MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals.

Between
Henry D. Phillips,
Appellant,
and
John A. Montgomery, Receiver,
Respondent.

On Appeal.

Brief of Respondent.

The appellant converted to his own use the goods and chattels of the Capital Cracker Company under color of a chattel mortgage, which was afterward declared null and void. *Montgomery* v. *Phillips*, *8 Dick. p.* 203. By the decree declaring the said mortgage void, the matter was referred to a Master to ascertain and report the value of said goods and chattels. He reported the value to be $2,030.76 (p. 7). To this report the appellant excepted; the exceptions were overruled and a decree was entered ordering the appellant to pay said amount with interest, in all $2,411.86.

It is not denied but that the Master's valuations speak the true market value of the goods; they were based on the undisputed evidence of the respondent's witnesses

who were fully qualified to estimate the values. But the appellant claims that because the goods were converted by him under color of right and sold at public auction, and because the same method of disposition would have been pursued by the respondent had they come to his possession, the measure of damage is the amount for which the goods sold at public auction. Our answer is—

POINT I.

The appellant was a trespasser *ab initio;* that he acted under color of authority and in good faith is of no consequence.

Sutherland on Damages 483, 484.

West Jersey R. R. v. *Trenton Car Works, 3 Vr., 517.*

POINT II.

The measure of damage in case of an illegal conversion is the fair market value of the goods.

Sedgwick on Damages, 492.

Sutherland on Damages, 488.

Thompson v. *Thompson, Coxe 159.*

Wooley v. *Carter, 3 Hal. 85.*

Hoppel v. *Higbee, 3 Zab. 342.*

Outcalt v. *Durling, 1 Dutch. 443.*

Mellick v. *Voorhees, 9 C. E. G. 305, 10 C. E. G. 523.*

POINT III.

The measure of damage, or the amount for which the appellant must account, was adjudged by the decree to be "the value of the goods and chattels."

Decree-Book, p. 2, l. 20.

POINT IV.

The trespasser's auction price is not to be taken as the measure of damage (*Lockley* v. *Pye, 8 M. & W. 133;*

Ward v. *Benson*, *31 How. Pr. 411*), under circumstances like those in this case it has been held to be some evidence of value.

Sutherland on Damages 493.
Whitehouse v. *Atkinson*, *3 C. and P. 344.*
Campbell v. *Woodworth*, *20 N. Y. 499.*
Gill v. *McNamee*, *42 N. Y. 44.*
Herrmueller v. *Abbott*, *34 N. Y. Sup. 230.*
Dixon v. *Buck*, *42 Barb. 74.*

And there are cases similar to this one in which the trespasser was obliged to pay only the amount recovered at public auction; but it will be found that the tort was waived, and the action brought to recover for money had and received.

Smith v. *Baker*, *L. R. 8 C. P. 350.*

Or, as in the case of *Bird* v. *Davis*, *1 McCarter 467*, cited by the Vice Chancellor as in point, in which the lien was valid, and the complainant regarded as consenting to the sale.

POINT V.

The public sale was not fairly conducted; the highest prices obtainable were not obtained.

See Auctioneer Brennan's testimony, pp. 18–24.

POINT VI.

Some of the articles were not sold at public sale.

Phillips' testimony, p. 77.

We submit that according to the directions of the decree, and under the evidence and the law, the Master could not have reported otherwise than appears, and we submit that the decree below should be affirmed.

JOHN H. BACKES,
Counsel for Respondent.

MacCrellish & Quigley, Printers, Trenton, N. J.

NEW JERSEY

Court of Errors and Appeals.

Between
HENRY D. PHILLIPS,
Appellant,
and
JOHN A. MONTGOMERY, RECEIVER, &c.,
Respondent.
On Appeal.

Points by W. M. Lanning, for Appellant.

On March 5th, 1892, Henry D. Phillips, the appellant, loaned $650 in cash to the Capital Cracker Company. Prior to May 9th, 1892, he had also become liable as accommodation endorser upon a promissory note of $4,000, discounted by the First National Bank of Trenton, for the benefit of the Capital Cracker Company. On May 9th, 1892, a chattel mortgage was given to Phillips by the Capital Cracker Company to secure the loan and to indemnify him against any loss by reason of his accommodation endorsement of the note. The mortgage was proven and sworn to on May 10th, 1892, and recorded in the county clerk's office on May 11th, 1892.

Subsequently a bill of complaint was filed in this

Court by Mahlon R. Margerum and Samuel W. Margerum, partners, &c., against the Capital Cracker Company, declaring the company to be insolvent, and praying for the appointment of a Receiver, and on June 7th, 1892, John A. Montgomery, the respondent, was appointed Receiver.

