take up protested checks—how many times?

A. I don't think I said that, not the way you ask the question.

Q. What did you say?

A. If you could find that question and repeat it, I could tell you exactly what I said; I don't remember the question and answer both. 10

Q. Can't you tell without hearing the question?

A. I think there was quite some conversation there when that question was asked me; we gave him checks to take up checks, after the check went to protest; that was the end of that check; that check came back; when you ask me if he gave a check to take up a protested one, that could not be, but we did give him checks to meet his paper with; I think that is the answer I gave before.

Q. Then you never gave him checks to take up his protested checks? 20

A. No, sir.

Q. How many times did you give him checks to take up his checks, before they came due?

A. I could not tell you the number of times; I told you that I took a check there myself once.

Q. How much was that check?

A. I could not tell you the amount.

Q. What was the date of that?

A. I could not say. 30

Q. Can you tell what year?

A. No, sir; I simply remember the transaction.

Q. Can you tell anywhere near what year it was?

A. No, sir.

Q. What was your employment in the store at the time you did that?

A. I never had any position there, for instance, like a bookkeeper; I had to do just what came along.

Q. What did Mr. Moorhouse say to you when he gave you that check?

A. He simply told me to take it out to Mr. Adams, and that I should be in a hurry to get there. 40

Q. Was that all?

A. That was all.

Q. He didn't say anything else?

A. No, sir.

Q. He didn't say what the check was for?

A. No, sir.

Q. Did your father say anything to you about that check?

A. No, sir; the cashier told me after I came back.

Q. Who was the cashier?

A. I don't remember now who it was.

Q. Anybody else say anything about the check, except the cashier?

A. No, sir.

Q. So that when you took that check to Mr. Adams you
10 didn't know what it was for, at the time you took it?

A. No, sir; not when I took it I did not.

Q. Neither one of the firm ever told you what it was for?

A. No, sir.

Q. And that was the only time you took a check to him?

A. Yes, sir.

Q. Do you know another time when a check was sent to Mr. Adams?

A. I have seen him there, and get them himself.

Q. Was that before this?

A. I could not tell whether it was before or not.

20 Q. Whether before or after?

A. No, sir; I have seen him there so often.

Q. Have you seen him there so often to get checks?

A. I have seen him repeatedly getting checks.

Q. How many times?

A. I could not say.

Q. What do you mean by repeatedly—three times?

A. I can't tell you how many times.

Q. Do you mean more than three times?

30 A. If I could tell you, I would tell you how many times?

Q. Will you say you saw him three times?

A. I wont say anything about it; I know he has been there at various times, but I could not say how many times.

Q. Will you say he has been there twice to get a check?

A. I think he has; yes, sir.

Q. What did he say?

A. I don't know, he didn't speak to me.

Q. You didn't hear him say anything about it?

A. No; I saw him get the check; that is all; him and Mr.
40 Moorhouse did all the conversation.

Q. And you didn't hear any part of it?

A. No, sir.

Q. Did you ever know of Mr. Adams giving a note, besides this $964 note to the firm of Mahnken & Moorhouse?

A. No.

Q. That is the only note that you know of?

A. Except those that appear in the books; of course, you know there are notes credited here.

Q. How many?

A. I could not tell you; I can count them up if you want.

Q. You don't know of any, except what are credited on that book?

A. No, sir.

Q. What were you told this check that you carried out there was to take up?

A. I don't remember.

Q. You said you saw Mr. Adams behind the desk since the order was given? 10

A. Yes, sir.

Q. How many times?

A. I could not say the number of times.

Q. What was he doing?

A. Looking at the ledger.

Q. Did you hear what he said about the ledger?

A. No, sir.

Q. You did not have any conversation with him?

A. No, sir.

Q. And did not hear any? 20

A. No, sir.

Q. You never heard any conversation of his about the order?

A. No, sir.

Q. Neither before it was taken or since?

A. No, sir; only, of course, such conversation as I heard while this trial was going on.

Q. You said that your father found that order?

A. I said I thought it was my father who found it?

Q. Where did he find it?

A. I do not know; it was in the safe; I believe he found 30 it, but he can testify more accurately in regard to that than I can.

Q. Do you remember the time when he found it?

A. I don't remember the date.

Q. You say it was after I was there?

A. I don't remember the date; I think it was after you were there.

Q. You say that you went to Washington—who asked you to go? 40

A. Nobody asked me to go.

Q. You went as one of the firm of C. Mahnken & Co.?

A. I went for my father at my own suggestion.

Q. Why did you want to make any inquiry about that order?

A. Because when I went into partnership the account of Mr. Adams was taken in as good money and these mortgages, after I had had the search made, I knew were scanty security

and I wanted to find out whether the order was given for anything.

Q. That is the reason you went?

A. Yes sir.

Q. Is the cash book of 1873 and 1874 here?

A. Yes, sir.

Q. See whether check Ex. A. 4, is credited on the cash book?

A. There is a credit here of $100 on that day.

Q. Who for?

10 A. J. E. Adams.

Q. Is that all that is credited to him on that day?

A. That is all that is credited to him, unless there may be a $50 credit in that cash sales, but it don't appear who it is for.

Q. Whose indorsement is that on the back of that check?

A. Mr. Moorehouse's writing.

Q. It is Mahnken & Moorhouse's?

A. Yes, sir.

Q. Look at Ex. A. 3, see whether that is on the book?

A. There is a credit here of $150 on the 19th; if that check

20 was paid after three o'clock in the afternoon it would be taken into the next days cash.

Q. $150; this check is $175?

A. Yes, sir.

Q. Whose indorsement is that?

A. Mahnken & Moorhouse.

Q. Look on the ledger and see what credit Mr. Adams' got there?

A. On the 19th of July?

Q. Look at August 22d, 1873?

A. There are two credits here, one for $150 and one for

30 $100; the $100 is on the 22d, and the $150 is on the 25th of August; there are three different credits; here is one on the 19th.

Q. That is 19th on the cash book?

A. Yes, sir.

Q. What is it on the ledger?

A. The 19th.

Q. How much?

A. $100; I should say $150 on the 19th; on July 19th there is a credit of $150, both in the cash book and in the

40 ledger; on August 22d there is a credit of $100 on the cash book and ledger, and on the 25th of August there is a credit of $150 on the ledger.

Q. Can you tell whether that check A. 4, is dated August 22d?

A. Yes, sir; it is dated here August 22d.

Q. You don't know when it was received?

A. No, sir; I do not; I know that we received checks sometimes dated ahead.

Q. Turn to May 23d, 1873 in the cash book, I show you Ex. A. 2, do you find that credit on that date?

A. No, sir.

Q. Do you find it credited on any date;

A. Not on that date.

Q. On any date?

A. No, sir; there is a deduction here in the ledger that does not appear in the cash book of $8.07.

10

Q. You do not find this credited on the cash book or on the ledger?

A. No, sir.

Q. I show you Ex. A. 6; say whether it is credited on the cash book?

A. No, sir.

Q. Look on the ledger and say whether it is credited there?

A. No, sir.

Q. Whose indorsement is that?

A. Mahnken & Moorhouse.

Q. By whom?

20

A. My father.

Q. Who is Ex. A. 3, indorsed by?

A. By my father.

Q. And A. 2?

A. Also by my father.

RECESS.

THE WITNESS:—I made a mistake before dinner which I would like to correct; when I was looking for this October 31 *that* is where I looked for it; there was no year, but this heading on page 242; the year was not carried over on to these pages, and it should have been 1873; I find it here credited on the 31st of October, 1874, page 410, J. E. Adams, for note on account of mortgage, $150.

30

Q. In that case was that note entered on any book?

A. That I could not tell without looking; I could tell by seeing that book.

Q. Here is the book?

A. No, sir.

Q. It don't appear on any book of the firm?

40

A. Only on the cash book.

Q. Does the note appear on the cash book in any other place?

A. They could not be entered more than once; they could not credit it more than once.

Q. I want to know whether there is any other entry of that note at any time?

A. An entry anywhere else besides here?

Q. Yes, sir?

A. Not that I know of.

Q. When did you have that search made?

A. I could not give you the date.

Q. As near as you can?

A. It was after the dissolution.

10 Q. How long after?

A. I could not state exactly how long after.

Q. Within a year?

A. Oh, yes; I think it was within a year; the way I came to have it made, Mr. Adams was buying goods of us, and he was again running behind in his bills and I sent him word that unless he kept up promptly to the time I should sell him only for cash, and then I think my father and I had some conversatiod about it, and I said that I wanted to find out just about what these mortgages were worth, and I sent this man on to 20 Elizabeth to look it up.

Q. Was it within a year after the dissolution?

A. I think so.

Q. How long was it before you went to Washington?

A. I could not say; I didn't take no account of the time; I didn't pay any attention to it.

Q. Didn't you go to Washington immediately after having the search made?

A. I don't know how long it was.

Q. Wasn't it immediately after?

30 A. No; I could not say.

Q. You wont say it was not immediately after?

A. I wont say when it was for I don't remember.

Q. You wont say that you did not go to Washington immediately after having the search made?

A. I say I don't know.

Q. Then you wont say that you did not?

A. I say I don't know; how can I say any hing about it if I don't know.

40 Q. You spoke about some quarrels between your father and Mr. Moorhouse; when did they first begin?

A. That I could not tell.

Q. How long before the dissolution?

A. Sometime before.

Q. Years?

A. Yes, sir.

Q. What do you mean by quarrels?

A. Hard words; I have heard Mr. Moorhouse say things to

my father that if he had said them to me I would have knocked him down.

Q. What was it about?

A. About business in various ways; sometimes about the purchase of goods, and, of course, they would commence to talk and talk between themselves, so you could not hear it, and by and by when they got angry then you could hear it.

Q. Did you hear your father use any cross words?

A. I have heard him answer Mr. Moorhouse. 10

Q. You have heard him say cross words to Mr. Moorhouse?

A. Mr. Moorhouse would accuse him of one thing and another, and my father would take it.

Q. Was this a common occurrence?

A. It occurred often.

Q. And had for years?

A. It had for several years.

Q. Commenced that way as soon as the partnership was formed? 20

A. No; I could not say that.

Q. How soon after the partnership?

A. I could not say.

Q. You said they were not friendly now?

A. I said I didn't think they were.

Q. Why don't you think they are—ever see them come together since?

A. No, but indications outside of that.

Q. Have you seen Mr. Moorhouse since the dissolution? 30

A. Yes.

Q. Talk with him?

A. No, sir.

Q. Has not talked with him since?

A. No, sir.

Q. Is the unfriendliness on the part of your father or on the part of Mr. Moorhouse?

A. On the part of both, I guess.

Q. How do you know, if you have not talked with him?

A. I know from reports that are brought to me from what Mr. Moorhouse has said. 40

Q. That is the only way you know, is it?

A. Yes, sir; I know too, that people have come to me with things that they have heard that could not have come from anybody else, but Mr. Moorhouse.

Q. You have not heard Mr. Moorhouse say anything about it?

A. I have not spoken to him.

Re-direct by Mr. Hartshorne:

Q. Did you not go to Washington after this suit was commenced?

A. Yes, sir.

Q. Was it not the result of a conference between yourself, your father and your counsel in this case, that you went there?

10 [Objected to as leading.]

A. As far as that goes I remember the whole circumstances of it.

Q. State the circumstance?

A. The question being leading would not have any effect on the answer; I answered before that it was at my own suggestion that I went to Washington; we had spoken about this order and about the case; that is, my father and Mr. Hartshorne and myself, and I made the suggestion at the time 20 whether it was not advisable for me to go there and find out about it; I believe that is the way it happened.

Q. What was your object in going to Washington?

A. My object was to find out whether this order was likely to be paid, and when.

Q. And if it had been paid?

A. And if it had been paid too; that is, if Mr. Clark had collected that money in the suit.

Q. Did or not your counsel advise you to go to Washington for that purpose, after you made the suggestion?

A. Yes, sir.

30 Q. Can you explain what check for $30, marked A. 2, on the part of the complainant, dated May 23d, 1873, for which there appears no credit on J. E. Adams account, was given for?

A. Mr. Adams used to come there and buy goods sometimes for cash, and, of course, as I said before, these cash sales they could not be traced back on account of their not being any name on the ticket.

Q. What were the cash sales of May 23d, 1873, on that day?

A. $495.50.

40 Q. If Mr. Adams purchased goods for cash on that day to the amount of $30, would or would not it be included in that $495.50?

A. It would be included there.

Q. Mr. Adams did purchase goods for cash, did he not?

A. Sometimes.

Q. Whenever he purchased goods C. O. D., where would the proceeds of those sales go to?

A. Into the cash sales.

Q. Might not that have been a C. O. D. purchase?

A. It might have been.

Q. On July 18th, 1873, J. E. Adams gives to the firm a check of $175, and received credit on his account for $150; can you explain where the difference of $25 went to?

A. The only way I can explain that would be if he bought $25 worth of goods the payment of $25 worth of merchandise might have been taken out of that check and the balance credited on his account.

Q. Would that go in the cash sales then on that day? 10

A. Yes, sir.

Q. On August 22d, 1873, J. E. Adams gave Mahnken & Moorhouse a check for $150, and received credit on his account for $100; can you explain where the difference, the $50 went?

A. The only way I can explain it is the same way as the other.

Q. On August 22d, 1873, your cash sales were what?

A. $430.36.

Q. On July 18th, 1873, your cash sales were how much?

A. This check was evidently paid in after three o'clock, and 20 it would appear in the cash of the 19th.

Q. On the 19th how much were your cash sales?

A. $409.66.

Q. And on the 18th how much?

A. $303.82.

Q. Were you traveling on the road during the year of 1881?

A. I can't remember.

Q. After the $5500 order was given to Mahnken & Moorhouse, by J. E. Adams, did you hear Mr. Moorhouse demand money of Mr. Adams on his account? 30

A. Yes, sir.

Q. More than once?

A. I think so.

Q. Did Mr. Adams ever purchase goods for cash?

A. He did sometimes; I could not say how often.

Q. From October, 1880, until April, 1881, he either purchased for cash or C. O. D.?

A. Yes, sir; with one exception that I referred to.

Q. The stock and assets of Mahnken & Moorhouse, where did they pass after the dissolution? 40

A. They passed into the hands of C. Mahnken & Co.

Q. In that stock and assets, were there or not included the $2000 mortgage and the $1500 mortgage, and the $964.14 note, and the open account of J. E. Adams?

[Objected to, as the books are the best evidence.]

[Objection overruled.]

A. I think they were.
Q. Were they taken in as good assets?
A. Yes, sir.
Q. And do the firm of C. Mahnken & Co., now hold them?
A. Yes, sir.
Q. And have you as one of the partners of C. Mahnken & Co., an interest therein?
10 A. Yes, sir.
Q. I show you book No. 7 for identification; what book is this?
A. That is what we call account of stock book.
Q. Has that got the account of stock and assets taken in April, 1882?

[Objected to as not a proper rebuttal.]

20 [Objection overruled.] Appeal.

A. Yes, sir.
Q. Included in those assets do you find Mr. Adams' bond and mortgage for $2000, the $1500 mortgage and the $964.14 note, and also balance due on open account of $1121.11?
A. I find the open account on page 35; the note on page 36, and the two mortgages on page 37.
Q. Were they all taken at that time as good assets?
A. Yes, sir.
Q. At the time of the dissolution of Mahnken & Moorhouse,
30 they held the order of $5500 as collateral security, did they not?
A. Yes, sir.
Q. Did that pass into the hands of C. Mahnken & Co.?
A. Yes, sir.
Q. Do you find in that account of stock and assets any reference to the $5500 order?
A. No, sir.
Q. Book No. 8 for identification, shown witness. What book is that?
40 A. A ledger.
Q. Of whom?
A. Mahnken & Moorhouse.
Q. You are well-acquainted with it?
A. I have seen it repeatedly.
Q. Of what years is it?
A. 1875 to 1878, it runs to.

Q. On page 9, of J. E. Adams' account, do you find a credit there for the $2000 mortgage?

A. Yes, sir.

Q. When is that credit?

A. It says there January 15th, 1875.

Q. I show you book No. 9 for identification. What book is this?

A. The ledger of Mahnken & Moorhouse.

Q. You are well-acquainted with it?

A. Yes, sir; I have seen it. 10

Q. Seen it often, haven't you?

A. Yes.

Q. On page 122, of account of J. E. Adams, do you find a credit there of the mortgage of $1500?

A. Yes, sir; I find a credit here of August 15th, $1500.

Q. Can you explain how it is that those two mortgages of $2000 and $1500 appear to be credited out of their dates in the ledger?

A. The only way is that the mortgages when given out to be recorded; it might have been that length of time to get them 20 back again.

Q. Then they were credited when they came back?

A. So it appears.

Q. Whose account is it on page 244?

A. J. E. Adams, Elizabethport, N. J.

Q. Is that account balanced there?

A. Yes, sir.

Q. What balances that account?

A. A note dated April 27th, $964.14. 30

By Mr. Alward:

Q. Whose handwriting is this ledger in—this page that is now open?

A. It appears to be in Mr. Harrison's.

Q. I see that there is an erasure of May 6th, $25; do you know anything about that?

A. No, sir; I would not know what it is now; it has been checked in red ink; there was something special about it?

Q. You cannot explain it? 40

A. No, sir.

Q. The note is credited as of April 27th, 1880, is it?

A. Yes, sir.

Q. What is the next credit above that?

A. June 10th.

Q. Of the same year?

A. Yes, sir.

Q. How much?

A. $90.02.

Q. What is the next credit above that?

A. May 25th, $88.25.

Q. And on May 6th there is $25 erased?

A. Yes, sir; there is another credit right up over that; the same date $72.75.

Q. They are added in to balance on this side of the ledger, are they not?

A. They are added to that, not to balance.

10 Q. Then this ledger would not be balanced with the payments that were made prior to the date of that note—the date of the note is April 27th?

A. You mean take this note and the payment, without those three payments?

Q. Yes; would not even balance?

A. Why no, of course, not.

Q. Then the ledger was not balanced on the date of that note?

A. Not on the date as on the note, but I don't know how 20 that date came to be on the note; we often take notes from people where they owe a string of bills, and average the dates and then date the note back so as to get the interest instead of figuring the interest on every bill.

Q. Did you in this case?

A. I don't know; we often did that; I did not draw the note.

Q. Do you know on what day this transaction took place?

A. No.

Q. You don't know on what day the note was given?

30 A. No, sir.

Q. What is that memorandum on that page?

A. "April 27th, 1880. Demand note given to balance account to March 1st, 1880, $964.14. Future account not to exceed $300. Bills to be paid promptly in 30 days and $50 or more to be paid monthly on account of note."

Q. Do you know in whose handwriting that memorandum is?

A. That appears to be in Mr. Harrison's also.

Q. Do you know anything about how it got there?

40 A. No, sir; it appears that he put it there.

Q. There is a red ink mark on that side, $25; read that memorandum?

A. "May 6th, transferred to note, $25."

Q. What does that mean?

A. It means what it says; it is transferred to a note; I can only explain it in this way, that there was a note and the note had been credited on the account to balance, and after the note was credited, this payment was made, and instead of crediting

it on the back of the note, as it should have been done, it was carried into the ledger and there is where the credit was given, and here it is charged back again, and they have crossed it off on both sides.

Q. Do you know whether that was added there after the note was given or not?

A. It appears so.

Q. You were not present when that note was given?

A. I don't think I was.

Q. You don't remember anything about it? 10

A. No, sir.

Q. By the connection, between what days was that mortgage credited on the ledger—it was credited on July 19th, wasn't it?

A. It is credited between two credits of July 19th.

Q. Of your own knowledge do you know why it was credited on that date?

A. No, sir; I do not.

Q. You can't give any explanation of it of your own knowledge?

A. No, sir. 20

Q. On the stock book you state that there were three items; the open account, the note and the mortgage; which one appears first on the stock book?

A. The open account.

Q. And which second?

A. The note.

Q. And the third and last the mortgages?

A. Yes, sir.

Q. Why were they put in that order?

A. They were put in that order for this rea on; our book-keeper in making out his stock sheets he copies off the ledger 30 account the balances on the ledger account first, and these mortgages were kept in a drawer in the safe, and, of course, he would not stop in taking the amount off his ledger when he came to Mr. Adams' account he would not go to the safe and take the mortgages out, but he waited until he got through his ledger, and then took the papers as he got them.

Q. Why is the mortgage so far after the note?

A. In the stock book?

Q. Yes? 40

A. I have just told you.

Q. No, you have told why the account would be that way?

A. For the simple reason that the mortgage would come—he copied the ledger first and then he took such other things as were there.

Q. Why did not the note and the mortgage come together?

A. Because the mortgage is credited on the books and balanced the account, and we only took it as a mortgage; if we

had taken the book account and then taken the mortgage again it would have come in our stock twice.