On July 5th, 1892, the Receiver filed his bill in this cause, alleging that the chattel mortgage was void as against creditors. The cause was heard on pleadings and proofs and the Court of Chancery, being satisfied by the proofs that the mortgage secured an honest debt due to Phillips from the company, sustained it and decreed that the bill of complaint should be dismissed. On appeal to this court the decree of the Court of Chancery was reversed, but not until after two arguments, and not even then because of any actual fraud in the execution of the mortgage.

The mortgage had been taken by Phillips, who was a director of the company, believing that he had a right to such preference under the doctrine in *Wilkinson* v. *Bauerle, 14 Stewart 635*, and *Vail* v. *Jameson, 14 Stewart 648*. In those cases it was held that an insolvent corporation might prefer its creditors to the same extent that an insolvent individual might do. But, after two arguments in this court, it was decided that the case now in hand should be distinguished from *Wilkinson* v. *Bauerle*, and that a principle, never before intimated by any decision in this State, should be adopted, viz.: that where an insolvent corporation executes a mortgage to one of its directors to secure a precedent debt, the mortgage should be void as against other creditors.

It is well known that a large number of corporations throughout the State of New Jersey have regarded the two cases above cited, which were decided in 1886, as establishing the validity of any mortgage or security that might be given by a failing corporation to any of its creditors, whether those creditors were officers of the corporation or not. Although the bill filed in this cause, and the testimony of the Receiver's witnesses taken in the cause abound with charges of fraud on the

part of Phillips, but neither the Court of Chancery nor this Court found any actual fraud. *See Montgomery* v. *Phillips, 31 Atl. Rep. 622.* And it was not until after two arguments here that this Court determined to lay down a rule, which at least the bar considers a modification of the rule stated in *Wilkinson* v. *Bauerle* and *Vail* v. *Jameson.* It will be observed, therefore, that the case is one in which Phillips can not be charged with bad faith. He acted in taking the mortgage as scores of other directors of corporations have done. He acted on May 9, 1892, as any well-informed lawyer would then have advised him to do.

By the Decree of Reference it is ordered (see Paper Book, page 2) "that the defendant, Henry D. Phillips, account for the value of the goods, chattels and personal property of the Capital Cracker Company by him appropriated and sold under and by virtue of the said deed of mortgage, bearing date on the ninth day of May, eighteen hundred and ninety-two." He appeared before the Master, as required by the Order of Reference, and made such accounting. He accounted for every cent received, producing a written statement, *Exhibit 2*, showing a complete account. See his testimony on page 9, and *Exhtbit 2*, pasted in the end of the Paper Book. But the Master charged Phillips a much larger sum than he received.

Phillips does not stand in the situation of a mortgagee who has seized and sold goods and chattels before default made in his mortgage, nor in the situation of one who has seized and sold goods and chattels under a writ of execution which are not the property of the defendant in execution.

Nor does the Receiver in this cause stand in the position of a person whose individual property has been unlawfully siezed and sold, but of an officer of the court whose duty it is to turn into money the assets of the insolvent corporation, and divide the proceeds amongst the creditors of that corporation. Had the receiver come into possession of the goods and chattels which Phillips sold, he would have disposed of them, without

doubt, in the same manner as Phillips disposed of them, that is, by public sale, duly advertised. The sale conducted by Phillips was duly advertised and fairly conducted. Indeed, his efforts to obtain the best prices possible for the goods sold appear by the proofs to have been extraordinary. It seems to me quite clear from the testimony that the Receiver could not possibly have done better.

I submit (1) that the sale was thoroughly advertised; (2) that it was fairly conducted; (3) that the goods and chattels were fairly sold for the best prices that could be obtained, and (4) that the exceptions on pages 172 and 173 of the Paper Book ought therefore to have been sustained by the Court of Chancery.

1. The sale was thoroughly advertised.

Printed posters, thoroughly descriptive of the property to be sold, were scattered around the city of Trenton and sent to other cities to the amount of several hundred. They were mailed to every grocer in Trenton, to the customers of the Capital Cracker Company, to manufacturers and dealers in Trenton, Camden, Philadelphia, Somerville, Lambertville, New Brunswick, Newark, Jersey City and Brooklyn. Besides that, they were delivered by the driver of the sales-wagon to all the grocers in Trenton, and were posted in conspicuous places in Trenton. (See Phillips' testimony, pages 74, 75; Blackwell's testimony, bottom of page 118, and Green's testimony, page 41.) This testimony is not disputed, nor has any attempt been made in anywise to refute it. It stands as an uncontradicted fact in the case.

2. The sale was fairly conducted.

It is true that the Receiver made an effort to show that the sale was conducted with undue haste, but upon reading all the testimony bearing upon the subject it is submitted that the weight of testimony clearly shows that there was no undue haste. This is proven by the Receiver's own witness, Robert Green, on pages 42 and

43; also, by Charles Mather, on page 120; by Holmes S. Green, on page 135, and by Phillips, on page 75. And the testimony of Mr. Branin himself, who was the auctioneer and the main witness for the Receiver, on this point shows, on pages 22 and 23, that there was no undue haste in the management of the sale, and that there was a crowd of fifty to seventy-five people attending the sale. Other portions of the testimony show that people were present at the sale from various portions of the State, as well as from the city of Trenton.

Mr. Branin further testifies, on page 23, that he did not sell a single article to Phillips. Phillips was interested only in getting as much as possible for the goods offered for sale. Mr. Strohecker, a witness for the Receiver, refused to say that the sale was conducted with undue haste. See page 30. Mr. Sheridan, on page 156, testified that there was no extra haste.

Upon this testimony, I submit that the Receiver has utterly failed to show that the sale was not conducted in a proper manner.

3. The goods were sold for the best prices that could be obtained.

If Phillips had not so thoroughly advertised the sale, if he had not employed a competent auctioneer who had had an experience in that business of fourteen years (see page 18), and if he had bought any of the goods himself, there might possibly be some ground for charging bad faith on his part. But, as we have seen, the sale was thoroughly advertised, a competent auctioneer was employed, Phillips purchased nothing at the sale, and there was a good crowd of bidders present. And there were competitive bids upon the articles offered. The auctioneer himself declared that he could not take a single bid. See Maher's testimony, bottom of page 52.

4. The exceptions on pages 172 and 173 of the Printed Case should have been sustained by the Court of Chancery.

The items contained in the first exception were sold for the lesser sums named in that exception, and such

sums were accounted for by Phillips, as appears by *Exhibit 2*, at the end of the printed case. The Master to whom the accounting was referred, however, charged Phillips with the larger sums named in the exception, and the Court of Chancery sustained the Master's findings.

The proceeding against Phillips for an accounting is not by a person whose individual property has been unlawfully seized and sold, but by the receiver of an insolvent corporation. It is submitted that the receiver can recover from Phillips nothing more than the receiver would himself have been able to realize had he come into possession of the property and himself sold it. Had he come into possession of the property he would, doubtless, have sold it at public sale, as receivers and assignees generally do, to the highest bidders. A sale conducted by the receiver in the manner in which Phillips conducted his sale would certainly not render the receiver accountable to creditors for his failure to realize more than the goods would bring at public sale.

In *Whitehouse* v. *Atkinson, 3 Carrington & Payne 344*, it appears that goods which should have gone to the plaintiff, as assignee of a bankrupt, were seized and sold by the defendant, a sheriff, and one of the questions considered was the measure of damages which should be applied to the case in a suit by the plaintiff, as assignee, against the defendant, as sheriff. Lord Tenterden said: "With respect to the damages, a plaintiff is not bound by the sum at which goods have been sold at auction; but where the plaintiff is an assignee, who must have sold the goods if they had come to his hands before any sale by the sheriff, it often happens that a jury considers the sum at which the goods were actually sold at auction as a fair measure of damages."

It is submitted that, in the case now in hand, the price at which the goods were sold by Phillips at the public sale hereinbefore referred to, so fairly and so wisely conducted, should be the measure of damages against Phillips. He ought not to be held accountable

for a sum in excess of what the goods brought at the public sale. It is further submitted that, upon the testimony in the case, the Master and the Court of Chancery have erred in charging Phillips with more than he obtained for the goods at public sale. I below refer to the principal parts of the testimony relating to the items mentioned in the exceptions.

The first four items in the first exception are:

1 barrel of molasses, charged at $15.00, but sold for $5.50;

1 barrel of sugar, charged at $15.00, but sold for $5.00;

Ginger, charged at $1.20, but sold for 50 cents;

Lard, 412 pounds, charged at $33.36, but sold for $16.18.

The only testimony relating to these four items is Strohecker's testimony, on page 32, as follows:

"*Q.* What was a barrel of molasses worth at that time?

"*A.* I should judge about $15.00, *if it was full.*

"*Q.* What is a barrel of sugar worth?

"*A.* About the same amount.

"*Q.* What was the ginger worth?

"*A.* About twelve cents a pound.

"*Q.* What was lard worth a pound?

"*A.* I can't recollect what lard was worth at that time. Last year it was very high; this year it is more reasonable; previous to that I think it was nine cents."

The fifth item is—

Thirty-five pounds twine, charged at $4.20, but sold for $2.45.

The only testimony relating to this item is that of Strohecker, on page 32, as follows:

"*Q.* What is twine worth?

"*A.* I don't know."

And the testimony of Fisher, on page 148, who bought the twine in question, and who testified as follows:

"*Q.* What do you have to pay for twine?

"*A.* We generally pay twelve to fourteen cents a pound.