Q. Open to the stock book?

A. There is the running account which is quite long; there is the note.

Q. What is the entry on the note?

A. There is no date in this book.

Q. What in the entry there?

A. J. E. Adams, $964.14, among bills receivable.

10 Q. And it is towards the bottom of the 36th page?

A. Yes, sir.

Q. Tne mortgages are where?

A. They are at the bottom of the 37th page.

Q. The two mortgages are together?

A. Yes, sir.

Q. Can you tell why the note and the mortgages were not entered at the same time and the same place, one after the other consecutively?

A. I have already explained that.

Q. What is the explanation; why is that?

20 A. These notes are kept in an envelope along with others; *these here* are all notes too; these are notes given to balance account, but these accounts are balanced on the ledger, and these notes are kept in a different place; they are not kept by the book-keeper; they are kept in the safe, and after he gets his balance off of his ledgers, then we give him the notes in the safe; *that* is a chattel mortgage and that is a note.

Q. I want to know this—were not Mr. Adams notes and mortgages kept together in the safe?

A. They were kept together, yes, sir, but I do not know that

30 one was right on top of the other.

Q. Were not they handed to the book-keeper at the same time?

[Objected to.]

A. They may have been.

Q. Can you give any explanation further than what you have, why the mortgages are so far separated from that note?

40 A. There is no other explanation to be had.

Q. At the time Mahnken & Moorhouse dissolved was there any discussion between them in reference to the Adams account?

A. No, sir; there was not.

Q. It was not mentioned?

A. Not in my presence.

Q. You say that the order does not appear on the books?

A. No, sir.

Q. In case the order had been taken to take up the mortgages and the note and the book account, what entry could you have made of that order on your books?

A. We would have balanced the open account, and cancelled the mortgages and given Mr. Adams the note.

Q. Could you have done that without first making a statement of Mr. Adams' account?

A. You would not need to have made a statement; you could have taken the balance right off the ledger.

Q. When you started the new firm of C. Mahnken & Co., did you have any discussion with your father as to the Adams account? 10

A. Not the Adams account individually; we took them all in.

Q. You said nothing about that?

A. No, sir.

Q. You had no discussion with your father about the mortgages and the order?

A. No, sir; we took them all in as bills receivable, as they appear on this book. 20

Q. You said you heard Mr. Moorhouse demand money of Mr. Adams after the order was given; what time was that?

A. I could not tell you.

Q. How long ago was it after the order was given?

A. I could not remember the date of that.

Q. Could you tell how long after the order was given?

A. No; I could not.

Q. How long was it before the dissolution?

A. It was sometime before that.

Q. Can't you give us any idea what time it was? 30

A. No, sir.

Q. How many times did you hear him?

A. That I could not say.

Q. More than once?

A. I could not say the number of times.

Q. Can you say more than once?

A. I think I could.

Q. More than twice?

A. I cannot remember, I told you how many times.

Q. Can you tell me what the words of Mr. Moorhouse were? 40

A. No; I could not recollect the exact language, but it was a demand for money.

Q. What were his words?

A. I could not tell you that.

Q. What did Mr. Adams say?

A. That I did not hear; Mr. Adams never spoke very loud, especially when he was dunned for money he used to talk very low.

Q. How near were you to Mr. Moorhouse?

A. Not very far away; may be a couple of feet.

Q. What time in the day was it?

A. I can't tell exactly the time of day, but Mr. Adams generally called there about n on, so I suppose it was about that time.

Q. You don't remember the time?

A. I think it was before noon.

Q. You don't remember the time?

A. No, sir; I didn't look at the time; to answer that I
10 would have had to go and look at the clock and see the time.

Q. In 1873 did Mr. Adams buy any goods for cash?

A. I could not state any exact time or the amount.

Q. Could you say whether he bought any for cash in 1873 or 1874?

A. That is a difficult question for me to answer; I have accounted for the difference in those checks.

Q. I don't ask you about that, I ask you whether or not he was buying for cash at that time?

A. He did at various times.

20 Q. Did he in 1873 or 1874?

A. I think he did.

Q. Will you say positively that he did?

A. I can't say positively.

Q. At that time were you not trusting him?

A. He was buying some on credit?

Q. Was he not buying all he wanted to on credit at that time?

A. No; I don't think he could have got all he wanted to at that time, because there was a memorandum made that his
30 account was not to overrun $300.

Q. When was that memorandum made?

A. I don't know that, but it was previous to that time; the note shows that.

Q. What is the date of the note?

A. April 27th.

Q. What year?

A. 1880.

Q. That was the time the memorandum was made, was it
40 not?

A. Yes, sir.

Q. Was there any memorandum made in 1873 or 1874 that his credit was not to exceed $300?

A. Not that I know of.

Q. Did you ever hear of his being refused credit at that time?

A. No; I could not say that.

Q. Do you know of any instance of bills being sent to him C. O. D. in 1873 or 1874?

A. No; I don't think I could point you out any, without looking them up.

By Mr. Hartshorne:

Q. At the time of those checks in 1873 and 1874, Mr. Adams owed Mahnken & Moorhouse a large amount, didn't he? 10

A. I would like to have the date of those checks.

Q. I only ask if he owed a large amount?

A. If I know the dates of the checks; I can turn right to it on the ledger; it appears here that he was gradually increasing his account.

Q. He was owing a large amount, wasn't he?

A. Yes, sir.

Q. And increasing his account?

A. Yes, sir; on the 31st of December, 1873, he owed $1,833.47; so this book says. 20

Q. Did he owe that besides what he owed on the $2500 mortgage at that time?

A. Yes, sir; because the mortgage never went in he must have owed it.

Q. You have spoken of the $2000 mortgage and the $1500 mortgage being given to balance account; were they given to balance account or on account?

A. They were credited on account; the books show that.

Q. You said "balance" the account in your testimony?

A. I might have made a mistake in that word. 30

Q. The $25 charged in red ink on page 244 and afterwards crossed out, was it not credited on the $964.14 note?

A. Yes, sir; it appears on the back May 6th, $25.

Q. And that is the $25 that has reference to these two items on page 244 that are erased?

A. I think it is.

Q. From the book and from that credit of May 6th was not that note dated back?

A. It appears so.

Q. Does not that note say "with interest?"

A. Yes, sir. 40

By Mr. Alward:

Q. Do you know anything about that note, only as you see it and the book?

A. That is all.

Q. At the time that you said Mr. Adams owed $1,833.47, which you said was December 31st, 1873, according to your statements of account, had not Mr. Adams paid off nearly all of the $2500 mortgage?

A. In 1873?

Q. Yes?

A. I think I testified the mortgage was paid off in 1875?

Q. There was $1500 paid in 1873?

10 A. Yes, sir; there were two payments in 1873, one of $1000 and one of $500.

JOHN H. JANSEN re-called for further direct examination.

By Mr. Hartshorne:

Q. When you stopped your examination at the last sitting you stated that Mr. Adams was behind the desk looking over 20 his account at one time and afterwards was in the office; who was in there with him?

A. Mr. Moorhouse.

Q. Was he behind the desk with him too?

A. Yes, sir.

Q. Was he there more than once after the order was given?

A. Yes, sir.

Q. How many times would you say he was there up to the time of the dissolution?

A. A number of times; I could not say, probably he was 30 there every week I should think.

Q. Did you hear him say anything about this order being credited?

A. No, sir; I never heard him say a word about it.

Q. When was the first you heard about this order being credited?

A. I think it was just previous to commencing this suit, or right after it; this gentleman, Mr. Alward, is the first one I heard say anything about the order; I don't know that anything was spoken then in regard to the order alone, in fact, I 40 don't think there was a word said referring to the order alone.

Q. Was Mr. Adams in there looking over the books after the dissolution, that you know of?

A. Yes, sir.

Q. More than once?

A. I think so.

Q. After the order was given did Mr. Adams make any complaint about it not being credited on his account at the time he was looking over the books?

A. No, sir; never.
Q. Did Mr. Adams use to purchase goods for cash?
A. Yes, sir; he has sometimes.
Q. Quite often?
A. Quite often; yes, sir.
Q. Mr. Adams used to be sent invoices of the goods that he bought?
A. Yes, sir; unless he paid cash, and then he would get merely a little memorandum, a cash ticket we call it.
Q. Did you occasionally, or at stated periods, send a state- 10 ment of his account to him?
A. Yes, sir.
Q. That was one of the accounts that was sent to him?

[Handing paper to witness.]

A. Yes, sir; that is one.
Q. Is this in your handwriting?
A. Yes, sir.
Q. That outside paper, where was that taken from? 20
A. From the ledger.
Q. This inside paper, what is that a statement of?
A. That is a statement of the mortgages, the note and the book account, together with the interest on the same.
Q. Mr. Adams has testified that he got this account, without the credit of the $690 thereon, and that he brought back this paper and had that put on afterwards; how came that to be put on?
A. The money had been reeeived, and had not been credited 30 on the mortgage through some carelessness.
Q. Haven't you charged interest on the mortgage from the dates up to the date of this paper?
A. Yes, sir.
Q. Then have you not charged in your ledger account the interest on those mortgages amounting to $690?
A. In the ledger account, no, sir.
Q. Refer to the ledger account, interest on mortgage $70, interest $70, interest $70?
A. That is back of my time; I could not testify to that. 40
Q. I will show you the ledger marked No. 9, for identification. You are well-acquainted with this book?
A. Yes, sir.
Q. What is it?
A. Ledger of Mahnken & Moorhouse.
Q. I show you book No. 8, for identification; you are well-acquainted with this book?
A. Yes, sir.

Q. What is it?
A. Ledger of Mahnken & Moorhouse.
Q. Look on page 10, "Interest on mortgage, $70, interest, $70."
A. Yes, sir; it is all charged up there.
Q. Page 14, "Interest, $70?"
A. Yes, sir.
Q. "Interest on mortgage, $70?"
A. Yes, sir.
10 Q. Page 467, "Interest on mortgage, $70?"
A. Yes, sir.
Q. And in book No. 9, page 122, "Interest, $70?"
A. Yes, sir.
Q Page 123, "Interest, $70?"
A. Yes.
Q. Page 243, "Interest, $52.50?"
A. Yes, sir.
Q. You find those amounts charged in the ledger account?
A. Yes, sir.
20 Q, That was before you were book-keeper there?
A. Yes, sir.
Q. Now, if you make out a statement charging interest from date of those mortgages, and charging up the full balance of the ledger account at the time of the dissolution, would that not be making you charge him the interest twice in your statement?
A. I don't understand that?
Q. You find, before you were book-keeper, by referring to the books now, that the interest was charged up as you have
30 testified on the books?
A. Yes, sir.
Q. Now, if you charged him interest from the date of the mortgage, without knowledge, that they had been charged before, and they had been charged in the account before, that would make a double charge of interest, would it not?
A. Yes, sir.
Q. Now, when he brought this back did you not go over the books and see how much had been credited, and give him credit on that statement?
40 A. Yes, sir.
Q. Is not that your explanation of how that statement was made out?
A. Yes, sir; Mr. Adams brought that statement back or sent it back.
Q. When was that statement made?
A. On July 22d, 1882.
Q. That interest, less interest paid on $2000 mortgage, January 15th, 1880, $600, and less interest paid on $1500 to

August 15th, 1879, $90—does not that refer to the amount of interest that had been theretofore charged on the books on those mortgages?

[Objected to as leading and suggestive.]

Q. What does it refer to?

A. This is interest paid on account of this interest that has been charged here; it had not been credited here. 10

Q. Was it paid in cash or had it been charged on the book theretofore?

A. It had been charged on the book.

Q. Then as far as you know it had not been paid, had it?

A. No, sir; not so far as I know.

Q. Mr. Adams at the time of the dissolution of the partnership owed how much?

A. He owed that book account of $1,121.11, together with the mortgages and the note; that is all the interest that had been paid. 20

Q. That is all the interest that had been charged?

A. Yes, sir.

Q. There are no books to which you can refer, no books of Mahnken & Moorhouse by which you can show that any interest has been paid at all, on these mortgages?

A. No, sir.

Q. It just merely—all you can refer to, is what is in the account on the ledgers, interest charged there?

A. That is all.

Q. Was or not this statement made out for Mr. Adams at his request? 30

A. At Mr. Adams request that was made out.

Q. Did you give it to him?

A. Yes, sir.

Q. Hand it to him personally?

A. Yes, sir.

Q. Do you remember when it was?

A. July 22d, 1882.

Q. Did he or not say anything in reference to the $5500 order at the time you handed him this statement? 40

A. Nothing said about that at all?

Q. Did he make any complaint that the $5500 order was not credited on this statement?

A. No, sir; never made any reference to it at all.

Q. Did you or not send to Mr. Adams, after the order was given, other statements than this one?

A. Yes, sir.

Q. Of his book account?

A. Yes, sir.

Q. Did he ever make any complaint to you that the $5500 order was not credited?

A. No, sir; never.

Q. I show you book No. 8, for identification; look at J. E. Adams' account on page 9, and see if you find credit of the mortgage of $2000?

A. Yes sir.

Q. Under what date is it credited?

10 A. January 15th, 1875.

Q. That account is carried from what page?

A. From folio 6.

Q. There are several credits on folio 6?

A. Yes, sir.

Q. Subsequent to January 15th, are there not?

A. Yes, sir.

[Ledger No. 9, for identification, shown witness.]

20 Q. Look at J. E. Adams' account on page 122, and if you find the credit of the $1500 mortgage there?

A. That is August 15th, 1878, $1500.

Q. You find several credits made before that credit since August 15th, 1878, do you not?

A. Yes, sir.

Q. On page 244, whose account appears there?

A. J. E. Adams.

Q. Is that account balanced there?

A. Yes, sir.

Q. By what?

30 A. Balanced by a note.

Q. How much?

A. $964.14, dated April 27th.

Q. There are some entries on both sides of this account after April 27th, 1880, can you explain those?

A. That note had been given after these dates, and had been dated back in order to get interest on the account that was overdue; that is the way that note was dated back; why it was dated April 27th; Mr. Harrison and Mr. Moorhouse always figured in that way; dated a note back so they could get inter-

40 est on the account that was overdue.

Q. What do you find erased on the credit side?

A. A credit of $25.

Q. What date?

A. May 6th.

Q. Does that credit appear on that $964.14 note?

A. Yes, sir; it does.

Q. Do you remember the time when Mahnken & Moorhouse refused to give Mr. Adams further credit?

A. Yes, sir.

Q. When was it?

A. I think it was in 1880; the latter part of 1880 and in 1881.

Q. Did they sell him then at all?

A. Yes, sir.

Q. How did they sell him?

A. He would send in with the Elizabethport express an order, and we would send it out C. O. D.

Q. Did you get many orders that way?

A. Quite a number.

Q. Do you remember his ever exchanging checks with Mahnken & Moorhouse?

A. Yes, sir.

Q. Do it often?

A. Quite often.

Q. Would he ever come and get checks to pay his obligations coming due?

A. Yes, sir.

Q. He gave notes to Mahnken & Moorhouse on account too, did he not?

A. Yes, sir.

Q. You remember this order of $5500?

A. Yes, sir.

Q. Then after that order was received by Mahnken & Moorhouse what was done with Mr. Adams after that, in regard to his account?

A. After that order was given.

Q. Yes?

A. I don't know what was done; I know that we afterwards credited him.

Q. Do you mean gave him further credit?

A. Yes, sir.

Q. Did he commence running an account again then?

A. Yes, sir; he did.

Q. Before the dissolution of Mahnken & Moorhouse did you ever hear any heated conversation between them?

A. Yes, sir; sometimes I did.

Q. More than once?

A. Yes, sir.

Q. State what it was, as near as you can?

A. I cannot give dates, and I don't know that I can give the direct conversation between them.

Q. Did they quarrel?

A. Mr. Moorhouse has called Mr. Mahnken hard names and argued in a manner unbecoming to him I should think, con-

sidering what Mahnken had done for him ; I remember before the dissolution. Mr. Moorhouse had got himself in a pretty high pitch, and he said he would apply for a receiver and so on ; he called Mr. Mahnken a drunken loafer and such words as that ; he has done that before to my knowledge.

Q. Was this conversation you speak of just before Mr. Mahnken purchased him out?

A. Yes, sir.

Q. Do you know whether or not Mr. Mahnken and Mr. Moorhouse were on friendly terms at that time?

10 A. They were partners, but I know they were not on friendly terms.

Q. Did Mr. Moorhouse come there in a friendly way after the dissolution?

A. No, sir ; he never did ; he has always done the opposite, and is to-day.

Q. When was it you left C. Mahnken & Co.?

A. In 1883, in March or in April.

Q. It was after this suit had been commenced?

A. Yes, sir.

Q. You were employed as book-keeper by Mahnken &
20 Moorhouse at the time of the dissolution?

A. Yes, sir.

Q. And you were also at the time this $5500 order was given?

A. When was that order dated.

Q. March, 1881 ?

A. I think so.

Q. From that time March, 1881, the time this order was given until you left the employment of C. Mahnken & Co., were you ever requested by anyone to give credit on the books of either Mahnken & Moorhouse or C. Mahnken for that order.

30 A. Never.

Q. Did Mr. Adams ever request you to give him credit?

A. No, sir.

Q. Or complained that the credit had not been made?

A. No, sir.

Q. How often did you see Mr. Adams?

A. I saw him most every time that he came in.

Q. He came in town how often?

A. Once a week I should think, may be oftener ; he generally came behind the desk and looked at the books.

40 Q. After the order was given in March, 1881, you have stated that Mr. Adams was behind the desk looking at his account on the books ; did you hear Mr. Moorhouse after that date make demand upon Mr. Adams for money?

A. After the order was given.

Q. Yes?

A. Yes, sir.

Q. More than once?
A. When his bills were due he would generally go for him; he was pretty slow pay.

Cross-examination by Mr. Alward:

Q. What is your business at present?
A. I am a merchant at present.
Q. How long have you been in mercantile business?
A. The last 8 or 10 years. 10
Q. When did you go to Mahnken & Moorhouse?
A I can't tell you: I think it was in the Spring of 1880.
Q. In what capacity?
A. First, I was there as bill clerk.
Q. What are the duties of a bill clerk?
A. To make out the bills.
Q. From what book?
A. From the order books.
Q. Anything else?
A. Yes, sir. 20
Q. What else?
A. I had charge of the day books.
Q. Anything else?
A. Yes, sir; a good many things.
Q. I want to know the duties of a bill clerk?
A. I cannot explain it; I had a great many other duties besides; I had a great many things to do in the office.
Q. How long did you continue in that capacity?
A. As bill clerk alone?
Q. Yes, sir?
A. I should think about a week or ten days.
Q. What did you have next? 30
A. I had the day book and the bills.
Q. Who was the book-keeper before you went there?
A. I don't know; Harrison I think.
Q. When you first went there who was the book-keeper?
A. Mr. Harrison was?
Q. How long did he continue to be book-keeper?
A. He continued to be the head man; I can't tell how long he was head book-keeper.
Q. Wasn't he the book-keeper up to the time of the sale?
A. No, sir.
Q. How long previous to the dissolution was he not book-keeper? 40
A. Sometime I guess.
Q. Give an idea?