"*Q.* Is that the ordinary thin twine that you buy for packages?

"*A.* Yes.

"*Q.* Did you buy some twine at the Capital Cracker Company?

"*A.* Yes; a little.

"*Q.* What did you do with that?

"*A.* Sold it to my son.

"*Q.* Was that the same kind they had in the store?

"*A.* No; a little better.

"*Q.* How much was that worth?

"*A.* I bought and sold it for the same price to them.

"*Q.* You say you don't know what it was worth?

"*A.* I don't remember what I gave for it.

"*Q.* How much a pound do you think it was worth?

"*A.* Ten or eleven."

The sixth and seventh items are:

Paper, charged at $30.80, but sold for $15.40;

Paper, charged at $9.18 but sold for $2.70.

The only testimony relating to these items is as follows, being the testimony of Baumgartner, on page 48:

"*Q.* Did you purchase anything there, Mr. Baumgartner?

"*A.* I purchased some wrapping paper.

"*Q.* You paid three and a quarter cents a pound?

"*A.* Yes, for some, and five cents a pound for others.

"*Q.* State whether or not that was a fair value?

"*A.* The one I paid five cents for, while I was treasurer we paid seventeen cents, and the one I paid three cents for I think seven cents a pound."

The eighth and ninth items are:

10 cake pans, charged at $5 but sold for 50 cents.

Empty flour barrels, charged at $10.20 but sold for $2.30.

The testimony relating to these items is on page 33, where Strohecker, who bought these articles, testified as follows:

"*Q.* Ten cake pans that you purchased?

"*A.* Well, they are worth fifty cents a piece.

"*Q.* Empty flour barrels; what are they worth?
"*A.* As a rule, twenty cents.

The tenth item is:

Empty sugar barrels, charged at $4.40, but sold for $1.54.

I do not find any testimony relating to this item except that of Blackwell on page 154, as follows:

"*Q.* Can you recall what articles you saw sold that day?
"*A.* No, sir; some few barrels.
"*Q.* What, were they empty?
"*A.* Yes, sir."

The thirteenth item is:

Pans, charged at $21.30, but sold for $3.55.

I do not find any testimony relating to these pans. It is certain that they were not the bread pans or the cracker pans embraced in the fifteenth and sixteenth items, and the only testimony relating to pans is that of Strohecker, on page 33, which is confined exclusively to bread pans and cracker pans.

The fourteenth item is:

Cracker machine, charged at $400, but sold for $170.

I will refer to the testimony concerning this item without quoting it here. The testimony of Geary, the Receiver's witness, on page 27, was that he judged the cracker machine to be worth about $200. On pages 31 and 32 Strohecker, the Receiver's witness, says that he thinks it cost, when new, about $600, and that he should say is was worth $400. He admits, on page 36, that it was sold fairly to the highest bidder, and that he and several other persons bid on it. Baumgartner, the Receiver's witness, who was treasurer of the Capital Cracker Company at the time the cracker machine was purchased says, on the top of page 49, that he thinks the company paid $375 for the machine, and that it was not worth as much when it was sold by Phillips as when the company purchased it. Bauer, who was a baker for the company, and

not an officer or manager, and who does not show the source of his information, says, on page 57, that $600 was paid for the machine. Phillips, on pages 76, 77 and 78, shows the efforts that were made to obtain the best prices for all of the machinery, as well as for the other goods sold, and states that $170.00, the price at which the cracker machine was sold, was the highest and best price that could be obtained; and that it was stated at the public sale that the highest bids for all the machinery offered would be held for a day or two before being accepted, and that in the meantime he sought to obtain better prices for the machinery, and that he succeeded in so doing with a part of the machinery, though not with the cracker machine.

The fifteenth and sixteenth items are:

98 cracker pans, charged at $29.40 but sold for $14.70;

34 bread pans, charged at $10.20 but sold for $3.91.

The only testimony relating to these items is on page 33, where Strohecker, the Receiver's witness, who purchased the bread pans, fixes their value at thirty cents apiece.

The nineteenth item is:

320 empty boxes, charged at $32.00, but sold for $8.80.

The only testimony relating to this item is that of Strohecker on page 34, where he admits that he bought the boxes and says that they were worth about $12.00 a hundred. He further says that, while he bought them pretty cheap, he was the only one who had use for them.

The twenty-first item is:

1 mixer $150.00 and 1 breaker $150.00, making a total charge of $300.00, but sold for $225.00.

Geary, in his testimony on page 26, states that he thinks the mixer and breaker were worth $300.00 second-handed, but he declared he had only heard other parties say what it was worth. It appears that he had no personal knowledge on the subject, and no

knowledge of facts upon which he could base an intelligent opinion as an expert. Strohecker, in his testimony on page 32, likewise fixed the value of the mixer and breaker each at $150.00.

The remaining items in the first exception are the eleventh, twelfth, seventeenth, eighteenth and twentieth, as follows:

25 barrels high grade flour, charged at $111.25 but sold for $68.75;

19 barrels Barclay's flour, charged at $91.20 but sold for $66.50;

3 barrels flour, charged at $10.20 but sold for $8.70;

64 barrels flour, charged at $217.60 but sold for $169.60.

1 barrel flour, charged at $4.50 but sold for $2.00.

Geary, the receiver's witness, declares, on the top of page 30, that these several items of flour were not sold upon the first bids therefor, but that there were three or four bids. It thus appears that there were competitive bids. It further appears by the testimony elsewhere that there were bakers and flour dealers present. The only testimony relating to the sale of flour will be found on pages 28, 29, 30, 31, 39, 40, 79 and 80.

It thus appears that Phillips has been charged $400.00 for the cracker-machine, notwithstanding one of the Receiver's witnesses testified that he judged it to be about $200.00, and that Baumgartner, the former treasurer of the company, also a witness for the Receiver, testified that he thought the company had paid $375.00 for the machine when new. The testimony of Bauer, that $600.00 was paid for the machine, is of no value whatever, inasmuch as he was not an officer of the company, and knew nothing except from hearsay, and the testimony of Strohecker that the machine was worth $400.00 is offset by his own admission that it was fairly sold to the highest bidder for $170.00, and by the proofs in the case, already referred to, that the highest bids upon all the machinery were held for a day or two, and that in the meantime Phillips made efforts to secure advanced bids.

As to the mixer and breaker charged against Phillips at the sum of $300, when he received only $225 for them, it appears that Geary's testimony that they were worth $300 is pure hearsay. Strohecker, the only other witness who spoke of the value of the mixer and breaker, is the man who purchased a large quantity of the goods offered at the sale, and his statement is likewise offset by the fact that the highest bid of $225 was reserved for a day or two in order that Phillips might, if possible, secure an advanced price therefor.

As to the sale of the flour, it is submitted that it must be regarded as a second-hand commodity offered for sale, and that it is not right, under the circumstances existing at Phillips' sale, to regard the flour as worth what had been paid for it to the manufacturers themselves. Flour purchased from a manufacturer bears his brand and his implied, if not express, warranty as to quality. The flour offered for sale by Phillips was attended with no warranty, either express or implied. Moreover, it was composed of "job lots," and for this reason would not bring as much at a public sale as when purchased directly from the manufacturer.

The testimony relating to the other items above referred to shows that the charges made by the Master beyond what Phillips received can, in some cases, only be supported by the testimony of the men who purchased the goods concerning which they testified, and, in other cases, the testimony utterly fails to support the charges altogether.

As to all of the items embraced in the first exception on page 172 of the Paper Book, it is therefore submitted that the prices received at the public sale must control the judgment as to what should be charged against Phillips, and that it would indeed be inequitable to charge him with anything more than the amounts so received.

The third exception, on page 173 of the Paper Book, relates to credits which Phillips claims on account of the expenses of the sale, but which the Master and the

Court of Chancery refused to allow. The testimony relating to these items will be found on pages 82 and 83. Further testimony relating to the item of $25.00, paid to Mr. Green for labor, will be found in Green's testimony, on pages 45 and 46. It is submitted that all of these items should have been allowed.

I have not been able to ascertain from what source the Master charged Phillips with the sums referred to in the second exception on page 173 of the Printed Case. So far as I know, there is nothing to justify the charges.

I therefore submit that the decree of the Court of Chancery ought to be reversed and modified so that Phillips should be charged only with the amounts received by him at the public sale, less his expenses as set forth in *Exhibit 2*, together with interest thereon from the date of the sale to the time of settlement. And, inasmuch as Phillips at the very opening of the testimony before the Master produced his account in *Exhibit 2*, as will be seen by reference to his testimony on pages 9 and 10 of the Printed Case, I further submit that he ought not to be charged with the expenses of the litigation in the Court of Chancery and in this Court, so unreasonably persisted in by the Receiver, and so oppressive to him.

As I have already stated, Phillips' conduct in taking the chattel mortgage and in making the sale was doubtless in harmony with what well-informed members of the bar would then have advised.

W. M. LANNING,
Of Counsel with Appellant.

MacCrellish & Quigley, Printers.

In Chancery of New Jersey.

Between
JOHN A. MONTGOMERY, RECEIVER, ETC.,
Complainant,
and
HENRY D. PHILLIPS ET AL.,
Defendants.

On Bill, &c.

DECREE ON REVERSAL.

(Filed April 9th, 1895.)