A. I can't give an idea.

Q. What is your best recollection?

A. I have no recollection at all; I can't state at all; I could not say whether it was a year or six months.

Q. Or three months?

A. Or three months.

Q. Or one month?

A. It was more than that.

Q. What was he after he ceased to be book-keeper?

10 A. I don't know; you might call him salesman; he was out on the floor.

Q. Have anything to do with the books?

A. Nothing more than anybody else had there; sometimes looked over the books and helped make out statements.

Q. When you first went there who did the writing in the ledger?

A. Mr. Harrison.

Q. How long did he contiuue to write in the ledger?

A. I can't tell you that.

20 Q. Do you know Mr. Harrison's handwriting?

A. I can tell it generally when I see it.

Q. Whose writing is that on page 244?

A. That is Mr. Harrison's.

Q. Which is the first entry of yours in Mr. Adams' account, what date in this ledger?

A. February 25th, 1881.

Q. That is your first entry is it?

A. Yes; that is in Mr. Adams case.

Q. And the rest of these entries down here are in your handwriting?

30 A. Yes, sir.

Q. The entry then of March 30th, that is in your handwriting?

A. Yes, sir.

Q. The two entries on that day?

A. Yes, sir.

Q. What were they for?

A. Checks.

Q. Given to Mr. Adams?

A. Yes, sir.

40 Q. By whose order?

A. By order of Mr. Moorhouse.

Q. Checks of the firm, were they?

A. Yes, sir; checks of Mahnken & Moorhouse.

Q. Do you know what they were given for?

A. Money; he wanted to borrow some money to use.

Q. Do you know when the order came to the office?

A. Yes, sir.

Q. Who brought it there ?
A. That I can't tell you ; I think Mr. Adams did.
Q. What makes you think so ?
A. I know he did.
Q. Who did he give it to ?
A. Mr. Moorhouse.
Q. Where were you ?
A. I was in the office.
Q. Didn't you say in your direct examination that you had not heard of that order until I asked about it ? 10
A. I had not heard of it being credited up until you asked about it.
Q. Didn't you say you had not heard anything about that order ?
A. No, sir.
Q. Are you sure you did not ?
A. I am.
Q. Do you say that you did not say in your direct examination that you had not heard of this order until I called ?
A. I do ; yes, sir. 20
Q. You say that Mr. Adams came to the store every week ; did he have any conversation with you ?
A. Very little.
Q. You and he were not on very good terms ?
A. Never bad terms ; he was a man that had very little to say to anybody.
Q. And he never said much to you ?
A. No, sir ; I used to say something to him though.
Q. There was a little coldness between you wasn't there ?
A. No, sir. 30
Q. None at all ?
A. No, sir ; not a particle, and is not to this day.
Q. Any coldness between you and Mr. Moorhouse ?
A. No, sir.
Q. Ever have any quarrel with him ?
A. No, sir.
Q. At the time that that order came to the office did you have charge of the books or Mr. Harrison ?
A. I think I did.
Q. Are you sure of that ? 40
A. Yes, sir.
Q. When you gave Mr. Adams that statement were there any words passed between you and Mr. Adams ?
A. No, sir.
Q. Nothing said ?
A. Nothing said no more than asking for the statement.
Q. You handed him the statement ?
A. Yes, sir.

Q. And he took it and walked off.

A. He took it and looked at it and walked off.

Q. He did not say anything?

A. He did not say anything.

Q. You said that Mahnken & Moorhouse frequently exchanged checks with Mr. Adams?

A. What do you mean by that?

Q. That is what you said; what do you mean by that?

A. What do you mean by asking me that question; what do
10 you want me to say?

Q. I want you to say whether that was so? Did you say that Mr. Adams and Mahnken & Moorhouse frequently exchanged checks.

A. I said that Mr. Adams had had checks from the firm.

Q. How many?

A. That I can't tell you.

Q. You say that he had checks from the firm?

A. Yes, sir.

Q. And gave his checks for them?

A. He has had checks from the firm; he never gave his
20 check for anything that I know of; he has given his check when he came and bought a bill of goods; he has given his check for $50 and perhaps the bill has not amounted to $30, and taken the cash for the balance and used it.

Q. Then you never exchanged checks with him?

A. If by exchanging checks you mean give his check for Mahnken & Moorhouse's check, that I am not prepared to say.

Q. Did you ever know him to do it?

A. Not check for check.

Q. On no occasion?

30 A. Not that I can think of now.

Q. Then I misunderstood you?

A. I think I testified that the checks had been exchanged, but when I said that I understood it to be in this way, that he had had checks of Mahnken & Moorhouse.

Q. What checks did he have of Mahnken & Moorhouse?

A. I think he has had several.

Q. What were they for?

A. He has had one for $200 and another for $250.

40 Q. What for?

A. For money; cash.

Q. What did he give to show for it?

A. I suppose it was charged to his account and he gave the note of $964.14 in the end to pay up that.

Q. The $200 and $250 you speak of were settled by this note of $964?

A. No; I do not say that, but there might have been other amounts back of that too.

Q. But it was in that note, was it.

A. I can tell you by looking at the dates. [Referring] No, it was not; he had some cash I know, when he gave this order.

Q. How do you know that?

A. I know it because Mr. Moorhouse gave him checks.

Q. Gave him checks when he gave the order?

A. A short time after that after he found out that the order might amount to something.

Q. After he found the order might amount to something he gave him the checks? 10

A. Yes, sir.

Q. You said you had heard heated conversations between Mr. Mahnken and Mr. Moorhouse?

A. Yes, sir.

Q. Was that as soon as you went to the place?

A. I can't say.

Q. How long after you got there?

A. I can't tell you; I don't know.

Q. How many times did you hear them quarrel?

A. I can't tell you. 20

Q. More than once?

A. Yes, sir.

Q. More than twice?

A. I could not say.

Q. What were they quarreling about?

A. That I can't say; I think it is Mr. Moorehouse's disposition.

Q. Was it Mr. Mahnken's disposition too?

A. No, sir.

Q. He is very mild?

A. Yes, sir; I never heard a wrong word spoken by him 30 all the time I ever worked there; I never worked for a better man in my life.

Q. When Mr. Moorhouse said he would apply for a receiver, as you say, who was by?

A. I was by for one.

Q. Who else?

A. Mr. Mahnken for another; I can't tell you who else was there; there was quite a number.

Q. Was Mr. Harrison there? 40

A. I don't know.

Q. All the clerks there?

A. I could not tell you; some were there.

Q. Can you mention any others?

A. No, sir.

Q. What had been said previous to that, that caused him to say it?

A. Nothing harsh on the part of Mr. Mahnken I can assure you of that.

Q. What was said; what did Mr. Mahnken say?

A. That I can't tell you, because they were both in the back office; when they came out I heard Mr. Moorhouse say that.

Q. Is that all the conversation that you heard?

A. I could not tell you all the conversation that I heard.

Q. Do you know what they were talking about at that time?

A. I imagine that Mr. Moorhouse wanted either to buy or to sell.

10 Q. You said you heard Mr. Moorhouse ask Mr. Adams for money after that order was given; how many times?

A. When his bills were due he would certainly tell him about it; I have told him about it myself, when he would come in there?

Q. Do you remember the conversation when Mr. Moorhouse did ask him for money after the order was given?

A. No particular conversation; I can't give any date.

Q. Do you remember the words, the circumstances?

A. No, sir; I do not.

20 Q. You can't give the words of a single instance?

A. No, sir.

Q. You can't tell what Mr. Moorhouse said?

A. No, sir.

Q. You can't tell what Mr. Adams said in reply?

A. No, sir.

Q. Then how do you remember that he asked at all?

A. Because it is as natural for him to ask a man for money, when bills are overdue, as it is for me to eat my dinner.

Q. That is the only reason you know it?

30 A. I have heard him ask; that is a sufficient reason.

Q. I want to know the circumstances under which he asked?

A. I can't give them to you.

Q. You cannot state the circumstances at all?

A. No, sir; except when a bill was overdue and he wanted it paid he would ask them for money.

Q. And that is the only thing you can remember about it?

A. Yes; I have heard him ask him for money on account of the note.

Q. When was that?

40 A. When payments were due.

Q. What note, the $964 note?

A. Yes, sir.

Q. How long ago did you hear him ask him for that?

A. I can't tell you.

Q. When the note became due?

A. When the interest was due.

Q. You were not there when the note was given?

A. Yes, sir ; I think so.
Q. You were?
A. Yes, sir ; I was there.
Q. Did you know when that note was given ?
A. Yes, sir.
Q. What were you then, the book-keeper or was Mr. Harrison the book-keeper?
A. You have asked me that three or four times before.
Q. What answer did you give?
A. I was the book-keeper there then I think. 10
Q. Were you present when the note was given?
A. I was there in the office.
Q. Did you hear the conversation between Mr. Moorhouse and Mr. Adams when it was given ?
A. No, sir.
Q. Didn't hear anything that was said between them?
A. Yes, sir ; I will tell you what I heard ; I heard Mr. Moorhouse tell Mr. Adams that he would start a new account, and that the bills were to be paid promptly on 30 days' time.
Q. You heard him say that? 20
A. Yes, sir ; and he should pay $50 a month on account of the note ; that I heard and Mr. Adams agreed to do that, that I remember.
Q. Do you remember anything Mr. Adams said when this note was given ?
A. I just told you what he said, and what Mr. Moorhouse said.
Q. What did Mr. Moorhouse say to Mr. Adams ?
A. Mr. Adams stood there and took it all in, and agreed to pay $50 a month on the note. 30
Q. What were the words that he used ?
A. I can't give them to you.
Q. What were the words that Mr. Moorhouse used ?
A. His words are right on that page of the ledger there ; that memorandum shows what Mr. Moorhouse's words were ?
Q. Did you hear those words spoken ?
A. Yes, sir.
Q. Did you see them written down there?
A. That I can't say.

40

CORD MAHNKEN, sworn on his own behalf, and testified as follows.

By Mr. Hartshorne :

Q. Where do you reside ?
A. 188 Second avenue, New York City.

Q. You are in business where?

A. 174 Duane street.

Q. What is your business?

A. Wholesale grocery.

Q. How long have you been in business in 174 Duane street?

A. I believe in 1871 I had the house built; I was doing business in Greenwich street and from there moved on Duane.

Q. You have been in business in New York, how long?

10 A. Nearly 39 years, less two months.

Q. What is the firm now?

A. C. Mahnken & Co.

Q. Who is in the firm?

A. Edward A. Mahnken and James Longwell.

Q. When did this firm first start in business?

A. On the 7th of April, 1882, when the new firm started.

Q. What was the firm's name previous to that?

A. Mahnken & Moorhouse.

Q. Who were the members of the firm then?

20 A. Cord Mahnken and Stephen Moorhouse.

Q. When did they first start in business?

A. I was in business alone, and then I first gave Mr. Moorhouse a salary; I think it was $1200, and Longwell $1000 a year, and allowed them one-eighth of the profits; I think that was from 1871 to 1872; my memory is not very good; I might be mistaken in the date, but such a thing has been in existence, but I don't remember exactly the date.

Q. Then the firm was what?

A. In 1872, the firm was Mahnken & Moorhouse.

30 Q. You know Jeremiah E. Adams, the complainant in this suit?

A. Yes, sir.

Q. In 1875, was he trading with Mahnken & Moorhouse?

A. Yes, sir; he was.

[Bond and mortgage, made by J. E. Adams to Mahnken & Moorhouse, for $2000, dated January 15th 1875, shown witness.]

40

Q. What was that bond and mortgage given for?

A. I think it was for a book account, and sometimes Mr. Adams came there and gave a check and got money for it, and sometimes the check would go to protest, so I could not state distinctly what it was for; it was not either one alone; it was for a book account and some checks, but you can refer to the books.

Q. Was there a credit given on your books for it?

A. Yes, sir, I think there was.

Q. At the date of this mortgage, January 17th, 1875, did J. E. Adams owe the firm of Mahnken & Moorhouse over $2,000?

A. I will have to refer to the books; they will speak, I can't remember those things.

Q. What is your age?

A. I am going on 64.

Q. You are a native of what country?

A. Germany.

Q. Do you understand English very well? 10

A. I understand a good deal of it, but not all the "high falutin" words; I would not know how to answer them; I must give it a name, and that is the best I can do.

[The mortgage from J. E. Adams to Mahnken & Moorhouse for $1500, dated August 15th, 1878, shown witness.]

Q. Do you know what that was given for?

A. I think that was for book account, for merchandise he had received from us, and some in the other way, that I stated 20 to you before.

Q. Does your book show what it was given for?

A. Yes, sir, every article that he had went in into these books, but, I am sorry to say, I never made an entry in them myself.

Q. You trusted to your partner and your book-keeper?

A. Yes, sir, our book-keeper; my partner made no entries; it was left to the book-keeper.

Q. Do you know at this time what Jeremiah E. Adams owes the firm of C. Mahnken & Co.? 30

A. You mean the amount.

Q. Yes?

A. I must answer that in the same way, for I can't positively say; you will find it in these books.

Q. Do you know how much he owes on mortgage?

A. I suppose the two together would make $3500.

Q. Does he owe a note—look at that note?

A. That is his signature.

Q. Does he owe that note? 40

A. Yes; you will find that on the book.

Q. That is $964.14?

A. Yes, sir.

Q. And he also owes an open book account, don't he?

A. Yes, sir; he kept running up his account, and to have some kind of a security for it, he gave the mortgage to us.

Q. When was it that Mahnken & Moorhouse dissolved partnership.

A. I think it was the 7th of April, 1882; it will be two years next April; I may be mistaken in the dates.

Q. Wasn't it April 8th, 1882?

[Referring to paper.]

A. Yes, sir; the contract I think was made on the 7th, but that came on Good Friday, and the 8th it was executed.

10 Q. How did the firm dissolve, what did you do, as to Mr. Moorhouse's interest?

A. I paid him a certain amount of cash, and a certain amount in notes.

Q. Did you buy him out?

A. I bought him out.

Q. His interest in the firm?

A. Yes, sir; his interest.

Q. Then immediately after that what did you do?

20 A. After I bought him out I formed new partnership.

Q. That is the one in existence now?

A. Yes, sir; it is called C. Mahnken & Co.

Q. Before the dissolution of the co-partnership of Mahnken & Moorhouse, were you and he on friendly terms?

A. Well, I acted always friendly towards the gentleman, but sometimes he greatly insulted me, and if I can have a chance to explain it to you, you can get my idea; the way the first dispute arose, Mr. Moorhouse, he had a contract for some canned goods for the coming year, and I opened the mail and I found a contract from Louis Morey; I said "Mr. Moor-

30 house you know you are doing wrong, I am responsible for these goods, our co-partnership expires, we had a ten-year term and it was about expiring and our lease expires;" and he said, "I will take care of that;" I said, "You wrote my name there and it makes me responsible;" and he said, "It is none of your business; that was a little too much for me.

Q. You and he had hard words?

A. Yes, sir.

Q. And at different times?

A. He insulted me many times, and then he got up and said

40 he would put a receiver in there, and all such stuff as that, and that was the reason particularly that we had a dissolution; I would be willing to work along with him; I took him in there without a dollar; I built him up; I was poor myself, but he had no money, and he borrowed some from his mother, and the firm's note was—

Q. Never mind that—since the dissolution of the co-partnership up to the present time, have you and he been on friendly terms?

A. I have not spoken to him since; I met him once and said "good morning," and another time I nodded to him, but he did not nod to me, and since then I have not spoken a word to him since our dissolution.

Q. Has he been to your place to see you, in a friendly way?

A. No, sir, although he said he would collect the firm's debts, but he has never done any thing.

Q. At the time he threatened to have a receiver appointed, was that before you purchased his interest in the place?

A. Yes, sir, that was before we had agreed upon anything, and another thing, he refused to pay so much rent as I ought to have; the property cost me $46,000, and he didn't want to pay only $2500 rent. 10

Q. Look at D. 1, for identification; what is that—what money was that?

A. That is money that we borrowed from Mrs. Moorhouse.

Q. That is Mr. Moorhouse's mother?

A. Yes, sir.

Q. That is, C. Mahnken & Co. borrowed that?

A. Yes, sir. 20

Q. That was C. Mahnken & Co.'s signature to that?

A. It was C. Mahnken & Co. at that time, and the year after that, Mahnken & Moorhouse started.

Q. What did they do?

Q. We borrowed some more and then she got married to Hammond Hatenhorn, and she loaned the money; she said, "Mr. Mahnken, I can trust you with that; I don't like to put that money in my son's hand, but I know you—

[Objected to.] 30

Q. Did the firm of Mahnken & Moorhouse get that money?

A. Mahnken & Moorhouse had the use of that money; that is, Mr. Moorhouse's signature; he signed the note; he made it; I never saw it until I took it up; I paid that money.

Q. Did Mr. Moorhouse furnish any other capital?

A. He did not furnish any capital; this money we borrowed of Mrs Moorhouse.

Q. At the time of the dissolution of Mahnken & Moorhouse did the firm still owe this money? 40

A. When the firm dissolved this money was due to Mrs. Hatenhorn.

Q. And did you pay that after the dissolution?

A. I gave Mrs. Hatenhorn a check; we made a check out in the lawyer's office.

Q. Then you yourself paid that note?

A. I paid that myself, the interest and all that was due upon it.

Q. What did you pay Mr. Moorhouse for his interest?

A. $40,000.

Q. So he got $40,000 over and above this?

A. Yes, sir, but he did not get it all in cash.

Q. You gave him notes, and afterwards paid the notes?

A. I paid him $25,000 cash, in a certified check; three notes, $5,000 at one month, sixty days, and the other at—

Q. I don't care about that, but you paid the notes?

A. I paid all the notes when they came due.

10 Q. While the firm of Mahnken & Moorhouse was in business, did Mr. Adams ever borrow any money of them or exchange checks or anything of that kind?

A. He has given us his check, and we gave him money for it, at different times; he would come there in the morning and perhaps buy some goods, and he would say he wanted some cash, and he would give us a check; it might be dated a day or two ahead, and we would give him the money for it, and sometimes the check was honored, and a good many times they were not.

Q. Do you remember of his buying goods elsewhere, and 20 coming to you after the money and giving his check for it to pay for the goods he bought elsewhere?

A. I can answer you this way—he came and said he had to have the money to buy these goods, they would not take his checks, something to that effect; the people at Washington market would not trust him; they wanted the cash, and he would come there and get money on his checks.

Q. You would give him the money and he would give you a check?

A. Yes, sir, that often occurred; we would give him the cash.

30 Q. Do you remember of exchanging checks with him, give him your check and take his check dated two or three days afterwards?

A. I don't know whether that has taken place; it might have been done between him and Mr. Moorhouse when I was not present.

Q. Do you know the signature on that check marked Ex. No. 10, for identification?

A. Yes, sir; that is Mr. Moorhouse's writing.

Q. You recognize this as the cash book of Mahnken & 40 Moorhouse for 1872?

A. Yes, sir.

Q. That check is dated when?

A. September 14th, 1872.

Q. Mahnken & Moorhouse's check to J. E. Adams?

A. Yes, sir.

Q. You know J. E. Adams' signature?

A. I think that is in his handwriting.
Q. You have seen him write often?
A. I believe that to be correct.
Q. Look on your cash book, under date of September 17th, 1872, and say what you find there?
A. An exchange check for $500.
Q. Then that was given as an exchange check to J. E. Adams?
A. That appears to be the way of it; I have no remembrance of it, only from the books; it would not be possible for me to remember it. 10
Q. Look at check No. 11, for identification, that is dated March 22d, 1881?
A. Yes, sir.
Q. Pay to J. E. Adams, $200?
A. Yes?
Q. Is that check signed by Mahnken & Moorhouse?
A. Yes, sir; written by Mr. Moorhouse.
Q. Is that J. E. Adams' name on the back of it?
A. Yes, sir.
Q. That has been through the bank? 20
A. Yes, sir.
Q. Look at check, No. 12, for identification, dated March 30th, 1881?
A. Yes, sir.
Q. "Pay J. E. Adams, $250?"
A. Yes, sir.
Q. Whose signature is that?
A. Mr. Moorhouse.
Q. The firm of Mahnken & Moorhouse?
A. Signed Mahnken & Moorhouse; signed by Mr. Moorhouse. 30
Q. Is that J. E. Adams' signature on the back?
A. Yes, sir.
Q. That has been through the bank?
A. Yes, sir; these checks I never saw until this morning.
Q. At the time these checks were given did you have anything to do with them?
A. I could not say that I did, for I never saw them until to-day.
Q. Look at Ex. No. 8 for identification? 40
A. This was about the time that the check was given; Mr. Moorhouse spoke to me about it.
Q. What is that?
A. The order.
Q. For how much?
A. For $5500.

Q. When was it you first saw this order, that you can remember of?

A. I first saw it when I found it in the safe; Mr. Moorhouse spoke to me about it, that he had an order from Mr. Adams, by giving him some more goods to make the other claim good, and he gave him this as security.

Q. Before the order was given, what took place with you; state as near as you can?

A. William Adams asked me for money on an order; it had nothing to do with that, but I refused to have anything to do with it, and one morning when I came in the store and saw goods marked for Mr. Adams, I stepped in the office and said, "Mr. Moorhouse, for God's sake don't give that man any more goods; he owes us so much now, and we have no security;" he said, "It is secured;" I said, "how is it secured now?" He said, "I have an order on the District of Columbia;" I thought it was on the Government, and looking at this thing, it is only a thing to collect the money.

Q. Did he say what the order was for?

A. For merchandise; the order is only left as collateral for that money; these two checks part in cash and part in goods bought, and he left this as collateral security, to the best of my knowledge and belief.

Q. Did you receive that order from J. E. Adams?

A. No, sir.

Q. Did you receive it from anybody else?

A. No, I found it in the drawer where we put our valuable papers; that was the first I saw of it, although Mr. Moorhouse had informed me that he had taken the order as collateral security.

Q. Mr. Moorhouse has testified that he was sick for several days and after getting back to the store that you told him the order was in the safe; is that true or not?

A. I don't remember anything of it; I don't know nothing of such words.

Q. Mr. Moorhouse has testified that this order was given to cancel the entire indebtedness of Adams to the firm of Mahnken & Moorhouse, and that you knew that was the agreement at the time the order was given—is that true or not?