Upon opening the matter this day to the court by John H. Backes, counsel, with John A. Montgomery, receiver, complainant, and it appearing that the said John A. Montgomery, receiver, filed an appeal from the decree made in this cause on the thirty-first day of October, eighteen hundred and ninety-three, to the Court of Errors and Appeals in the last resort; and that the said appeal has been determined by the said Court of Appeals and the proceedings have been remitted to this court to proceed further thereon according to law; and on reading the remittitur from the said Court of Appeals, whereby it appears that it was ordered and decreed by said court that the said decree of the Chancellor be in all things reversed, set aside and for nothing holden, with costs to be paid by the defendants in this court to the complainant; and further, that a decree be entered in this court as hereinafter decreed. It is thereupon, on this ninth day of April, eighteen hundred and ninety-five, on motion as aforesaid, ordered, adjudged and decreed that the

certain deed of mortgage made by The Capital Cracker Company to Henry D. Phillips, bearing date on the ninth day of May, eighteen hundred and ninety-two, and recorded in the Clerk's office of Mercer county, in Book 12 of Chattel Mortgages, page 456, &c., selling, transferring and setting over to the said Henry D. Phillips certain goods, chattels and personal property therein described, be and the same is hereby set aside as fraudulent and declared to be null and void and for nothing holden; and further, that the certain deed of mortgage made and executed by The Capital Cracker Company to Henry D. Phillips, bearing date on the eighteenth day of March, in the year one thousand eight hundred and ninety-two, and recorded in the Clerk's office of Mercer county, on the eleventh day of May, eighteen hundred and ninety-two, in Vol. 91 of Mortgages, on page 50, &c., conveying lands and premises in the city of Trenton, and therein fully described, be and the same is hereby set aside as fraudulent and declared to be null and void and for nothing holden. And it is further ordered and decreed that the defendant Henry D. Phillips account for the value of the goods, chattels and personal property of The Capital Cracker Company by him appropriated and sold under and by virtue of the said deed of mortgage bearing date on the ninth day of May, eighteen hundred and ninety-two, and for that purpose it is ordered that it be referred to Gardner H. Cain, esquire, one of the masters of this court, to ascertain and report the value of the goods, chattels and personal property so appropriated and sold, to the end that such further decree may be made as directed by the said Court of Errors as the Chancellor shall think equitable and just; and that the master make his report to this court with all convenient speed. And all further equity and directions are reserved until the coming in of said master's report.

ALEX. T. McGILL, *C.*

Respectfully advised:

JOHN T. BIRD, *V. C.*

IN CHANCERY OF NEW JERSEY.

BETWEEN JOHN A. MONTGOMERY, RECEIVER, &c.,
Complainant,
and
HENRY D. PHILLIPS ET AL.
} *On Bill, &c.*

MASTER'S REPORT.

Pursuant to an order of the Court of Chancery made in the above cause, I find and report the value of the goods, chattels and personal property appropriated by Henry D. Phillips to be, at the time said goods were appropriated on the eleventh day of May, 1892, as follows:

One gauge	$0 40
One barrel of molasses, 5.50	15 00
One barrel of sugar, 5.00	15 00
Bowls	60
Alum	10
Soda	75
Ammonia	1 50
Cinnamon	50
Ginger, 50c	1 20
Scales	4 50
Brown sugar	6 06
Salt	50
Rolling pins	25
Tins	25
Lard, 417 lbs., at 4, 16.68, at 8c	33 36
4 bags meal	3 00
49 empty boxes	4 90
35 lbs. twine, at 7c, 2.45, at 12c	4 20
Paper, 3¼, 15.40	30 80
54 lbs. paper, 05, 2.70, at 17c	9 18
Cocoanut	1 00
24 lbs. butter, 05	1 20
24 lbs. imperials, at 04	96
75 lbs. currants, at 04	3 00
Bowl	05

	10 cake pans, at 05, 50c, at 50c	$5 00
	Paper bags	1 75
	51 empty flour barrels, 04½, 2.30 at 20c	10 20
	22 empty sugar barrels, at 07, 1.54, at 20c	4 40
	24 bbls. old crackers	7 80
	Excelsior	50
	Canvas	3 00
	25 bbls. high grade flour, 2.75, 68.75, at 4.45	111 25
	5 bbls. 2d grade flour, 3 75, 18.75	18 75
10	19 bbls. Barclay's flour, 3.50, 66.50, at 4.80	91 20
	Broken cake	4 80
	Small rope	30
	Large rope	1 50
	Eggs	20
	Cracker dust	18
	Lard kegs	05
	Cracker dust	50
	Lemon extract	35
	Cotton seed oil	40
20	Orange extract	25
	3 shovels	97
	Coal	2 75
	Soft-cake machine	40 00
	71 pans, at 5c., $3 55, at 30	21 30
	Cracker machine, $1.70	400 00
	98 cracker pans, at 15c., $14.70, at 30c	29 40
	34 bread pans, at $1.12, at 30c	10 20
	Rock candy sugar	7 53
	3 bbls. flour, at $2.90, $8.70, at $3.40	10 20
30	64 " " $2.65, $169.60, at $3.40	217 60
	Wheelbarrow	2 00
	Tools	1 80
	Spade	40
	Cake and boxes	80
	Chocolate	2 34
	6 lbs. macaroons, at 15c	90
	7 " drop cake, 5c	35
	10 " bolivars, 5½c.	55
	7 " jumbles, 6c	42
40	Saw	45