A. The order; I didn't know anything at all about it; I didn't know what they had agreed to; I never knew anything about it from Mr. Moorhouse or Adams or anybody.

Q. I ask you whether it was true or not that he told you that the order was given to cancel the entire indebtedness; is that true?

A. He told me that he had collateral security to secure our debts; he had taken it on the strength of securing the debts; that is what I understood it was.

Q. Did he tell you that you were to cancel the mortgages and cancel the notes and book to the District of Columbia for it?

A. No, sir.

[Objected to.]

Q. Did he say anything about cancelling the mortgages?

A. Not a word. 10

Q. Did he say anything about paying Mr. Adams the difference between the mortgages, his indebtedness to the firm and the amount of this order?

A. No, sir.

Q. Mr. Moorhouse testifies that he and you talked the matter over about receiving the order, and that you said the order was given, and the Government would have to pay it; is that true?

A. No, sir.

Q. Did you say anything of the kind? 20

A. No, sir; when I saw this order I never looked at it closely; when he spoke to me about it he had told me that he had it, but I never considered that order even good; I don't know whether it will ever be paid now, as it is; it may be and may be not.

Q. Mr. Moorhouse has testified that after he returned, he testified that he was sick for a few days, and upon his return to the store you told him that Mr. Adams had left with you an order which you considered perfectly good, as the Government would certainly have to pay it, and that you and Moorhouse had better accept it; is that true? 30

A. No, sir; we never had a consultation about it; I would not consider it good, if a man offered it to me to-day.

Q. Did you make any inquiries before this order was given as to whether the mortgages were good or not at Elizabeth?

A. The mortgages I didn't consider worth the amount they were, and his standing I know was very shaky; it was as shaky as could be.

Q. Did Mr. Adams ever ask you for a statement of his account? 40

A. Never in particular to my knowledge; the custom of the book-keepers was to send out a statement to all the customers on the first of the month; that was the rule of the house; when Mr. Adams came there to pay any money he always took the liberty to walk behind the desk and look over his bills with the book-keeper.

Q. Mr. Adams testifies that he spoke to you when he took this statement, Ex. No. 13 for identification, and you said that

Mr. Moorhouse had the order, and that was why you had not given him credit for the order; is that true?

A. Not to my knowledge.

Q. Did you ever say to Mr. Adams that he should have credit for that order?

A. No, sir.

Q. After the firm had dissolved, at the time he brought that paper, what did you say to him in reference to what the order was given for?

10 A. There was nothing said about it; I believe there was some understanding between him and the book-keeper, and they fixed it up some way or other, which I didn't know anything about.

Q. As to the credits?

A. As to the credits and charges there was some understanding between them, but they never said anything to me about the order; what I did do, I called in the Fall and saw Mr. Adams; I told him, "Mr. Adams I am very much in want of money, and if you will raise the money which you owe me, I will give up all the mortgages and everything and take off ten 20 per cent. and make you a present of it, for I need it bad, for I have paid money out to Mr. Moorhouse and I am short of money in my business, for I paid out too much cash money."

Q. Did Mr. Adams ever ask you why he had not received credit for the $5500 order.

A. Never.

Q. Have you seen Mr. Adams since the order was given, behind your desk, looking over his account in your books?

A. That is the way; he has been in back and forwards and 30 traded there, and when he would get his bills, they generally look over the book to see if they are all correct; as sometimes the boys make mistakes, and I have seen Mr. Adams behind the desk many times, where the book-keeper is, looking over the bills to see if they are right.

Cross-examination by Mr. Alward:

Q. Do you remember the first time you ever saw that order, 40 Ex. No. 8?

A. To the best of my belief I found it in the drawer.

Q. That was the first time you ever saw it?

A. Yes, sir; but I heard Mr. Moorhouse speak of it.

Q. When was it that you first saw it?

A. It must have been in 1881; I can't give you the exact date.

Q. It is dated March 9th, 1881; how soon after that date did you first see it in that drawer?

A. I told you, as I said before, Mr. Moorhouse had some goods marked on the floor, and I was not satisfied that Mr. Adams should have any more; I didn't want him to have any more goods, so I—

Q. I don't want that; I want to know when you first saw that order?

A. I can't name the date.

Q. How long after this date—the date of the order?

A. I can't answer that definitely.

Q. Come the nearest you can?

A. What would I tell a lie for; I can't tell. 10

Q. I don't want you to tell a lie?

A. I can't name the date.

Q. Give it as near as you can?

A. I don't like to miss the mark; honestly speaking, I don't like to miss the mark; I found that order in the drawer.

Q. Had Mr. Moorhouse spoken to you about the order before you found it in the drawer?

A. Yes, sir.

Q. How long before you saw it in the drawer did Mr. Moorhouse speak to you about it? 20

A. I can't say; it might not be long, but I can't say.

Q. Was it a month before?

A. I can't say distinctly; I don't remember.

Q. Did you and Mr. Moorhouse talk about this order more than once?

A. No.

Q. Never talked about it but once?

A. No; after I fairly inspected the order, I told him "That order is only an acceptance;" that is all.

Q. When was that?

A. That might have been three or four months after; I could not say definitely. 30

Q. Did you know when Mr. Moorhouse paid Mr. Adams the $450 on this order?

A. I did not.

Q. Was it entered on your books at the time?

A. It has been entered on the book; I saw it afterwards on the book.

Q. How long afterwards did you see it on the book?

A. That was sometime afterwards.

Q. How long?

A. I think it was after Mr. Moorhouse had left the concern. 40

Q. Didn't you know it when you dissolved?

A. No, sir; my impression was that he had given him only $220.

Q. Did you know that he had given him anything, before you dissolved ?

A. Yes ; I knew he had given him some money.

Q. Did you know that at the time he got the order?

A. No, sir ; he spoke to me before ; first, William Adams wanted about $200 ; he wanted to give that order to me, and I would not take it ; he spoke about the order ; I don't know that it was this one, and I would not do it.

Q. When did you first know Mr. Moorhouse had given
10 Mr. Adams any money on this order ?

A. He told me he had given some cash, but he didn't tell me distinctly what he did give him ; he said he had an order and it was security ; that was when I saw the goods ; he said he had to give him some cash, but he didn't state the amount.

Q. What was Mr. Moorhouse's words to you ; what was the first thing he said ?

A. He said it would secure the debts.

Q. Were those his first words ?

A. That is the way he expressed it ; to secure the debt.

Q. What did you say ?

20 A. I felt satisfied ; he took it for collateral, and I thought it would cover the claim ; there are two checks ; two different times money was given ; I didn't know about that ; I saw it when we looked at the checks ; I found it out.

Q. There is a mortgage marked Ex. 15, on the part of the complainant, of Mr. Adams to you, for $2000 ; did you take that mortgage to the Court House in Elizabeth, to be recorded ?

A. I don't remember that.

Q. Do you remember of taking the $2500 mortgage to the Court House to be cancelled of record ?
30

[Objected to on the ground that it is not a proper cross-examination.]

[Objection sustained.] Appeal.

Q. Did you loan Mr. Adams any money, and take a mortgage for $2500 ?
40

[Objected to on the ground that it is not a proper cross-examination.]

[Objection sustained.] Appeal.

Q. How many mortgages has Mr. Jeremiah E. Adams ever given you.

A. Those two that you have there; I don't know of any others.

Q. You don't know of any others?

A. We have not got any others, I know.

Q. Did you ever have any other mortgage of Jeremiah E. Adams, except those two?

[Objected to on the ground that it is not a proper cross-examination.]

10

[Objection sustained.] Appeal.

Q. Did not Mr. Adams borrow of you $2000, and agree to give you a mortgage for $2500?

[Objected to on the ground that it is not a proper cross-examination.]

20

[Objection sustained.] Appeal.

Q. Was not the mortgage given in pursuance of that agreement?

[Objected to on the ground that it is not a proper cross-examination.]

[Objection sustained.] Appeal.

30

Q. And was not this mortgage for $2000 given in part payment of that $2500 mortgage.

[Question withdrawn.]

[Complainant's counsel states that he withdraws the appeals in each instance.]

40

The Chancellor being satisfied on hearing the solicitors of the parties, that the above entry of withdrawal is the result of a misapprehension on the part of the examiner orders that it be expunged.

THEODORE RUNYON, *C.*

Dated, Feb. 26, 1884.

CORD MAHNKEN being further cross-examined, says:

[Exhibit No. 15, on part of complainant, shown witness.]

I remember taking this mortgage to the Court House to be recorded; I have not got it in my mind when I took it there; you will have to refer to the documents themselves.

Q. Previous to taking this mortgage did you have another
10 mortgage of Jeremiah E. Adams?

A. Well, I do not know whether there was another mortgage at that time; there has been another mortgage since of fifteen hundred dollars.

Q. Do you remember of having a mortgage of Mr. Adams for twenty-five hundred dollars?

A. Why, you mean previous to this? We did.

Q. When was this twenty-five hundred dollar mortgage given to you?

A. I could not remember the date.

20 Q. Was that mortgage recorded?

A. I believe so.

Q. Do you know where it is now?

A. No, I do not; I believe it was paid; I know it was.

Q. When was it cancelled of record?

A. I don't remember.

Q. Who took it to the Clerk's Office to be cancelled of record?

A. I don't remember.

Q. Did not you take it on the same day to be cancelled that
30 you left the two thousand dollar mortgage to be recorded?

A. Well, I don't remember, but it runs in my mind that that mortgage was cancelled long before the last mortgage was made.

Q. What makes you think so?

A. I have no particular recollection of it; I can't keep these things in my mind.

Q. When was the last time you recollect of seeing that twenty-five hundred dollar mortgage?

A. I don't remember when I did see it.

Q. Do you ever remember of seeing it?

40 A. I remember there was such a thing, but I don't remember when I saw it first or last.

[Question repeated.]

Q. Do you ever remember seeing it?

A. I believe I saw it.

Q. Do you remember seeing it more than once?

A. I don't remember seeing it particularly.
Q. Do you remember when that mortgage was given?
A. I don't remember the date of it.
Q. Do you remember the circumstance of Mr. Adams giving the mortgage?
A. His brother had a fat contract in Washington, District of Columbia, building sewers, where he could make a hundred thousand dollars out of it, and he wanted it for his brother to build the sewers with.

10

[Question repeated.]

A. Yes.
Q. Did Mr. Jeremiah E. Adams speak to you about it?
A. Yes, he did.
Q. Did he ask you to loan him the money?
A. Yes; he asked me to loan him the money.
Q. How much did he ask you to loan him?

[The counsel for defendant, Cord Mahnken, objects to the above question, unless the witness is allowed by the counsel of the complainant to relate the whole of the conversation, relative to said loan, that took place between him and Mr. Adams.] 20

[Question allowed.]

A. He wanted a good deal, but I told him I hadn't any to spare; I could not state how much he asked me to loan him; he wanted more than I was willing to loan him.
Q. How much did you agree to loan him?
A. I don't mind particularly, I could not state now; I don't remember these little things; it was a good while ago. 30
Q. Did you loan him any?
A. Yes.
Q. Did you pay him that by a check?
A. I believe so; check or cash, one of the two; I could not exactly state that now.
Q. Will the books of Mahnken & Moorhouse show whether it was a check or cash?
A. These books will not show that; it was independent; he got the money, and we got the mortgage; it had nothing to do with the books. 40
Q. Was it the money of Mahnken & Moorhouse that was loaned to Adams for this mortgage?
A. Well, I think it was.
Q. Will not the books of Mahnken & Moorhouse show how much money was loaned to Mr. Adams?

A. I don't believe that it even went to the books; it was a cash loan.

Q. When Mahnken & Moorhouse loaned money was not the loan entered on any book?

A. Well, sir, we are not in the habit of loaning money; we give credit, but are not in the habit of loaning money to people.

[Question repeated.]

10 A. I suppose when people come there who are hard up, and we loan them money, it goes on the book.

Q. What book would it go on?

A. First, the cash book and next to the ledger, from the cash book to the journal and next to the ledger.

Q. Was not all the money paid out by Mahnken & Moorhouse entered on the cash book?

A. Yes; it generally was entered on the cash book, the money we took in and paid out.

Q. Was not this loan to Mr. Adams entered on the cash
20 book?

A. I don't remember that.

Q. Did Mahnken & Moorhouse keep a cash book at that time?

A. I suppose they kept a cash book if they did business.

Q. Where is the cash book of 1872?

A. I don't know, sir.

[Counsel for complainant calls on the counsel of defendant, and also on the defendant himself to produce the cash book of 1872.]

30

Q. Where is that book?

A. I cannot tell; you had it, Mr. Hartshorne, didn't you?

[Mr. Hartshorne answers—I don't remember.]

Q. Did Mahnken & Moorhouse preserve their checks?

A. They might, and some might be lost.

[Mr. Hartshorne produced the book, which is marked No. 1 for defendant for identification.]

40

Q. Do you know whether that loan is entered on this cash book?

A. I can't answer that, gentlemen, I never kept the cash book; if you find it there it is there.

Q. Do you know how much money Mahnken & Moorhouse loaned Mr. Adams for that mortgage?

A. Well, the particulars I can't say, but I remember I gave him one check for two thousand dollars, whether he got more or not I do not know; I don't remember how much I did give him really.

[Witness being shown paper marked No. 20 for complainant for identification.]

Q. Mr. Mahnken, the Clerk of Union County has entered in the margin of his book of mortgages, wherein the twenty-five hundred dollar mortgage from Jeremiah E. Adams to Mahnken & Moorhouse is recorded, that you presented this mortgage for cancellation—is that true? 10

A. Well, if the record shows it it must be true, I have no remembrance of it particularly.

Q. Do you remember it at all?

A. Mr. Alward, that is a hard question to answer; it is so long ago; if I had any remembrance of it I would tell you.

Q. Did you not present it for cancellation at the same time that you presented the two thousand dollar mortgage for record? 20

A. The first mortgage was to be paid in six months; this was in 1872, and this was in 1875, and I can't remember it to be so; the dates ought to explain the time; I don't remember.

Q. Will you say that you did not present it at the same time?

A. I don't think I did, Mr. Alward; it is so long that I can't remember; I don't remember.

Q. How is it you remember leaving the two thousand dollar mortgage to be recorded, and do not remember the cancellation of the twenty-five hundred dollar mortgage? 30

A. I don't remember when this twenty-five hundred dollar mortgage was recorded, and when it was dated, only this great talk about it.

Q. How do you remember about the two thousand dollar mortgage?

A. By looking at it, sir.

Q. Can you remember in any other way?

A. Not particularly, sir.

Q. Look at that Exhibit No. 20, in the margin; the margin reads on the 16th day of January, 1875; the original mortgage was produced in the office by Cord Mahnken duly cancelled, Henry R. Cannon, Clerk; do you not remember as much about the cancellation of the one mortgage as you do about the registry of the other? 40

A. I couldn't remember that particularly; it might be so and might not; I don't clearly remember.

Q. Do you remember how the twenty-five hundred dollar mortgage was paid?

A. It was paid by checks and cash.

Q. What makes you think so?

A. I know very well it was.

Q. Do you remember receiving any checks?

A. That is too much for me to remember; I remember receiving from him checks once or twice a week, and his father before him.

Q. Do you ever remember receiving a check from Mr. Adams on account of this mortgage?

10 A. I think he did; I cannot answer that question; I have no remembrance of it; he paid money off and on.

Q. Can you give the amount of a single check that Mr. Adams paid on account of that mortgage for twenty-five hundred dollars?

A. I can't give the date or amount of any particular check.

Q. Can you remember any instance where Mr. Adams gave you a check on account of this mortgage?

A. I think he paid it off by small installments; I have no recollection of any particular date.

Q. Have you a recollection of any particular time?

20 A. I have not.

Q. Why was the twenty-five hundred dollar mortgage cancelled on the same day that the two thousand dollar mortgage was recorded?

A. I don't remember the particulars; I don't know whether it is so or not; I don't remember.

Q. Do you remember of having any settlement with Mr. Adams for the twenty-five hundred dollar mortgage?

A. I do not particularly remember; I believe it was set-
30 tled up.

Q. Do you remember any calculation of how much was due on that twenty-five hundred dollar mortgage?

A. I have no particular remembrance of that; but I know it was settled and paid.

Q. Why don't you remember the calculation?

A. Now, how can I? you might just as well ask me how can I fly.

Q. Your memory, Mr. Mahnken, is very poor, is it not?

A. My memory is not good now; my age and troubles make
40 it poor; I sometimes buy goods in the morning and forget it in the afternoon.

Q. You trusted Mr. Adams' transaction to your partner, Mr. Moorhouse, did you not?

[Counsel for defendant wants to know what transaction. The counsel for complainant answers the transactions in this suit. The question now reads.]

Q. You trusted Mr. Adams' transactions to your partner, Mr. Moorhouse, did you not?

A. I did not Mr. Moorhouse alone; he had credit in the house.

Q. Did you have any transactions with Mr. Adams individually?

A. I did before Mr. Moorhouse became a partner.

Q. Did you after Mr. Moorhouse was a partner?

A. Yes; I sold him goods and credited him.

Q. Did you settle the twenty-five hundred dollar mortgage with Mr. Adams? 10

A. I think it was settled in our office at our place of business.

Q. Was it settled with you or Mr. Moorhouse?

A. He paid money, as I said before, from time to time; I don't remember who was present when the last payment was made.

Q. Was you present when Mr. Adams paid any money on that mortgage? 20

A. I was present a good many times when he paid money there on the mortgage and other bills.

Q. But you can't remember any amount that he paid on the mortgage?

A. No, distinctly.

Q. Did not Mr. Adams borrow of you two thousand dollars, and agree to give you a mortgage for twenty-five hundred dollars?

A. I believe I have answered that before; I think he did; he offered it.

Q. Was not the mortgage for twenty-five hundred dollars given in pursuance of that agreement? 30

A. How do I understand that? I think it was; I couldn't tell whether I gave him more or not.

Q. Did Mr. Jeremiah E. Adams ever speak to you about an order for fifty-five hundred dollars?

A. He did not; his brother William did.

Q. You had no conversation with Jeremiah E. Adams about that order before it was left at your store?

A. No, sir.

Q. Did you ever have any conversation with him about that order after it was left? 40

A. I don't remember I did.

Q. Will you say you never had any conversation with him about the order?

A. Only with his brother; never with Jeremiah.

Q. In your direct examination you said that you saw Jere-

miah E. Adams behind your desk looking at his account; how many times did you see him there?

A. Different times; a good many times; that is between him and the book-keeper.

Q. What was the book-keeper's name?

A. We had different ones.

Q. What was the name of the one that Mr. Adams was with?

A. The last one was Jansen.

10 Q. Who was before Jansen?

A. Eggers.

Q. Was he the one directly before Jansen?

A. No, he was not.

Q. Who was directly before Jansen?

A. I believe a man named Harrison, and another one by name of Cranch.

Q. When did Harrison cease to be the book-keeper?

A. In 1879 or 1880; I won't be sure.

Q. What book was Mr. Adams looking at?

20 A. I do not know how to answer that; we have many books; if you will name the one I will answer you.

Q. Will you name the books?

A. We have a ledger, a day book, cash book and order book; I do not know we have any name for any other books.

Q. Have you a journal?

A. The journal we call a day book.

Q. Have you mentioned all the books of your firm you can remember?

A. I believe I have named them before; order book, day 30 book, cash book and ledger.

Q. Are those all the books the firm have?

A. We have a check book and bank book; I do not know of any others.

Q. Which book did you see Mr. Adams looking at?

A. He looked at the ledger most times he came there.

Q. Did he say anything to you about his account?

A. No; I think I spoke to him about it.

Q. Mr. Adams did not say anything to you about the account?

40 A. He was not in the habit of speaking about it.

Q. Do you know what he was looking at it for?

A. Yes; I told him he owed me too much money; he must pay down.

Q. What did Mr. Adams say?

A. As soon as he could get the money from the District of Columbia he would settle with us.

Q. When did he say that?

A. At different times; I do not exactly remember the date

of that; we would ask him for money and he would answer that.

Q. What year was that?

A. I could not say exactly; two or three years ago or more.

Q. Do you remember the first time he said that?

A. He had some District of Columbia bonds, and said if he could get anybody to buy them he would settle his account, but he could get nobody to buy them.

Q. That was the last time, was it not?

A. I cannot say; I don't think it was the last time. 10

Q When was the last time you remember?

A. I couldn't tell you the date.

Q. What did he do with those bonds?

A. I do not know; once he told me he sold them.

Q. How long ago is it since he told you he sold them?

A. I don't remember.

Q. He had those bonds at the time he said he would pay you up, did he not?

A. I do not know how to take that; yes, he offered to give me some and I would not take them. 20

Q. That is the last time he offered to pay you up, was it not?

A. No, sir.

Q. When was the last time he promised to pay you?

A. I can't answer that; the last time I saw Adams; I can give you that.

Q. Give us the last time, as near as you can, when Mr. Adams offered to pay you?

A. Well, he never offered to pay.

Q. Did he ever promise to pay you? 30

A. He promised many times to make it all good, but he never did it.

Q. When was the last time he made you that promise?

A. I can't understand the English language fluently; I could not exactly give the date, but I suppose the check went to protest, the same as usual; he never promised to me to make his account good; he would say as soon as I get my money from Washington I will settle up, but there was no depending on it.

Q. When was the last time he said that? 40

A. I can't exactly give you the date; I think it was a year ago last Fall, at Elizabethport; I offered to take off fifteen or twenty per cent. if he would pay me.

Q. Whereabouts did that conversation take place?

A. We both were drinking a glass of beer in a lager beer saloon; it was at Elizabethport; he and I were together, others around.

Q. Give Mr. Adams' words? What he said?

A. I believe he said, "Old man, I will pay you if I had the money," or something to that effect.

Q. Did he say anything else?

A. No; this was quite a friendly meeting.

Q. Have you stated all the words Mr. Adams used?

A. I don't remember anything more particularly; when a man gets to drinking beer he says a good deal sometimes; this remark was not made for this case, it was meant for outside.

Q. What had you said to Mr. Adams that caused his
10 answer?

A. I don't know, but I called on him to pay another protested check; I don't remember strictly, but it might be so.

Q. Then you don't remember what you had said previous?

A. We were talking there some time, and one might have talked business or other things; I can't remember what was said.

Q. Have you given all of that conversation that you can remember?

A. The principal point was I was after my money; we were
20 talking about that order on the District of Columbia; I had not received one cent on it, and was very much in doubt if I ever would; I told him I needed a good deal of money to buy and pay for canned goods; I told him he ought to do something for me; I had waited long enough and needed it badly, and the money was long overdue, and that his account was running along too long, and that I could not afford it to have it run on so long; I don't know but I told him I had bought Moorhouse out, and had paid him a good round sum of money.

Q. Do you mean to say that you spoke those words to Mr.
30 Adams on that occasion?

A. I know I did.

Q. Did you speak anything else to him?

A. I might have mentioned that I thought the order was on the government of the District of Columbia; I found out afterwards that it was only collect of Wm. Adams.

Q. At that time—that is the time of this conversation—did you think this order was on the District of Columbia?

A. At that time I knowed it was only on the collector.

Q. How long before that time had you learned it was only
40 on the collector?

A. I think it was more than a year previous to that that Moorhouse spoke to me about the order; I think it was more than a year and a half previous to that time that I learned it was only on the collector; it was some time previous, but I can't remember the date.

Q. Where was the order at the time you had this conversation with Mr. Adams?

A. It was in my safe.

Q. How long had it been in your safe?

A. It might have been a year previous to that; perhaps eight or ten months; I won't be sure about that.

Q. Was that the first conversation you had with Jeremiah E. Adams with reference to that order?

A. I do not know that it was; I can't say.

Q. Can you recall any other?

A. I can't positively say that we had any other conversation about it.

Q. You had no conversation with Mr. Adams at the time the order was left at the store? 10

A. No, sir.

Q. How many times did you and Mr. Moorhouse talk about the order?

A. The first time it came to my knowledge he had it; one time I remember distinctly.

Q. Was that the only time?

A. It was to the best of my remembrance.

Q. Was that before the order was left at the store or after?

A. That was after the order was there. 20

Q. Do you mean to say you never talked with Mr. Moorhouse or Mr. Adams about that order before it was left at the store?

A. With Mr. J. E. Adams I never talked before the order was taken about it; I never talked with either of them about it before the order was left at the store.

Q. Do you mean to say that you never talked with Jeremiah E. Adams about that order, except at Elizabethport, on the occasion you have mentioned?

A. No, sir; I never talked with J. E. Adams about it except that once. 30

Q. How many times did you talk with Mr. Moorhouse about that order?

A. Once that I remember; that was the time when we first took it, because I saw goods marked, and objected to his having more, and found fault with Moorhouse for letting him have more goods.

Q. Do you remember any other occasion that you talked with Mr. Moorhouse about the order?

A. Well, I don't remember any particular time, except when I found out it was not on the District of Columbia; I didn't see the order when it was left there. 40

Q. How long was this after it was left there?

A. I think it was the very day it was left there; in the afternoon when I came back from across town.

Q. Did you find out that the order was not on the District of Columbia on the day it was left there?

A. I did not see the order at all, only Mr. Moorhouse mentioned it to me.

Q. When did you find out that the order was not on the District of Columbia?

A. I found it out a long time afterwards; after Moorhouse had left the concern; after I had bought him out.

Q. Between the time that Moorhouse told you the order was in the safe and the time you found out that the order was not on the District of Columbia, did you have any conversation with Mr. Moorhouse about the order?

10 A. We did.

Q. How long after the order was left there was this?

A. The same time that the order was left there.

Q. Is that the only conversation you had with Moorhouse about the order?

A. We might have talked about it, whether we could get anything for it.

[The complainant objects to the last part of the answer.]

20 Q. How long was this after the order was left there?

A. This took place the same day, I think.

Q. Then there was no conversation with Mr. Moorhouse about that order after that day?

A. I won't say that distinctly; we might have talked the matter over afterwards.

Q. Do you recall any occasion?

A. Yes; I suppose we talked this over when I bought him out—this thing and other things.

Q. Did you talk with Mr. Moorhouse about the order at the
30 time you bought him out?

A. I might have had a conversation with Mr. Moorhouse about whether the order was worth anything or not.

[Counsel for complainant objects to this answer as not responsive to the question.]

[Master decides that it is responsive.]

Q. Do you remember distinctly of having a conversation
40 with Mr. Moorhouse at the time you bought him out, but do not state what that conversation is?

A. We had a distinct conversation at that time; I would hesitate; I did not consider it worth the face of it.

Q. Do you mean to say that you mentioned this order to Mr. Moorhouse at the time you bought him out?

A. The whole affair was mentioned, this and others included; if you buy anything you want to know what you buy.

[Question repeated.]

A. Yes; all been mentioned.

Q. Did I understand you to say that Mr. Moorhouse and you were not friendly before you dissolved partnership?

A. We were; he asked me if we were on speaking terms, did he not? I don't understand these terms.

Q. What did you understand when your counsel asked the same question in your direct examination?

A. Explain it to me and I will answer. 10

[Counsel for defendant asks master to explain to witness what friendly means.]

A. I think we settled on friendly terms; it is understood so, anyway.

Q. Were not you and Mr. Moorhouse on friendly terms all the time you were together?

A. No, sir; we had many good jokes and many good quarrels; little quarrels; nothing very serious.

Q. Did you not part good friends? 20

A. I answered that before; we parted good friends; it was understood distinctly between us.

Q. How was Mahnken & Moorhouse's office in New York situated?

A. On the first floor.

Q. On the right hand side as you entered?

A. Yes; we made an addition to it; the office was about thirty feet deep or more, it was about 6 or 7 feet wide; there was but one division in the office; the books and the book-keepers were in the front part of the office near the windows; 30 the entrance to this office was near the middle; that entered to the store.

Q. Was the rear room private?

A. It would be private, but we never closed it.

Q. Did you and Mr. Moorhouse ever go there to have a consultation?

A. No; we usually went to the back part of the front office; the back part was used for the shipping clerks; when we were at the back part of the front office we would be about 15 feet from the book-keepers' desk; all the customers and 40 salesman, and any one who bought goods were in this front office; it was open to anybody.

Re-Direct:

Q. Has the twenty-five hundred dollar mortgage, given by Adams to Mahnken & Moorhouse, ever been paid to Mahnken & Moorhouse?

A. It was paid to Mahnken & Moorhouse.
Q. Who was it paid by?
A. Adams; I mean Jeremiah E. Adams.
Q. How did he pay it?
A. In cash.
Q. What do you mean by cash—bank bills?
A. Yes; perhaps he might have given a check sometimes.
Q. Who were the negotiations made with by Mr. Adams for the money advanced in this twenty-five hundred dollar mortgage?
A. By me.
Q. What was your part of the business in connection with the firm of Mahnken & Moorhouse?
A. The principal was to do the outside buying.
Q. Did you have anything to do with keeping the books of Mahnken & Moorhouse?
A. No; I never kept the books or made any entries therein.
Q. Adams dealt largely with Mahnken & Moorhouse, did he not?
A. Yes, sir.
Q. On an average, how often about would he make payments to them?
A. Generally about twice a week.
Q. Where would he make those payments?
A. In the office.
Q. Did you have anything to do with receiving those payments?
A. I never had anything to do with receiving those payments.
Q. Mahnken & Moorhouse had a cashier, did they not?
A. Yes, sir.
Q. To whom were the payments made?
A. Generally to the cashier; he might have been out, and some one have to take his place.
Q. How old were you when you came to this country?
A. About twenty.
Q. You have never been to school here, have you?

[Question objected to as not being a rebuttal.]

[Question admitted.]

A. No, sir.
Q. Can you read and write the English language perfectly?
A. No, not perfectly.
Q. Can you read writing in English readily?
A. I cannot readily; if written plainly I might take the meaning of it.

Q. You have spoken in your cross-examination of going to Elizabethport to see Jeremiah E. Adams; what did you go there for?

[Question objected to as not competent.]

[Question admitted.]

A. In order to get a settlement with; to get money out of him. 10

Q. Did you have any other business there at that time?

[Objected to as irrelevant, not competent and not a proper rebuttal.]

[Question admitted.]

A. No, sir; I waited a long time before he came in at his store.

Q. Did he or not come in his store before you left?

A. I waited till he came in. 20

Q. Was or not that the time you had the conversation with him that you testified to on your cross-examination?

A. It was just as I stated before; it was at that time.

Q. Were you present at the store of Mahnken & Moorhouse, in New York, when the fifty-five hundred dollar order was left there?

A. I was not.

Q. Before the dissolution of the co-partnership of Mahnken & Moorhouse had you and Mr. Moorhouse had any quarrels and disputes? 30

A. We had frequent quarrels, but no blows struck.

CORD MAHNKEN.

Sworn and subscribed before me this 4th day of March, A. D. 1884.

HOLMES W. MURPHY,
Master in Chancery of N. J. 40

JESSE K. FURLONG, a witness produced on the part of the defendant, b ing duly sworn according to law, on his oath says: I resi.le in the City of Brooklyn, County of Kings and State of New York; I am an attorney and counsellor-at-law of

the Supreme Court of the State of New York; my office in 293 Broadway, New York City; I know Cord Mahnken and Stephen Moorhouse, partners, trading as Mahnken & Moorhouse; I know each of them; I remember the fact of the dissolution of that co-partnership; I drew up the papers in connection therewith.

[Exhibit No. for identification for defendant, shown witness.]

10

Those are the articles of dissolution drawn up at that time; the submitting witnesses to the same were myself and James A. Seaman; it was signed by Cord Mahnken and Stephen Moorhouse; I saw each of them subscribe their signatures thereto; I saw Mr. Seaman, the other subscribing witness, sign it.

Q. At the time of the dissolution of Mahnken & Moorhouse did you notice anything that led you to believe that there was unfriendliness between them?

20 [Objected to as irrelevant.]

[Question admitted.]

A. I noticed nothing particular indicating unfriendliness between them; each was represented by their respective lawyer on that occasion; and there was but little intercourse between Mahnken & Moorhouse; I did not notice anything particularly friendly between them.

30 Q. The dissolution was based upon a bargain and sale, or what?

A. Upon the sale of Stephen Moorhouse's entire interest in the business, and property in business of the firm of Mahnken & Moorhouse to Cord Mahnken.

Q. Please explain about the interlineation of the words "stocks, bonds and mortgages," in this article of dissolution on the first page?

A. Cord Mahnken and Stephen Moorhouse, about two hours prior to the execution of this instrument, both called on me at 40 my office and gave me instructions for its preparation; I prepared it as quickly as possible, for they wanted it at half-past one o'clock that afternoon; the engrossing of the articles was not completed when they arrived; as soon as they were completed I took the copies into my private office, where Stephen Moorhouse and his counsel, James A. Seaman, and Cord Mahnken were seated waiting; I read one of the engrossed copies aloud to them, while James A. Seaman held and read the other engrossed copy with me for the purposes of comparison; when

I had finished reading the engrossed copy I discovered that I had omitted to insert in my draft the words to which my attention has just been called—knowing that among the assets.

[This testimony is objected to as not having anything to do with the matter at issue, and as incompetent, as the complainant was not present.]

[Counsel for defendant submits that the objection should have been made to the question, and not to the answer given, and that it is for the purpose of contradicting Mr. Moorhouse.] 10

[Master decides that the witness should go on with his answer.]

Appeal, March 4, 1884. H. W. MURPHY, *Master.*

Of Mahnken & Moorhouse there were stocks, bonds and mortgages; I stated that the words above referred to should be inserted in the instrument; Stephen Moorhouse, Cord Mahnken and James A. Seaman assented to it; and the interlineation was made and noted at the foot of the instrument preceding the signatures of the witnesses. 20

Q. Do you remember of the suit of the late firm of Mahnken & Moorhouse against Wilson & Co.?

A. Yes, sir; in this State.

Q. What did you do in connection with that suit at the request of Robbins & Hartshorne, the attorneys of record? 30

[The complainant's counsel asks the object of this, and defendant's counsel says it is for the purpose of contradicting Mr. Moorhouse.]

A. I called on Mr. Stephen Moorhouse and asked him for information in regard to the claim and suit, but he would give me none.

Q. How long were you there with him at that time?

A. About twenty minutes.

Q. Whereabouts was it you called on him? 40

A. At his place of business corner of Dame and Hudson streets; I think it is Hudson street.

Q. About when was that?

A. A little while before the trial; about a year ago, I think it was.

Q. Are you positive or not that it was since the dissolution?

A. Certainly, it was since; I am positive of that.

Cross-examined :

I am the attorney of Cord Mahnken, in matters in the State of New York ; I do much business for him ; there was no one present that I remember in this conversation with Stephen Moorhouse ; it was partly in his office and partly in the store outside ; part of the conversation was in one place and part in another ; we were walking around ; no one heard our conversation that I am aware of.

10 Q. Repeat the question that you asked Stephen Moorhouse at that time?

A. The precise language I cannot at this late day give.

Q. Will you repeat Mr. Moorhouse's answer to you?

A. I cannot give the precise language of his answer.

JESSE K. FURLONG.

Sworn and subscribed before me this 4th day of March, A. D. 1884.

20

HOLMES W. MURHHY,
Master in Chancery of N. J.

[Counsel for complainant says that he withdraws his appeal.]

H. W. MURPHY, *Master.*

March 4, 1884.

30 [Defendant's counsel offers in evidence a bond and mortgage for two thousand dollars, made and executed by Jeremiah E. Adams to Cord Mahnken and Stephen Moorhouse, partners, &c., as Mahnken & Moorhouse, bearing date January 15th, 1875, the bond is marked by me Exhibit No. 1, on part of the defendant, and the mortgage Exhibit No. 2, on part of the defendant, Cord Mahnken.]

[Defendant's counsel also offers in evidence a bond for fifteen hundred dollars, made and executed by Jeremiah E. Adams to Cord Mahnken and Stephen Moorhouse, bearing date August 40 15, 1878, which is marked by me Exhibit No. 3, on part of the defendant, Cord Mahnken.]

[Also the mortgage accompanying the same for the same amount made and executed by Jeremiah E. Adams and Jennie E., his wife, to Cord Mahnken and Stephen Moorhouse, dated August 15, 1878, which is marked by me Exhibit No. 4, on part of the defendant, Cord Mahnken.]

[Defendant's counsel also offers in evidence a promissory note dated April 27, 1880, for 964\frac{14}{100}$ made by J. E. Adams, payable on demand to order of Mahnken & Moorhouse at Irving National Bank, with interest, which is marked by me Exhibit No. 5, on part of the defendant, Cord Mahnken.]

[The defendant's counsel also offers in evidence a note dated October 4, 1871, made by C. Mahnken & Co. (with signatures torn off) for $4000, payable on demand to the order of Mrs. M. A. Moorhouse at the office No. 174 Duane street, with interest, which is marked by me Exhibit No. 6, on part of defendant, Cord Mahnken.] 10

[The defendant's counsel also offers in evidence a note for $8,587$\frac{07}{100}$, dated October 26, 1879, made by Mahnken & Moorhouse, payable on demand to the order of Mrs. M. A. Kattenborn, at 174 Duane street, with interest, which is marked by me Exhibit No. 7, on part of the defendant, Cord Mahnken.]

[The complainant's counsel objects to these last named two notes as irrelevant.] 20

[The defendant's counsel also offers in evidence the cash book of Mahnken & Moorhouse, from July 1, 1872, to December 15, 1874, both inclusive, which is marked by me Exhibit No. 8, on part of defendant, Cord Mahnken.]

[Defendant's counsel also offers in evidence the cash book of Mahnken & Moorhouse, from December 16, 1874, to October 14, 1876, both inclusive, which is marked by me Exhibit No. 9, for defendant, Cord Mahnken.]

30

[Complainant's counsel objects to the offer of these cash books, unless all the books are put in.]

[Defendant's counsel also offers in evidence ledger of Mahnken & Moorhouse, (A), the first entry in which is April 13, 1872. which is marked by me Exhibit No. 10, a part of defendant, Cord Mahnken.]

[Also Ledger B, the first entry in which is May 1, 1878, which is marked by me Exhibit No. 11 for defendant, Cord Mahnken] 40

[Also book marked Ledger A, to L, M. & M. the first entry in which May 1, 1880, which is marked by me Exhibit No. 12 for defendant, Cord Mahnken.]

[Also book marked Ledger A, to L, M. & M. the first entry in which is January 3, 1882, which is marked by me Exhibit No. 13 for defendant, Cord Mahnken.]

[Also stock book marked No. 7 for identification Feb. 12, 1884, the first entry in which is 1, J. J. Buckingham 200.71, which is marked by me Exhibit No. 14 for defendant, Cord Mahnken.]

10 [Defendant's counsel also offers a paper purporting to be a statement of Jeremiah E. Adams' bond and mortgage given to Mahnken & Moorhouse, dated Aug. 16, 1872, for the sum of $2500, which is marked by me No. 15 for defendant, Cord Mahnken.]

[Also memorandum made by John H. Jansen, April 27 1880, which is marked by me Exhibit No. 16, on part of defendant, Cord Mahnken.]

20 [Complainant's counsel objects to this last mentioned paper as not having been identified.]

[Also paper being articles of dissolution of partnership of Mahnken & Moorhouse, dated April 8, 1882, which is marked by me Exhibit No. 17 for defendant, Cord Mahnken.]

[Objected to by complainant's counsel.]

[Also check for $500, given by Mahnken & Moorhouse, to order of J. E. Adams, dated Sept. 14, 1872, No. 356, which is 30 marked by me Exhibit No. 18 for defendant, Cord Mahnken.

[Also check No. 1237, dated March 22, 1881, for $200, given by Mahnken & Moorhouse to J. E. Adams' order, which is marked by me Exhibit No. 19 for defendant, Cord Mahnken.]

[Also check No. 1286, dated March 30, 1881, for $250, given by Mahnken & Moorhouse to order of J. E. Adams, which is marked by me Exhibit No. 20 for defendant, Cord Mahnken.]

40

[Also paper being order given by Wm. H. Adams, dated Washington, March 19, 1881, for $5500, which is marked by me Exhibit No. 21 for defendant, Cord Mahnken.]

HOLMES W. MURPHY,
Examiner in Chancery.

IN CHANCERY OF NEW JERSEY.

Between JEREMIAH E. ADAMS, *Complainant,* and CORD MAHNKEN, *et al.*, *Defendants.*	*On Bill, &c.*

10

I, WILLIAM V. SIMPSON, a Commissioner in New York for New Jersey, do certify that on the 26th day of March, 1884, I endorsed the deposition of Henry Eggers and Edward Mahnken in this envelope and sealed the said envelope with said depositions therein, enclosed and deposited the same in the Post Office of the City of New York, together with 15 checks as Exhibits, and directed the envelope to Messrs. Robbins & Hartshorne, Freehold, New Jersey, with the postage, 36 cts., prepaid. 20

WILLIAM V. SIMPSON,
Commissioner for New Jersey.

IN CHANCERY OF NEW JERSEY.

30

JEREMIAH E. ADAMS, *Complainant,* vs. CORD MAHNKEN, *et al.*, *Defendants.*

40

MESSRS. ROBBINS & HARTSHORNE,

TO WM. V. SIMPSON, DR.