Barrel truck	$0 45	
Ladder	90	
8 boxes cake	6 20	
6 " "	3 58	
5 " "	2 87	
5 " coffee cake	3 43	
Lemon biscuit	2 18	
1 bbl. crackers	1 48	
1 box bolivars	60	
1 " "	51	10
Snaps	90	
320 empty boxes, 2¾, $8.80, at 10c	32 00	
1 bbl. flour, $2	4 50	
2 boxes graham wafers	1 44	
46 lbs. snaps, 3½c	1 61	
½ box crackers, 5c. at 10c	50	
81 lbs. salt wafers, 5c	4 05	
128 " cookies, 3½c	4 48	
153 " " "	5 31	
64½ " peerless, 5½c	3 55	20
28 " " "	1 54	
1 bbl. waste cake	20	
3 " " " 20c	60	
50 lbs. pretzels, 5c	2 50	
54 " " 4¾c	2 56	
51 " " 4¾c	2 41	
15 " " 4c	60	
40 " dandy oyster crackers, 1¾c	70	
" " "	50	
" " "	50	30
" " "	50	
" " "	50	
191 lbs. nicknacks	7 27	
45 " sodas, 3c	1 35	
135 " " 3c	4 05	
90 " " 3c	2 70	
90 " " 3c	2 70	
108½ " milk sodas, 3½c	3 80	
63 " " " "	2 20	
56½ " " " "	1 98	40

	57½ lbs. milk sodas, 3½c	$2 00
	52 " " " "	1 56
	63½ " Duchess, 3c	2 10
	53½ " " 3c	1 60
	54 " " 3c	1 62
	52½ " " 3c	1 58
	53 " " 3c	1 59
	269 " plain soda, 3c	8 07
	Large desk	5 00
10	Small desk	2 50
	3 chairs	82
	Ink stand	20
	Harness	6 75
	Covered wagon	62 50
	"	15 50
	Yolkoline	2 50
	Cement	16 00
	F. Leggit bill	2 27
	Janney "	33 01
20	Sperry "	6 36
	100 empty tins	11 00
	43¾ lbs. arvenus, 5c	2 14
	45¾ " afternoon teas	2 29
	28 " " " 10c	2 80
	53¼ " graham wafers, 7½c	4 00
	162½ " pretzels, 4c	6 50
	14 " zephyrs, 10½c	1 47
	934 " egg biscuit	84 24
	Horse	60 00
30	Paper	5 00
	3 boxes	6 00
	5 bbls. crackers	11 50
	Racks	3 00
	Peels	3 00
	Iron	3 00
	Tables	3 00
	Mixer	150 00
	Breaker	150 00
	Sideboard	2 00
40	Belting, at 15c	22 20

Shute		$2 00
Sifter		20 00
Box		5 00
Basket		80
Scales		10 50
Safe		24 50
From Frank Duffield		15 00
Stone, sand and lumber		7 00
Vanilla		50
Raisins		3 00
Brooms		37
T. B. Love		1 03
Dolton & Co.		2 38
		$2,069 05
Expenses that should be deducted:		
Board of horse	$34 80	
Freight bill	2 02	
" "	1 47	38 29
		$2,030 76
Interest from May 11th, 1892, to June 27th, 1895		381 10
Value of goods, with interest		$2,411 86

I do respectfully certify and report that the value of the goods and chattels appropriated by the said Henry D. Phillips, referred to in the order in this cause, was on the eleventh day of May, eighteen hundred and ninety-two, two thousand and thirty dollars and seventy-six cents, and the interest on the same, from May eleventh, eighteen hundred and ninety-two, to June twenty-seventh, eighteen hundred and ninety-five, is three hundred and eighty-one dollars and ten cents; that the whole amount, with interest, is two thousand four hundred and eleven dollars and eighty-six cents.

And I do further report that the finding of the above value is based upon the testimony taken before me, which is hereto attached and made a part of this report. Said testi-

mony was taken after due notice to the defendant and to his solicitor, who attended the hearings before me.

All of which is most respectfully submitted.

Dated June 27th, 1895.