1884.

March 14	—16 folios, direct testimony Henry Eggers,	$3 20
" "	—1½ folios, oath of Commissioner, - -	30
" "	—Notary's fees, - - - -	12

March 17	—Re-direct testimony of Eggers, 5 fols., -	1 00
" "	—2 folios, direct testimony of Edward Mahnken, - - - -	40
" "	—10 folios, certificate of Commissioner, memorandum of Exhibits, &c., - -	2 00
" "	—Marking 28 Exhibits for identification,	2 80
" "	—Marking 43 Exhibits in evidence, -	4 30
" "	—Swearing 2 witnesses, - - -	25
" 26	—Postage, - - - - - -	36
		$14 73
	—46 folios cross-examination, - -	9 20
		$23 93

10

IN CHANCERY OF NEW JERSEY.

20

Between

JEREMIAH E. ADAMS,
Complainant,

and

CORD MAHNKEN, *et al.*,
Defendants.

On Bill, &c.

HENRY EGGERS, a witness produced before me on the part of the defendant, Cord Mahnken, and being duly sworn, did
30 depose and say as follows:

I reside at 42 Stanton street in city of New York; I am a grocer of the firm of Mahnken & Eggers; I do business at the corner of Jay and Greenwich streest, in the city of New York; I know Cord Mahnken, the defendant in this action, and also Stephen Moorhouse, the other defendant in this suit; Mr. Mahnken and Mr. Moorhouse were formerly partners, trading as Mahnken & Moorhouse; they were in the grocery business at 174 Duane street, New York; I have been in the employ of Mahnken & Moorhouse; I left their employ about the 15th day of March, 1879; I entered into their employ the end of
40 April, 1872; I came into their employ as book-keeper; I was book-keeper for them six years; after six years and until I left I had general charge as salesman; while book-keeper I had charge of the cash book, journal and ledger of Mahnken & Moorhouse.

[Shown witness Exhibts B 5, C 5, D 5, E 5, F 5, G 5, H 5, for identification.]

W. V. SIMPSON.
Commissioner.

These books belonged at that time to Mahnken & Moorhouse; they are the day books; from April 30, 1872 to April 29, 1878, the books are in my handwriting; during this time two young men kept these books for about fourteen days. 10

[Ledgers Ex. No. 8 for identification, February 15, 1884, and Exhibit No. 10 on the part of the defendant, shown witness.]

W. V. SIMPSON,
Commissioner.

This is the ledger of Mahnken & Moorhouse; it is in my handwriting; the account on the first page is J. E. Adams; it is J. Y. Adams by error of mine. 20

[Exhibit No. 11 on part of defendant, shown witness.]

W. V. SIMPSON,
Commissioner.

This is the ledger of Mahnken & Moorhouse; I know the handwriting in it; it is the handwriting of James Harrison; he was the book-keeper after me for Mahnken & Moorhouse; these two ledgers contain the account of J. E. Adams from the time that Mahnken & Moorhouse entered into copartnership until April 29, 1880.

30

[Exhibit A 5, for identification, shown witness.]

W. V. SIMPSON,
Commissioner.

This is what we call the day book of C. Mahnken & Co.; this is in the handwriting of William Ufferheide; he was the book-keeper for C. Mahnken & Co.; I know the handwriting of that book, that is all; on page 494 there is a credit and a charge in my handwriting; by the items and the handwriting of Ufferheide I recognize it as the day book of C. Mahnken & Co. 40

[Exhibit K 5, for identification, shown witness.]

W. V. SIMPSON,
Commissioner.

This book is in the handwriting, I believe, of Charles Bruning; he was a clerk employed by the firm Mahnken & Moorhouse; I am a little acquainted with his handwriting, but can't be positive about it; I find some of Mr. Harrison's handwriting in that book right on the first page; I am well acquainted with the handwriting of James Harrison; I am well acquainted with the handwriting of William Ufferheide; this is called the day book at that time of Mahnken & Moorhouse; can't say for certain as I was not here; all these books
10 I have testified were used in the regular course of business of C. Mahnken & Co., and Mahnken & Moorhouse; I have only testified as to only one book of C. Mahnken & Co.; that was the old firm of C. Mahnken & Co.

[Exhibit 8, on part of defendant, shown witness.]

W. V. Simpson,
Commissioner.

This is the cash book of the firm of Mahnken & Moorhouse;
20 it is in the handwriting of myself.

On page 102 I find an entry which reads to cash from J. E. Adams on acc. bond and mortgage, $1000.

On page 214 I find an entry under date of September 5th, 1873; I find an entry to cash J. E. Adams ac. bond and mortgage, $500.00.

On page 410, I find an entry under date of October 31, 1874, to cash J. E. Adams for note on ac. of mortgage, $150.

On page 414, under date of November 6th, 1884, I find an entry to cash for note on ac. of mortgage, $151.20.

30 On page 416, under date of Nov. 14, 1874, I find an entry, to cash J. E. Adams on acc. of mortgage, $150.90.

On page 420, under date of Nov. 21, 1874, I find an entry; to cash J. E. Adams on acc. of bond and mortgage, $151.11.

On page 426, under date of Dec. 5, 1874, I find an entry of to cash J. E. Adams on acc. of bond and mortgage, $151.52.

[Book marked Exhibit No. 9, on part of defendant, shown witness.]

W. V. Simpson,
40 *Commissioner.*

That is the cash book of Mahnken & Moorhouse of later date; it is the one succeeding the one I have just testified to.

On page 2, under date of Dec. 16, 1874, I find an entry to cash J. E. Adams on acc. of bond and mortgage, $151.72.

On same page, under date of Dec. 19, 1874, I find an entry to cash J. E. Adams on acc. of bond and mortgage, $83.40.

On page 6, under date of Dec. 20, 1874, I find an entry to cash J. E. Adams on acc. of bond and mortgage, $100.

On page 10, under date January 9, 1875, I find an entry to cash J. E. Adams on acc. of bond and mortgage, $153.13.

All the entries I have just testified to in the two cash books, Exhibits 8 and 9 are in my handwriting; I am well acquainted with these two cash books; the both books generally are in my handwriting; the entries were made by me while I was 10 book-keeper for Mahnken & Moorhouse, and I know them to be the cash books of Mahnken & Moorhouse for the times named therein. From August 30, 1875, to September 1st, 1875, and then again from September 6 to 20, inclusive, 1875; the book is not in my handwriting.

Q. To what do the entries on the left hand pages of these two cash books, Exhibits 8 and 9, refer?

A. It refers to the cash or checks paid into the firm; the items I have just testified to appear on the left-hand pages. The items I have just testified to refer to cash paid in on 20 account of bond and mortgage; I could not give an account of what mortgage is referred to, without referring to the books.

Q. Did you know of any mortgage that Mahnken & Moorhouse held against J. E. Adams at that time?

A. I think there was a mortgage, but am not certain without referring to the books.

[Exhibit No. 10, on part of defendant, shown witness.]

W. V. Simpson,
Commissioner. 30

On page 9 the second entry of the credit side is in my handwriting.

The entry under date of January 15, 1875, is by mortgage, page 205 day book, $2000.

[Ex. E 5, for identification, shown witness.]

W. V. Simpson,
Commissioner.

40

I find the credit on page 205, of this book, as follows:

J. E. Adams, Cr.,

By mortgage of January, 1875, - -	$2,000 00
In 3 mos. note July 19, - - - -	200 00
" Boxes, - - - - - -	2 00
	$2,202 00

Q. Is there any doubt as to the date of January 15, 1875, as being made on this day book and ledger as January?

A. There is no doubt at all.

Q. Has the month of January in this day book and ledger been altered in any way?

A. No, sir.

The entry I have just testified to in Exhibit E 5, is in my handwriting.

[Protested checks, marked A 5 to B 6, inclusive, shown
10 witness.]

W. V. Simpson,
Commissioner.

These are all protested checks of J. E. Adams; I recognize the maker of these checks to be the signature of J. E. Adams; I am well acquainted with the signature of J. E. Adams; I have often seen him write; while I was book-keeper Mr. Adams quite often let his checks go to protest; when his
20 checks went to protest, as a rule, we would keep them until he came in and gave us another check; then we would charge him the protested check, including the protest, and give him credit for the new check; wherever the name of J. E. Adams appears on the back of the checks, which is only one, it is endorsed by him to the best of my knowledge; the signature of C. Mahnken & Co., and Mahnken & Moorhouse on the back of these checks are endorsed by either Mr. Mahnken or Mr. Moorhouse, except Ex. N 5, which is so scratched that I cannot tell; Exhibits B 5, A 6 and B 6, I believe are endorsed
30 in C. Mahnken's handwriting, but they are so scratched I cannot be certain; I am well acquainted with the handwriting of Cord Mahnken and Stephen Moorhouse; have seen them sign and endorse checks often.

Cross-examined by Joseph Alward, Counsel for Complainant:

The cash book was made up from money paid in and money paid out. The entries were made the very day the transactions took place; we used to have a blotter, and the entries
40 were made from that to the cash book; there was a blotter all the time I was with Mahnken & Moorhouse; I cannot positively say that all the items were made from the blotter, but do not believe there was any item put in the cash book which was not taken from the blotter; the daily deposits in the bank were taken from the bank book.

The entry of September 5, 1873, I have made it, but do not remember just the particular entry; to the best of my knowl

edge I took it from the blotter; all the entries to cash paid on account of mortgage were all taken the very same way; I made the entries in the blotter; I wrote up the cash book once a day; never omitted it any day unless I was sick or absent; we call the other merely a book of memorandas, and this the book of original entry; the entries were not originally made in this book.

Q. Then in a strict sense this is not a book of original entries?

[Objected to defendant's counsel as calling for opinion of witness merely.] 10

W. V. Simpson,
Commissioner.

A. I suppose not; I do not know where those blotters are, because they do not belong to the regular set of books.

[Counsel for complainant here calls for original blotters.] 20

W. V. Simpson,
Commissioner.

Do not know how the check of September 5, 1873, came to the office; do not know whether it was a check or cash; either Mr. Mahnken or Mr. Moorhouse told me to credit it on account of bond and mortgage; have no recollection who told me; have no recollection who told me to credit either of these entries on bond and mortgage. 30

The witness wished to state that entries of such a nature as these were always ordered by either Mr. Mahnken or Mr. Moorhouse.

Q. Do you recall any instance where either Mr. Mahnken or Moorhouse directed these entries to be made in reference to the bond and mortgage?

A. Not any particular one.

Q. Then you cannot state of your own knowledge why any of these checks were credited on account of the bond and mortgage? 40

A. I could not say anything about it at present, any further than to keep their account correct.

Q. When can you state it?

A. I think I could not find any more out than to just keep their accounts correct.

Q. Then you have no knowledge whether these checks were paid on account of the mortgage or grocery account?

A. They were undoubtedly paid as put down in these cash books?

Q. Why do you say so?

A. Because I kept the books true and honest.

Q. Who received the payments?

A. Can't say who received these payments first off, but they were turned in to me as book-keeper of the firm; I do not
10 know to what individual they were paid to, but they were paid to the firm of Mahnken & Moorhouse; I do not recollect what Mr. Adams said when he paid them; I know Mr. Adams paid them, otherwise they would not be on the books; I do not recollect whether any of these particular checks Mr. Adams paid to me; he gave me checks often enough; I am unable to recollect whether I was present when any particular ones were paid; I believe I was present when all of these checks were paid, but don't recollect.

Q. Can you recall anything Mr. Adams said when these
20 checks were paid?

A. It was so long ago I cannot recollect.

Q. Why did you make the entry on account of bond and mortgage?

A. As clerk of the firm I was so ordered, and had to perform my duties.

Q. That is the only reason I made to entry?

A. Yes, sir; because I was told to; I do not mean to say that I had special orders for every entry made in the books, but on these particular items I am certain as Adams kept a
30 large account, and they would have been credited on his account in general, if Mahnken & Moorhouse had not told me different.

Q. In November 17, 1874, the cash entry is $150.90; do you know why he paid just that amount on the mortgage?

A. I do not recollect.

Q. Was it not an odd amount to pay on the mortgage?

[Objected to as calling for the opinion of the witness.]

40 W. V. Simpson,
Commissioner.

A. I am to testify to the books, and not to give an opinion in any matter.

Q. Why do you decline to answer that question?

A. Because it is expressing opinion and confirming to the account at all, whether right or wrong.

Q. Did it not attract your attention as an odd amount when you entered it?

A. Not that I recollect.

Q. Do you recollect any calculations having been made as to the amount due on that mortgage?

A. I do not recollect.

Q. If any had been made in this office would you not have known of it?

A. I suppose so.

Q. Were these payments made in any book beside the blotter and the cash book? 10

A. Not to my knowledge.

Q. Didn't the firm have any mortgage book?

A. No, sir.

Q. Did you know whether Mahnken & Moorhouse had a mortgage of Mr. Adams at that time?

A. I believe they had, but am not certain; I do not recollect having seen it; might have seen it; it was so long ago; I don't know whether these amounts were credited on the bond; do not recollect. 20

Q. Could you tell by the books of Mahnken & Moorhouse whether there was a mortgage of Mr. Adams at that time?

A. There is nothing like trying in this world; in my direct examination I said I thought I could tell by Mahnken & Moorhouse's books; I had the ledger in my mind.

Q. Is that mortgage entered on the ledger?

A. If I knew that I would know all about the mortgage? I do not know without looking; it is so long ago I could not recollect without referring to the books; I do not recollect without referring to the books; I was here in August, 1872; 30 was book-keeper and cashier at that time.

Q. If Mahnken & Moorhouse loaned Mr. Adams money, and took a mortgage, would that transaction be entered on any book of the firm?

A. The money would be on the book; I don't see any necessity of the mortgage; he got merchandise here, and if he got a mortgage, I believe, without referring to the books, he got it that way.

Q. If the funds of Mahnken & Moorhouse were loaned to Mr. Adams on a mortgage, would that be entered on any book of the firm? 40

A. If it was in cash money, it ought to be; it ought to be on the ledger.

[All evidence relating to what should appear on the books objected to by defendant's counsel, as the books are the best evidence of themselves.]

W. V. Simpson,
Commissioner.

If the money was in bills it would appear on the cash book; if in shape of check it would not; it would if in shape of check be carried from the check book to day book to ledger; in the account of whoever got the money.

[Exhibit B 5, for identification, shown witness.]

W. V. SIMPSON,
Commissioner.

10 Q. J. E. Adams gave Mahnken & Moorhouse a mortgage on 16th day of August, 1872, for cash loaned; can't you find any record of that transaction?

A. I have no right to go through the books, and don't feel like doing it this afternoon; the handwriting of August, 1872, is in my handwriting; referring to Aug. 16, 1872, I do not find any record of this mortgage on the day book; I do not feel like going through the book to find if there is any record of the mortgage in the cash book during the month of August, 1872.

20 Q. Ought not the transaction of this mortgage appear on that day book?

[Objected to by defendant's counsel as immaterial and irrelevant and matter of opinion merely.]

W. V. SIMPSON,
Commissioner.

A. I decline, because I did not come here to give you lawyers legal advice.

30 Q. What did you mean by saying that it would go from the check book to the day book, and from the day book to the ledger?

A. If the check was paid out in such a way it ought to be entered the way I stated.

Q. Do you know why this was not entered in this way?

A. That is another conundrum; I don't know of anything that had to be so entered.

40 [Exhibit E 5, for identification, shown witness.]

Q. On page 205 is a credit of a mortgage to Jeremiah E. Adams; on what date was that entry actually made?

A. On this book it was made July 24, 1875; don't recollect why it was made on that day; I made the entry, that I know, because it is in my handwriting; don't know of making it in any other way; I must have been told to make the entry, but

have no recollection specially on the subject; I can't come to any closer answer than that.

Q. Do you know why it was not entered on the 15th day of January?

A. I have no special recollection of that.

Q. Did you know it was not entered there on January 15, before you looked at the book to-day?

A. I had no reason to think of the matter at all.

[The above examination was adjourned by consent of the respective counsel to Monday, March 17, 1884, at 1.30 P. M.] 10

W. V. Simpson,
Commissioner.

On Monday, March 17, 1884, examination resumed of Henry Eggers, witness.

Counsel for complainant calls for check of Mahnken & Moorhouse to J. E. Adams, dated August, 1872. This same check was called for at the last sitting. 20

Counsel for defendant says that he has instructed search to be made for the check, and if it can be found it will be produced.

Counsel for defendant produces the blotters called for by complainant's counsel at the last examination.

[Witness shown book.]

It is a blotter book of memorandas; on page 211 I find Cr. J. E. Adams by cash on acc. of bond and mortgage, $1000; that is my handwritiug. 30

[Another book shown witness.]

W. V. Simpson,
Commissioner.

That is the blotter; the entry is Cr. to J. E. Adams on acc. of mortgage, dated August 16, 1872, $500; it seems to be my handwriting; have no special recollection of making those entries in the cash book or blotter. 40

[Page 410 cash book, shown witness.]

W. V. Simpson,
Commissioner.

Q. What entry do you find October 31, 1874, on the cash book?

A. It is one of the very same I had Friday; the minutes will show.

Q. Will the witness please read that entry?

A. I will not read it; it is a nonsensical way of asking a question; don't see why he should go over the same thing again and again; I consider it impertinent to make me do the same thing again.

10

[Counsel for defendant says that the entry is there and shows for itself.]

W. V. Simpson,
Commissioner.

The entry in the cash book is in my handwriting; I made it the same day that is attached to it.

Q. Did you underscore for note on account of mortgage?

20 A. It is so long ago I have no special recollection on that subject.

Q. What is the meaning for note?

A. In what sense?

Q. In the sense used and in the cash book?

A. In the sense it is given in the book here.

Q. Will you please explain what that means?

A. I mean the facts to be just exactly as they are stated on the book.

Q. Do you know what it means?

A. I know the meaning of a note.

30 Q. Do you know why for note was written then?

A. I have no bureau statistics in my head, and I do not recollect.

[Book shown witness.]

W. V. Simpson,
Commissioner.

This is a blotter.

Q. Will you please tell me the date of the entry of J. E.

40 Adams on page 40 of this book?

A. As the eminent attorney is able to find it himself, I decline.

[Counsel for defendant offers to find the date of the entry, which counsel for complainant refuses to let him do.

W. V. Simpson,
Commissioner.

Q. Is the date of the entry on that page?

A. I decline to be used as a boy for the attorney; this entry is in my handwriting.

Q. What is the entry?

A. Cr., J. E. Adams for note on account of mortgage, $150.

Q. Do you know what note that was?

A. As the time it happened long ago, I do not recollect; I testify to the entry on page 40 of this book.

Q. Was that entry all made at one time?

A. Yes; to the best of my belief.

Q. Why are the words for note on account of mortgage 10 written between the lines?

A. Probably I had not as yet then received special orders to credit it on account of bond and mortgage, and which might have been corrected this very same minute after entry was made.

Q. Might it not have been corrected the next day?

A. I do not believe it was.

Q. Do you remember anything about the correction.

A. I have no special recollection. 20

Q. With this blotter before you can you tell us why the words for note on account of mortgage in the cash book of the same date are under-scored?

A. Have no special recollection of the subject.

Q. Do you mean by that you cannot tell?

A. I mean by that I have no special recollection on the subject.

Q. What was received from Mr. Adams on that day?

A. The same as the entry reads.

Q. What is that? 30

A. The same as I have stated two minutes ago, as on the paper the commissioner has written.

Q. Was any money received from Mr. Adams on that day?

A. Just the same as on the book; it would not be on the book if it wasn't.

Q. Do you know whether it was money or check?

A. I have no recollection on the subject.

Q. Under the date of November 6, 1874, when was the entry on cash book taken from?

A. Blotter.

Q. What is the entry on the blotter; 40

A. Cr., J. E. Adams for note on account of mortgage, 151\frac{20}{100}$.

Q. Do you know how that was paid?

A. Have no special recollection.

Q. Do you recollect by whose order that was entered on account of mortgage?

A. Do not recollect, but probably by Moorhouse's.

Q. When you do not recollect why do you say probably by Moorhouse's?

A. Because I want to get as near to the facts as I possibly can.

Q. What reason have you for saying probably by Mr. Moorhouse's?

A. Because in those years Adams mostly settled these things with Moorhouse.

Q. Is that the only reason you have for saying probably by
10 Moorhouse's?

A. I do not know that I should have any other reason.

Q. Will you show me the entry on the blotter under the date of November 14, 1874, of Mr. Adams?

A. There it is.

Q What is the entry?

A. Cr., J. E. Adams on account of mortgage, 150\frac{90}{100}$.

Q. What is the date on the entry on the blotter immediately previous to that?

A. November 14, 1874.

20 Q. Is that in your handwriting?

A. Yes, sir.

Q. On the date of November 21, 1874, what is entry on the blotter?

A. Cr., J. E. Adams on account of bond and mortgage, 151\frac{11}{100}$.

Q. Do you know how that was paid?

A. Do not recollect.

Q. December 5, 1874, what is the entry in the name of J. E. Adams of that date on the blotter?

30 A. Cr., J. E. Adams by check for note on account of mortgage, 151\frac{52}{100}$.

Q. Whose handwriting is that?

A. It is my handwriting.

Q. Why are the words by check on account of mortgage written below the entry?

A. Because it was paid on account of bond and mortgage?

Q. Are not the words Cr., J. E. Adams, 151\frac{52}{100}$ written on a line above the words by check for note on account of mortgage?

40 A. Yes, they are.

Q. Can you tell me why they are written that way?

A. Because the lower part is merely a memorandum to show where the money should be credited.

Q. Do you know when the memorandum was made?

A. Saturday, December 5, 1874.

Q. Do you remember making it?

A. Have no special recollection of it, but as there is nothing

scratched nor afterwards inserted, it must have been done on the same day or same moment the entry was made.

Q. Had Mr. Adams given a check on account of the mortgage?

A. As this good book says he gave a check for note on account of mortgage.

Q. Is that all you know about it?

A. I have no recollection outside of what I see here.

Q. Have you any recollection of Mr. Adams ever giving a note on account of mortgage?

A. No special recollection, but he must have given some or, 10 as this entry would not have been on the book.

Q. Then you do not remember of his ever giving a note on account of mortgage of your own knowledge?

A. It is so many years ago, and the note and check business with Adams so numerous, that I could not possibly recollect even if I was an eminent man like the attorney here.

Q. Where was that note paid?

A. I do not recollect.

Q. Was there anything in the note to show it was paid on account of bond and mortgage? 20

A. That Mr. Adams could prove better than I if he produce the note.

Q. Is the entry in cash book the same as in the blotter?

A. The words by check are omitted and the word bond inserted.

Q. Any other difference?

A. By check for note omitted, and instead of mortgage it says bond and mortgage on cash book.

Q. Why was that difference made?

A. I do not see a difference in the meaning. 30

Q. Was it for note?

A. So the blotter says.

Q. The cash book does not, which is correct?

A. I suppose the blotter; and what the cash book don't say it is merely an omission in transferring the entry.

Q. Under the date of January 10th, what entry do you find there?

A. None at all.

Q. Then 9th, what's there?

A. Cr., J. E. Adams on account of bond and mortgage, 40 150\frac{18}{100}$.

Q. Whereabouts do you find the word credit you have read?

A. Way up to the top.

Q. Where is the word bond and mortgage written?

A. Underneath J. E. Adams on account of—

Q. Is it not written between the lines.

A. Yes, sir.

Q. Do you have any recollection when it was written between the lines?

A. No special recollection, but that was so ordered by the firm, or I believe it was so ordered by the firm.

Q. Were all the checks Mr. Adams paid entered on the cash book?

A. I do not know, as I do not believe I got all of Mr. Adams' checks, as he was trading with other firms also.

Q. Were all the checks he paid to Mahnken & Moorhouse entered on the cash book?

10 A. To the best of my knowledge and belief, unless they were in exchange of his own checks which he could not meet at the time or in exchange probably for cash; in that case it would not be on the book.

Q. Would an entry be made of such a check as that?

A. I guess not.

[Witness shown Exhibit 3, on part of complainant in this cause, being check for $175.

W. V. SIMPSON,

20 *Commissioner.*

Q. Whose name is at the bottom of that check?

A. J. E. Adams.

Q. His signature?

A. It looks very much like it; Mahnken & Moorhouse's endorsement is on the back.

Q. Do you know whether that check appears on the cash book?

A. Not unless I refer to the cash book.

30 Q. Will you please refer to it?

A. I do not find it.

[Witness shown Exhibit 4, on part of complainant, check for $150, dated August 2, 1875.]

W. V. SIMPSON,

Commissioner.

Q. Is that Mr. Adams' signature to the bottom of that

40 check?

Witness wants to add here that a check of $150, credited the next day, which check probably was paid on the 18th, and the difference between that and the check produced by the attorney I believe to be paid to Mr. Adams in cash, which, or as Mr. Adams frequently, when he had to pay small bills in this market got a little cash money from the firm.

Q. Do you remember anything about this check?

A. I do not recollect, especially about this check, but as Mr. Adams got money so frequently, as before stated, I believe it to be one of those and produced here to misconstrue facts.

Q. Do you remember any instance when you paid Mr. Adams money on account of a check?

A. On account of what check?

Q. Any check?

A. I recollect having given Mr. Adams cash money in part exchange for a check, but I have no recollection as to dates and amounts. 10

Q. Can you remember any amount you paid him on account of check?

A. I do not recollect any special amounts, as it is so many years ago. But I again assert that it frequently happened.

Q. Do you circumstances of any particular case remember?

A. I have stated the circumstances as before noted. I have also stated I have no special recollection as to dates or amounts. 20

Q. Do you remember Mr. Adams asking you for cash on his check?

A. I well remember that circumstances occurred as to matters before stated.

Q. What were Mr. Adams words?

A. In what matter?

Q. When Mr. Adams asked you to cash a check for him?

A. I have not said Mr. Adams asked me to cash a check for him.

30

Witness wants to state that the cash account was balanced about three o'clock in the afternoon, and money paid on the same day would go in on the next day's account.

Q. Do you remember Mr. Adams' words when he asked you to pay him cash on his checks at any time?

A. I do not recollect special words, but I well recollect that transactions of that nature were made.

Q. How can you recollect of such transactions and not remember a particular one? 40

A. Those transactions occurred so often that I well recollect them, but I could not repeat any words said about eleven years ago.

[Witness shown Exhibit 4, on part complainant's check, dated August 22, 1873, for $150.10.]

Q. Is that Mr. Adams' signature at bottom of check?

A. It is, so far as I know. It is made payable to Mahnken & Moorhouse, and endorsed by them.

Q. Does that appear on the cash book.

A. There is a credit on cash book of $100 on same day.

[Witness asks if counsel has any further questions to ask about this check. Counsel says he has not. Witness wants further to state that I believe this check of August 22, 1873, to be one of those that was part exchange for cash; wherefore
01 it was no necessity, and, in fact, never was done as long as I kept the cash account to credit parties the full amount of checks and charge them with the difference, and I verily believe that this check also was produced then to mislead and misconstrue facts, as Mr. Adams got a statement of his account on the first of each and every month during the time I kept the accounts for Mahnken & Moorhouse, and if any error should have occurred Mr. Adams would have looked for a correction right away.]

20 [Exhibit N 5, for identification, shown witness.]

W. V. Simpson,
Commissioner.

Q. Do you know whether that is charged against Mr. Adams on the ledger account?

A. It is charged under date of April 17th.

[Exhibit P 5 is neither charged or credited.]

30

[Witness shown Exhibit N 5 for identification.]

W. V. Simpson,
Commissioner.

This is credited and charged; O 5 is also; Q 5 also; R 5 also; S 5 also; T 5 also; N 5 also; V 5 also; W 5 also; X 5 I do not find credited or charged; it was after my time.

40 [Defendant's counsel instructs the witness that he need not testify as to what took place after he left the firm of Mahnken & Moorhouse, as the books are the best evidence, and he was not the bookkeeper.]

W. V. Simpson,
Commissioner.

[Complainant's counsel wish to state that his witness has

proved these Exhibits, and think it is proper he should be examined about them.]

W. V. SIMPSON,
Commissioner.

[Defendants' counsel asserts that he only proved the signature by the witness.]

W. V. SIMPSON,
Commissioner.

[Witness shown Exhibit Y 5 on part of defendants.] 10

Q. Is this check credited or charged?
A Do you mean to hire me as an expert on these books?
Q. Question repeated?
A. If you hire me as an expert and pay me I will go over the books and tell you.
Q. Do you decline to answer?
A. If you want some one to go over these books I will send you my bookkeeper.

20

[I 5, A 6, B 6 and P 5, Exhibits of part of defendants, shown witness.

W. V. SIMPSON,
Commissioner.

Q. Are those checks credited or charged on the ledger?
A. I have no desire to examine the books of the firm after the time I left. But as to Exhibit P 5, I answer that I cannot find it on the books.

30

Re-direct examination:

[Exhibit P 5 for identification shown witness.]

W. V. SIMPSON,
Commissioner.

Q. Can you explain why that check is not credited or charged back in Adams' account?
A. The check must have been given in exchange for cash. Probably seventy-five dollars, and it looks as if the protested check was given in exchange for seventy-five dollars, one which seems to be protested also. 40

[Complainant's counsel objects to the above answer as a mere opinion.]

W. V. SIMPSON,
Commissioner.

Q. When Adams gave his check to Mahnken & Moorhouse and received cash in exchange therefore, what entries were made on the books of Mahnken & Moorhouse of the transaction?

A. None at all.

Q. Were such exchanges often made?

[Objected to by complainant's council as leading and incompetent.]

A. I have before stated that he frequently got cash in exchange for checks.

10

[Exhibit Q 5 for identification shown witness.]

W. V. SIMPSON,
Commissioner.

Q. What was that check given for?

A. In payment of a protested check.

Q. Is Exhibit R 5 the protested check that was paid by it?

20

[Witness says you had better get that booked. Witness refers to Exhibit N 5 for identification.]

M. V. SIMPSON,
Commissioner.

A. Yes, sir.

[Exhibit 2 N Y for identification, page 73, shown witness.]

30

W. V. SIMPSON,
Commissioner.

Q. In the entry therein J. E. Adams on account of bond and mortgage, $151.72, in your handwriting?

A. Yes, sir.

Q. Is the entry on page 76, credit J. E. Adams on account of bond and mortgage $88.40, in your handwriting?

A. Yes, sir.

40 Q. In the entry on page 81, credit J. E. Adams by cash on account of bonds and mortgage $100, is that your handwriting?

[Objected to as not properly read.]

W. V. SIMPSON,
Commissioner.

A. Yes, sir.

Q. Are these three blotters, Exhibit 1 N Y, Exhibit 2 N Y, and another one not marked for identification, the blotters to which you referred in your examination on last Friday?

A. Yes, sir.

Q. Your cash books, Exhibits 8 and 9, written up from these blotters as far as they went?

A. Yes, sir.

Q. The handwriting in each of these blotters are yours, are they not? 10

A. Yes, sir.

Q. Which member of the firm of Mahnken & Moorhouse gave you your orders in reference to the books?

A. Stephen Moorhouse.

[Counsel for complainant wish to state that the check called for cannot be found.

W. V. Simpson,
Commissioner. 20

[Counsel for defendants now state that the firm of Mahnken & Moorhouse have thousands of old checks, and the boxes containing the same can be examined, and also the checks therein by the counsel of the complainant, for the purpose of finding the check.

Henry Eggers.

Sworn to before me and subscribed to before me this 17th day of March, 1884.

W. V. Simpson,
Commissioner for the State of New Jersey. 30

Mr. Edward A. Mahnken, recalled on the part of the defendants, testifies as follows for the purpose of proving some books of Mahnken & Moorhouse that were not at Freehold when the witness before testified.

[The counsel for complainant states that Mr. Mahnken has been called and sworn before a Master in New Jersey, and objects to his being recalled.]

W. V. Simpson,
Commissioner. 40

The witness being now sworn testifies as follows:

[Counsel for complainant objects to this proceeding as irregular and illegal.

W. V. Simpson,
Commissioner.

[Exhibits I 5, J 5, K 5, L 5, M 5, C 6, D 6, E 6, F 6, G 6, H 6, I 6, J 6, K 6, L 6, M 6, N 6, O 6, P 6 and Q 6 for identification on the part of the defendant shown witness.

M. V. SIMPSON,
Commissioner.

Q. Have you examined those books?

A. Yes, I have looked over them. They are the day books of Mahnken & Moorhouse up to April 8, 1882, inclusive, and after that time they are the day books of C. Mahnken & Co. I am well acquainted with the books, and know them to be the books I have stated.

Cross-examined:

Q. Have you presented all the books of Mahnken & Moorhouse containing the account of Jeremiah A. Adams?

A. The account of J. E. Adams on the ledger? I think all the day books and ledgers containing the account of J. E. Adams are there.

Q. Does it contain all the cash books and blotters?

A. I think not, but if you want we will produce them. We have got them all.

Q. Does it contain all the day books and ledgers of C. Mahnken & Co. relating to Jeremiah E. Adams' account?

A. No, sir. The day books and ledgers contain all the business with the new firm of C. Mahnken & Co. with J. E. Adams, but books containing the business of the old firm of C. Mahnken & Co. with J. E. Adams we have not produced, for the simple reason that we did not think they would be required. But we have them.

EDWARD A. MAHNKEN.

Sworn to and subscribed to before me, this 17th day of March, 1884.

WILLIAM V. SIMPSON,
Commissioner for the State of New Jersey.

[Exhibit 13 for identification, Feby. 15, 1884, W. W. M., offered in evidence and marked Exhibit 22, on part of the defendant.]

WM. V. SIMPSON,
Commissioner.

[Counsel for defendant, Cord Mahnken, then offered in evidence the following checks, which were marked respectively:

Exhibit N 5, on part of defendant, Cord Mahnken.
Exhibit O 5, on part of defendant, Cord Mahnken.
Exhibit P 5, on part of defendant, Cord Mahnken.
Exhibit Q 5, on part of defendant, Cord Mahnken.
Exhibit R 5, on part of defendant, Cord Mahnken.
Exhibit S 5, on part of defendant, Cord Mahnken.
Exhibit T 5, on part of defendant, Cord Mahnken.
Exhibit U 5, on part of defendant, Cord Mahnken.
Exhibit V 5, on part of defendant, Cord Mahnken.
Exhibit W 5, on part of defendant, Cord Mahnken. 10
Exhibit X 5, on part of defendant, Cord Mahnken.
Exhibit Y 5, on part of defendant, Cord Mahnken.
Exhibit Z 5, on part of defendant, Cord Mahnken.
Exhibit A 6, on part of defendant, Cord Mahnken.
Exhibit B 6, on part of defendant, Cord Mahnken.]

W. V. Simpson,
Commissioner.

[The following books, which had been marked A5, B5, C5, D5, E5, F5, G5, H5, I5, J5, K5, L5, M5, C6, D6, E6, F6, G6, H6, I6, J6, K6, L6, M6, N6, O6, P6, Q6, 1 N Y, 2 20 N Y, for identification on the part of defendant, and one not marked but examined upon, were also offered in evidence by counsel for defendant, Cord Mankhen, and marked respectively as follows:

Exhibit A 5, on part of defendant, Cord Mahnken.
Exhibit B 5, on part of defendant, Cord Mahnken.
Exhibit C 5, on part of defendant, Cord Mahnken.
Exhibit D 5, on part of defendant, Cord Mahnken.
Exhibit E 5, on part of defendant, Cord Mahnken.
Exhibit F 5, on part of defendant, Cord Mahnken.
Exhibit G 5, on part of defendant, Cord Mahnken. 30
Exhibit H 5, on part of defendant, Cord Mahnken.
Exhibit I 5, on part of defendant, Cord Mahnken.
Exhibit J 5, on part of defendant, Cord Mahnken.
Exhibit K 5, on part of defendant, Cord Mahnken.
Exhibit L 5, on part of defendant, Cord Mahnken.
Exhibit M 5, on part of defendant, Cord Mahnken.
Exhibit C 6, on part of defendant, Cord Mahnken.
Exhibit D 6, on part of defendant, Cord Mahnken.
Exhibit E 6, on part of defendant, Cord Mahnken. 40
Exhibit F 6, on part of defendant, Cord Mahnken.
Exhibit G 6, on part of defendant, Cord Mahnken.
Exhibit H 6, on part of defendant, Cord Mahnken.
Exhibit I 6, on part of defendant, Cord Mahnken.
Exhibit J 6, on part of defendant, Cord Mahnken.
Exhibit K 6, on part of defendant, Cord Mahnken.

Exhibit L 6, on part of defendant, Cord Mahnken.
Exhibit M 6, on part of defendant, Cord Mahnken.
Exhibit N 6, on part of defendant, Cord Mahnken.
Exhibit O 6, on part of defendant, Cord Mahnken.
Exhibit P 6, on part of defendant, Cord Mahnken.
Exhibit Q 6, on part of defendant, Cord Mahnken.
Exhibit 1 N. Y., on part of defendant, Cord Mahnken.
Exhibit 2 N. Y., on part of defendant, Cord Mahnken.
Exhibit 3 N. Y., on part of defendant, Cord Mahnken.]

10 W. V. SIMPSON,
Commissioner.

[Counsel for complainant objects to the books of Mahnken & Moerhouse being offered in evidence unless all the books containing all the account of Jeremiah E. Adams be offered at the same time.]

W. V. SIMPSON,
Commissioner.

20 [Counsel for defendant says that he has offered all the books that relate in any way to this case.]

W. V. SIMPSON,
Commissioner.

[Counsel for complainant calls attention to the fact that the books of the old firm of C. Morehouse & Co. are not offered.]

W. V. SIMPSON,
Commissioner.

30 [Counsel for defendant states that his testimony is closed.]

W. V. SIMPSON,
Commissioner.

State of New York,
City and County of New York, } ss.

I, WILLIAM V. SIMPSON, a Commissioner of Deeds for the
40 State of New Jersey in New York, resident in the city of New York, do certify that having first taken an oath before O. P. Smith, a Notary Public in and for the City and County of New York duly authorized under the laws of the State of New York to administer oaths to be used therein, faithfully, fairly, and impartially to take the foregoing deposition, I did at one o'clock and forty-five minutes in the afternoon of the 14th day of

March, 1884, at 174 Duane streeet, in the City of New York, therein proceed to take such deposition, the said complainant and the defendant Cord Mahnken appearing by their respective attorneys; the said Henry Eggers, witness, was on that day, and Edward Mahnken, witness, was on the 17th day of March, 1884, produced before me, and being by me duly cautioned and sworn to testify the whole truth, deposed as is above set forth respectively; and the same having been by me reduced to writing, and the deposition of Henry Eggers having been read over by him, and that of Edward Mahnken having been read over to him, they signed their respective depositions before me, and I have closed the said depositions and directed the same to Messrs. Robbins & Hartshorne, counsellors at law, Freehold, New Jersey, with Exhibits N 5, O 5, P 5, Q 5, R 5, S 5, T 5, U 5, V 5, W 5, X 5, Y 5, Z 5, A 6, B 6. 10

And I further certify upon information and belief that the reason for the taking of the foregoing depositions is that the said witnesses reside out of the State of New Jersey, to-wit: in the State of New York.

In testimony whereof I have hereto set my hand and affixed my official seal at the City of New York, this 20th day of March, A. D. 1884. 20

[Seal.] WILLIAM V. SIMPSON,

A Commissioner for the State of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

JEREMIAH E. ADAMS, *Complainant*,

and

CORD MAHNKEN, et al.,

Defendants. 30

City and County of New York, ss:

WILLIAM V. SIMPSON, being duly sworn, deposes and says that he is a Commissioner in New York for the State of New Jersey, duly appointed by the Governor of said State of New Jersey and duly commissioned. 40

Deponent further says that he will faithfully, fairly and impartially take the deposition and testimony of the witness, Henry Eggers, in the above entitled action.

Deponent further says that his commission has not yet expired.

WILLIAM V. SIMPSON.

Sworn to before me this
14th day of March, 1884.

O. P. SMITH,
Notary Public 191, *N. Y. County.*

IN CHANCERY OF NEW JERSEY.

10 Between
JEREMIAH E. ADAMS, *Complainant,*
and
CORD MAHNKEN, et. als.,
Defendants.

May, 1, 1884.

Before HOLMES D. MURPHY, *Master and Examiner.*
Examination at Elizabeth.

20 J. ALWARD for Complainant; A. C. HARTSHOME for Defendants.

WITNESSES FOR COMPLAINANT:

T. STEWART BROWN, - - -	1	10
Re-direct, - - - - - -	16	
JEREMIAH E. ADAMS, - - -	17	17

T. STEWART BROWN, a witness produced on the part of the complainant, being duly sworn according to law, deposes and says: I reside in the city of Elizabeth in this State. I have 30 looked at Mahnken & Moorhouse's books. I have had access to the ledgers showing the accounts of J. E. Adams.

[Ledger Exhibit No. 12 for defendants shown witness.]

This ledger shows an indebtedness of the date of April 29, 1881, of nine hundred and fifty-two dollars and fifty-seven cents from Adams to Mahnken. The ledger is not balanced on the first of February, 1881. I have ascertained what Mr. Adams' indebtedness would be at that time from the ledger; it would be four hundred and eighty-seven dollars and fifty-seven cents. February 25 I find an item of merchandise fif- 40 teen dollars. March 30th two items—one of two hundred dollars and one of two hundred and fifty dollars.

[Here counsel for complainant calls for checks marked Exhibits 19 and 20 for defendants, and counsel for defendants

produces them, and counsel for complainant asks for the stubs from which they were taken, and counsel for defendant says he has been informed that they have looked for them and cannot find them. The dates of the checks are Exhibit number 19, is a check dated March 22, 1881, for $200; Exhibit number 20 is dated March 30, 1881, for $250.]

I found there were entries on the day book, Exhibit G 6, from defendants, page 365, an entry J. E. Adams Dr. to check No. 1,237, $200, and in same book, on page 366, J. E. Adams Dr. to check No. 1,286, $250. These are both entered under the date of March 30, 1881. I find a charge under date of April 18, 1881, of merchandise, $27.08, and on April 27th, 1881, merchandise $44.73. I have credit on April 23d of cash $27,08, and on April 29th cash $44.73. I next find on May 10th a charge of merchandise of $39.61, and I find on May 3d a credit of merchandise of $1.85, and on May 10th cash $38.66. I also find on the books the following charges and credits: On May 21, 1881, a charge of merchandise of $28.91, and a credit on June 1st of $28.91. On June 1, 1881, a debit of $33.24, and on June 3 a credit of cash of $33.24. On November 25th a charge of $17.18, and on November 28th credit by cash $27.08. On November 29th a a debit of $9.25, and on November 29th a credit of $4.85, and December 2d $4.40, amounting to $9.25. On December 2d a charge to merchandise of $12.53, and on December 7th a credit by cash of $12.53. On December 30th debit to merchandise $50.79, and a credit of January 12, 1882 of $50.79.

Ledger Exhibit 13 for defendants shown witness, on page 631, I find entries as follows: On April 19, 1882, to merchandise, $56.91, and on May 1st a credit by cash of $56.91. On May 2d a debit $58,36, and on May 8th a credit of cash $58.36. On May 8th a debit of $21.40, and of May 12th a credit by cash of $21.40. On May 12th a debit of $31.33, and credits May 9th merchandise $1.75. May 17th merchandise $2.00, and May 19th cash $27.58. On May 16th debit merchandise $41.08, and debt May 17th merchandise $7.50, and May 19th merchandise $56.55, and May 25th $30.33. These four items amount to $135.46. On May 25th there is a credit of merchandise of $3.36, and June 2d cash $132.10, with two items, one an offset to the other four. On June 2d a debit of $51.07 and on June 12th credit by cash $51.07. On June 12th a debit of $70.29, and on June 13th a debit of $31.29—total of the two $101.58; and on July 7th a credit by cash of $101.58. On June 28th a debit of $62.13, and on July 26th a credit by cash of $62.13. On July 7th a debit of $98.68,

and a credit on July 21st by cash $98.68. On August 12th there is a charge for check and protest of $109.64, and on August 14th by cash $55 05, and on August 17th by cash $54.59, making $109.64.

[Ledger Exhibit No. 12 for defendants again shown witness.]

I paid on this date of May 26th, 1881, a charge for check and protest of $76.38, and on June 11th a charge of check and
10 protest, $77.54; on August 16th there is a charge of merchandise of $69.87. Against this there are open credits:

May 19th, merchandise - - -	$ 1.00
August 16th, cash - - - - -	50.00
September 16th, merchandise - - -	1.65
September 21st, " - - - -	1.00
September 21st, " - - -	1.00
November 10th, " - - -	60
Amounting to - - - -	$55.25

20 making an unpaid balance of August 16th item of $14.62.

In ledger Exhibit 13th for defendant, page 631, I paid under date of July 15, 1882, a charge of $16.20, and on July 21 a charge of merchandise $66.24, and August 3d for check and protest, $63.54. There is an open credit under date of August 4, 1882, of $107.94.

These are the only open items on the ledger since March 30th, 1881.

The last items objected to on the books are the best evidence. Answer admitted. Appealed May 1, 1884.]

30 H. W. MURPHY,
Master.

Q. How often are Mr. Adams' accounts balanced on the ledger?

[Question objected to by by defendants' counsel on the ground that the books are the best evidence.]

[Answer admitted.]

40 [Appeal, May 1, 1884.]

H. W. MURPHY,
Master.

The account of Mr. Adams commenced on April 13, 1872, which is apparently a balance brought from a former ledger, and is continued without a balance being struck till December

31, 1872, and again at the close of 1873—December 31, 1874, and again at the close of 1873—December 31, 1874.

I find on page 9 of Exhibit No. 10 for defendants, a balance is brought down under date of July 30th, and immediately after the balance is brought down there is a charge and credit July 27th. The next balance appears at the close of the year 1875, and the next balance at the close of the year 1876; the next balance is at the close of 1877, and at April 30th, 1878, the balance is carried to a new ledger, and it appears on page 122 of Exhibit No. 11 for defendants on the date of May 1, 1878, and a balance is not struck again until May 1, 1879, and the account is apparently closed on page 244. The date of the last charge in that page is April 29, 1880 The date of the last credit on that page is April 27, 1880; that credit is a note for $964.14. The credit next preceding is dated June 10, 1880, for $90.02. I find a charge of April 27th of $90.02 for merchandise. I find a credit here of May 25th of cash $88.25, and on May 6th of $72.75. I also see an entry which has been made under date of May 6th, by cash $25, which has been erased by a pen being through it. I also see on the debit side an entry on the date of May 6th for $25, which also has an ink pen mark run through it. I do not know whether it is a pen or pencil mark. This debit entry has a memorandum transferred to note.

On page 244 of the ledger I see a memorandum written in pencil as follows: "April 27th, 1880. Demand note given to bal. acct. to March 1, '80, $964.14. Future acct. not to exceed $300, bills to be paid promptly when due (30 days), and $50 or more to be paid monthly on acct. of note."

As to the note $964.14, the reference is to day book 3, page 711. This is Exhibit M 5 for defendant in page headed July 29, 1880; it is entered on that date.

The next account appears on page 145 of Exhibit No. 12 for defendant as an account freshly started; no balance brought forward; the first entry and date of May 6, 1880. There are eleven charges from May 6, 1880, to and including July 28, 1880, and seven credits between May 24th and July 28th, 1880, both inclusive.

The next balance appears at the end of April, 1881, brought down on May 1. The next balance is on April 1, 1882, to new ledger, and appears on page 631 of Exhibit 13 for defendant. I find a $2,000 mortgage, credited on page 9 of Exhibit 10 for defendant. That credit as appears on the ledger is January 15, 1875.

Q. Have you ascertained how much was due on the ledger January 15, 1875?

[Objected to by defendants' counsel, as the books of Mahnken & Moorehouse are the best evidence.

[Admitted.] Appeal. May 1, 1884.

H. W. MURPHY, Master.

A. The amount that appears due on the ledger January 15, 1875, is $2,548.58.

In November, 1874, I do not find any credits on the leager, nor do I find any credits of cash in December, nor do I find any credits for cash in January, 1875. There were charges during that period.

Under date of May 26, 1881, there is a charge for protested check of $76.38, and on June 11th there is a charge for protested check of $74.54. I find no entry where a check has has been credited to Mr. Adams that would be an offset to either of these charges. I have no knowledge of where these charges came from. There is a charge on August 30, 1880, of a cheek and protest of $101.61. I do not find any credit to Mr. Adams in that case. Those two items are in the shape that no credit has been given.

[The counsel for the defendant, Cord Mahnken, objects to the whole of the testimony of the witness as illegal, irrelevant and immaterial, and asks that it be stricken out.]

[Admitted.] Master refuses to strike out the testimony.

[Appeal.] May 1, 1884. H. W. MURPHY, Master.

[Counsel for defendants says that he cross-examines that witness, but he does not waive his rights under the appeal by going on.]

Cross-examined:

Q. Can you swear that Mr. Adams has not had value received for the items of the protested checks of $76.38, $77.54 and $101.61, which he gave to Mahnken & Moorhouse, of which you have just testified?

A. I cannot swear that he has not had value received, nor have I said that he has not.

Q. You have testified as to certain charges after March 30, 1881, which have been paid by credits of the same amount, did you not find the same kind of entries in going over the books in J. E. Adams' account previous to that time?

A. I have in a few instances—the majority of credits being apparently amounts paid on account.

Q. Is it not a common custom with country merchants in dealing with city merchants, where they have running ac-

counts, to have invoices sent them of each purchase, and to send check for the invoices as sent, although they may owe for subsequent bills purchased?

A. My experience has been that where bills are due or over due, remittances would be made for the amounts that are due, purchases which are not due remaining until maturity.

Q. As a general thing remittances would be made for the amount of invoices sent except where part of the goods were returned, and then for that much less, would they not?

A. Every man has his custom. One person will remit for exact amount of bills as they come due, where another would make payments on account. 10

Q. Where goods are sold on time, is it not the general custom to remit the amount of the bills as they fall due or soon thereafter?

[Objected to by complainant's counsel as not a proper cross-examination.]

[Admitted.] 20

[Appeal.] May 1, 1884. H. W. Murphy, Master.

A. As I have said before custom differs as to payment of their bills and accounts by different men. As to this account as the credits are mostly in even sums of $100 and $150, $200 and $250, the custom appears to have been for Mr. Adams to pay, and Mahnken & Moorhouse to accept payments on account.

Q. Does that appear by the books to have been Adams' custom after he gave the note, Exhibit N 5, for $964.14? 30

A. I can answer yes or no to that both. A number of items after May 6th, 1880, appear to have been paid at the exact amount which covered purchases as far as July 9th; purchases of July 15th and afterwards seem to be paid by check, on September 10th, by cash, $100; October 6th, $200; these are payments on account apparently.

Exhibit M 5, page 711, shown witness. (Pointing to entry) this is an entry of a credit given for the note Exhibit No. 5 for defendant. It reads "J. E. Adams & Co., by note April 27, '80, on demand to close old acct., $964.14." 40

Exhibit No. 11 for defendant, page 244, shown witness. Says that contains J. E. Adams' account as far as I know; it was shown to me by Mr. Mahnken to do so, and is balanced by note Exhibit No. 5 for $964.14, but the footing under the $964.14, which reads $3,190.94, includes the $25 as entered May 6th, and which is cancelled by the pen mark. The debit side of the account is the same way, the same figures; the true footings of

both the debit and credit sides would be without the $25 on each side $3,165.94.

Q. In looking at the pencil memorandum at the head of this account where it says April 27, '80, demand note given to bal. acct. to March 1, '80, $964.14, you would say from your examination of the books that the date March 1, '80, is incorrect?

[Objected to by complainant's counsel as his opinion and as not asked in direct examination. Admitted.]

A. Not necessarily.

10 Q. Please look at this account and see if the balance of March 1, 1880, is $964.14?

A. The balance of $964.14 as of March 1st, does not appear on that ledger, but the Dr. and Cr. columns of the ledger are footed in pencil between the lines, which appears to have been done for the purpose of finding the amount of balance of the account at that time.

Q. Does it show a balance of $964.14 at that time?

A. It does.

Q. Now from March 1, 1880, until this account on page 244 20 is closed, all the goods purchased have been paid for and balanced, have they not, as it appears on this paper?

A. The items that have been charged and placed to the debit of J. E. Adams' account on this page have been closed by sundry credit entries of cash and this note.

Q. As appears by this book and this page 244, the true balance on March 1, 1880, was $964.14, was it not?

A. My examination of the account of J. E. Adams in this book makes a balance to appear against him in March 1, 1880, of $964.14, as in these ledgers.

30 Q. On July 26, 1880, when the credit was made of the note of $964.14 on page 711 of day book Exhibit M 5, had not the account of J. E. Adams been transferred by Mahnken & Moorhouse to a new ledger from Exhibit No. 11, where his account is balanced by the note?

A. The account of J. E. Adams is started afresh in the new ledger, and the account is not transferred from the old ledger at all. An account is opened about May 1st of that year.

Q. Do not the words on said page 711, by note April 27, '80, on demand to close old account, $964.14, refer to the old 40 account in ledger No. 11?

[Objected to by complainant's counsel as not a proper cross-examination. Admitted.]

A. It certainly is posted to that old account by the reference on the margin showing to where it is carried, but at the time that July entry was made that account did not amount to $964.14.

Q. You have given these books a thorough examination?
A. As to this account pretty fair. I was at the store of C. Mahnken & Co. and examined them.

Re-direct:

On page 244 of Exhibit No. 11 is a ledger credit which comes from entry made in day book Exhibit C 6, page 418, under date of May 6, 188 , under heading cash to sundries, among other entries I find J. E. Adams on acct. $25.

10

Sworn and subscribed to before me this 1st day of May, 1884.

T. STEWART BROWN.

HOLMES W. MURPHY,
Master in Chancery of New Jersey.

JEREMIAH T. ADAMS, recalled for complainant:

20

Q. Did you ever hear Mr. Stephen Moorhouse say in the presence of Mr. Jansen that he had received the Washington order or additional security?
A. No, sir.
Q. While you were trading with Mahnken & Moorhouse or with C. Mahnken & Co., did you ever hear any one say that?
A. No, sir.
Q. Cord Mahnken, in his direct testimony says that he called on you at Elizabethport and said to you I am very much in want of money, and if you will raise the money which you owe me I will give up all the mortgage and everything, and take off ten per cent., and make you a present of it. Did he say that to you?

30

A. Nothing of the kind.
Q. At that time did you promise to pay Cord Mahnken any money?
A. No, sir.

Cross-examined:

Q. Was Cord Mahnken ever out to Elizabethport to see you?

40

A. Yes, sir.
Q After the date of Mahnken & Moorhouse receiving the order for $5,500?
A. I believe he was.
Q. Was not your business between Mahnken & Moorhouse and yourself talked over between you at that time?

[Objected to by complainant's counsel as not a proper cross-examination. Admitted. Appeal May 1, 1884.]

H. W. MURPHY, *Master.*

[The counsel for complainant tells the witness not to answer the question.]

[Question repeated. Counsel says that the witness declines
10 to answer under advice of his counsel.]

Q. Has Cord Mahnken been out to see you more than once about some account with Mahnken & Moorhouse?

[Complainant's counsel objects to this question because the date is not stated, and as not a proper cross-examination. Admitted. Appeal May 1, 1884.]

20 H. W. MURPHY, *Master.*

[Counsel instructs witness not to answer.]

Q. Had Cord Mahnken been to Elizabethport to see you more than once since the giving of the $5,500 order?
A. No, sir.
Q. At the time he was there did you meet him at a beer saloon or drinking place?

30 [Objected to by complainant's counsel as not a proper cross-examination. Admitted. Appeal May 1, 1884.]

H. W. MURPHY, *Master.*

[The complainant, the witness, instructed by complainant's counsel not to answer.]

J. E. ADAMS.

Sworn and subscribed before
40 me this 1st day of May, 1884.

HOLMES W. MURPHY,
Master in Chancery of New Jersey.

Complainant's counsel rests.

Defendant's counsel rests.

[The witness and complainant, Jeremiah E. Adams, by his counsel tendered himself willing and ready to answer the above questions and submit to further cross-examination.]

[The counsel for the defendant Cord Mahnken waived further cross-examination.]

H. W. MURPHY,
Master in Chancery.

10

EXHIBITS OF DEFENDANTS.

NEW YORK, July 22d, 1882.

MR. J. E. ADAMS,

To C. MAHNKEN AND CO, *Dr.*

20

1875.			
Jan'y 15.	To Mortgage, - -	2,000 00	
	" Interest on same to date,	912 34	
1878.			
Aug. 15.	" Mortgage, - -	1,500 00	
	" Interest on same to date,	354 25	
1880.			
Ap'l 27.	" Note on demand, -	964 14	
	" Interest on same to date,	123 12	
1882.			
July 22.	" Statement annexed Ap'l 1880 and 1881, -	1,121 11	
	" Interest on same to date,	98 70	
			7,073 66

30

Cr.

1880.			
May 6.	By cash paid on note, -	25 00	
June 11.	" " " " " -	25 00	
			50 00
			$7,023 66

40

Less Interest paid on 2,000 Mtge. to Jan'y 15, '80, - -	600 00	
Less Interest paid on 1,500 Mtge, to Aug. 15, '79, -	90 00	690 00
		6,333 66

25

145

STATEMENT.

NEW YORK, July 22d, 1882.

Mr. J. E. Adams, Elizabethport, N. J.

To C. MAHNKEN & Co., *Dr.*

Wholesale Grocers,

10 Terms Cash. 174 Duane Street.

1880.				
Aug.	18.	To Mdse., - - -	100 80	
Sept.	10.	" - - - -	47 04	
	13.	" - - -	30 07	
	24.	" - - - -	45 86	
Oct.	6.	" - - -	147 48	
	15.	" - - - -	106 12	
	22.	" - - -	2 20	
20	28.	" - - - -	8 00	
1881.				
Feb'y	25.	" - - -	15 00	
Mach.	30.	Cash, - -	200 00	
	30.	" - -	250 00	
May	26.	Ck & Prot., -	76 38	
June	11.	" -	77 54	
Aug.	16.	Mdse., - -	69 87	
				1,176 36

30 *Cr.*

1881.				
May	19.	By Mdse., - - -	1 00	
Aug.	16.	Cash, - - -	50 00	
Sept.	16.	Mdse., - - -	1 65	
	21.	" - - -	1 00	
	21.	" - - -	1 00	
Nov.	10.	" - - -	60	
				55 25
				1,121 11

40 Please compare Bills with Statement, and report all errors to our Office.

Exhibit 13, for identification.
Feb. 15, '84. H. W. M.

Exhibit 22, on part of defendant, Cord Mahnken.

IN CHANCERY OF NEW JERSEY.

Between
JEREMIAH E. ADAMS, *Complainant*,
and
CORD MAHNKEN, et. al.,
Defendants.

10

March 17, 1884.

WM. V. SIMPSON,
N. J. Com'r.

(Copy Exhibit No. 15, for defendant.)

Statement of Jeremiah E. Adams.

20

Bond and mortgage given to Mahnken & Moorhouse, dated Aug. 16th, 1872, for the sum of - - -	$2,500 00
Interest to Jan. 24, '73, - - - - - -	77 19
	2,577 19
Cr. Jan. 24, '73, - - - - - - -	1,000 00
	1,577 19
Interest to Sept. 5, '73, - - - - -	68 69
	1,645 88
Cr. Sept. 5, '73, - - - - - - -	500 00
	1,145 88
Interest to Oct. 31, '74, - - - - -	92 69
	1,238 57
Cr. Oct. 31, '74, - - - - - - -	150 00
	1,088 57
Interest to Nov. 6, '74, - - - - -	1 27
	1,089 84
Cr. Nov. 6, '74, - - - - - - -	151 20
	938 64
Interest to Nov. 14, '74, - - - - -	1 46

30

40

	940 10
Cr. Nov. 14, '74, - - - -	150 90
	789 20
Interest to Nov. 21, '74, - - - -	1 07
	790 27
Cr. Nov. 21, '74, - - - - -	151 11
	639 16
Interest to Dec. 5, '74, - - - -	1 74
	640 90
Cr. Dec. 5, '74, - - - - - -	151 52
	489 30
Interest to Dec. 16, '74, - - - -	1 05
	490 43
Cr. Dec. 16, '74, - - - - -	151 72
Amount forwarded, - - - - -	338 71
Interest to Dec. 19, '74, - - - -	20
	338 91
Cr. Dec. 19, '74, - - - - -	83 40
	255 51
Interest to Dec. 25, '74, - - - -	29
	255 80
Cr. Dec. 25, '74, - - - - -	100 00
	155 80
Interest to Jan. 9, '75, - - - -	45
	156 25
Cr. Jan. 9, '75, - - - . -	153 13
	$3 12

(Copy Exhibit No. 21, for defendant.)

Washington, District of Columbia, $5,500$\frac{00}{100}$.

Accepted, March 19, 1881.

ALLEN C. CLARK.

WASHINGTON, March 19, 1881.

Sir :—

After deducting your fees and incidental expenses in the prosecution of my claims against the District of Columbia before the United States Court of Claims, and also the amount of eleven hundred dollars in acceptance now out, please pay to the order of Messrs. Mahnken & Moorhouse of New York City five thousand five hundred dollars out of any money that may be awarded me by said Court of Claims in my suits now pending against said District of Columbia in said Court, value received, and charge the same to the account of

Yours Respectfully,

WM. H. ADAMS.

To ALLEN C. CLARK, ESQ.,
Attorney-at-Law,
220 4½ Street,
Washington, D. C.