GARDNER H. CAIN,
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between JOHN A. MONTGOMERY, Receiver, Complainant, and HENRY D. PHILLIPS ET AL., Defendants.	On Bill, &c.

Depositions taken before Gardner H. Cain, Esquire, Master, at his office, Forst-Richey Building, Trenton, Monday, April 5th, A. D. 1895, at 10 o'clock A. M., pursuant to Master's summons.

Present, John H. Backes, counsel for complainant; William M. Lanning, counsel for Henry D. Phillips; W. D. Holt, counsel for the First National Bank.

It was agreed that any testimony taken should be taken stenographically, and the signature of witnesses thereto waived, it being understood that the counsel for Mr. Phillips did not concede the right to examine any witnesses whatever at this stage of the case.

By Mr. Backes—I call Henry D. Phillips, and ask that he be sworn.

Mr. Lanning—Before Mr. Phillips is sworn I desire to say to the Master that he has already been sworn in this cause, and examined before the Vice Chancellor. He and other witnesses were examined as to the value of the goods and chattels covered by the chattel mortgage in question, and upon the allegation of fraud as against the creditors. This testimony was given by witnesses subpœnaed before the Vice-Chancellor by the Receiver, and examined on behalf of the Receiver. The order of reference now made by the

court to the Master is, that the defendant Henry D. Phillips account for the value of the goods and chattels and personal property of The Capital Cracker Company by him appropriated and sold under and by virtue of the said deed of mortgage bearing date on the ninth day of May, eighteen hundred and ninety-two, and for that purpose it is ordered that it be referred to Gardner H. Cain, Esquire, one of the Masters of this court, to ascertain and report the value of the goods and chattels and personal property so appropriated and sold. The point I now make is that there is no express 10 authority in the order of reference to the Master to examine witnesses, and witnesses having already been examined upon the subject matter of the value of the goods and chattels, which is the only matter upon which the Master can report, the Master cannot examine any witnesses whatever without the express authority from the Chancellor, but must use the testimony already taken in the cause.

Henry D. Phillips, being duly sworn, testified as follows: Direct examination (by Mr. Backes)—

Q. Your subpœna called for the production of a state- 20 ment of sale, and the production of a notice of sale under the chattel mortgage mortgage which was set aside by the court, have you got it?

A. Yes, sir.

Witness produces a paper which is headed Mortgagee's Sale and marked *Exhibit 1* on the part of the complainant for identification, and the other, a paper entitled "Receipts Mortgagee's Sale, May 23d, 2892, Capital Cracker Co., Trenton," marked *Exhibit 2* for complainant. 30

Q. Where is the original of the last paper?

A. I don't know where it is.

Q. That was offered in the cause at the original trial?

A. That wasn't the original.

Q. Where is the original of this last document that you have given to me that was offered in the cause?

A. The paper from which a part of that accounting is made, I have.

Q. Will you produce it?

A. Yes.

Witness produces another paper marked "Receipts Mortgagee Sale, May 23d, 1892," and is marked *Exhibit 3* for identification.

Q. In what respect does the last paper that you have offered differ from the one that you gave me immediately preceding that?

By Mr. Lanning—Objected to, as the papers will show for themselves.

10 *Q.* Does the last paper disclose a description of value of the articles that you obtained under the chattel mortgage of May 9th.

A. It does not.

Q. Does the paper which is marked *Exhibit 2* for identification, which you have shown me, disclose all the articles that you obtained under the chattel mortgage of May 9th, 1892?

A. Neither paper discloses a description, but both papers contain items or memorandum of items of all the goods 20 obtained and sold under the chattel mortgage.

Q. Do each disclose the same state of affairs?

A. They do.

Q. Are they identical?

Mr. Lanning—Objected to, the papers will show for themselves.

Cross-examination (by Mr. Lanning)—

Q. What is *Exhibit 2* for complainant that has just been handed you by Mr. Backes?

A. It is an accounting of the proceeds and expenses 30 attending a sale held May 23d, 1892.

Q. A sale that has been made under this chattel mortgage that has been spoken of?

A. Yes, sir.

A. Then I understand it is a paper setting forth the proceeds and expenses of sale of goods and chattels covered by this mortgage that has been referred to?

A. It does, and gives the name of each purchaser, the goods purchased, and the amounts of the purchase.

Q. Does that paper, *Exhibit 2*, set forth the entire receipts that came to your hands as the proceeds of sale of those goods and chattels covered by that mortgage?

Mr. Backes—Objected to as allegal and immaterial.

A. Yes, sir.

Q. Were all the goods appearing to have been sold by that statement, *Exhibit 2*, sold at this sale on May 23d, 1892?

Mr. Backes—Same objection. 10

A. With a few exceptions.

Q. And does that paper include all the goods and chattels covered by the mortgage sold by you both at that sale and other occasions?

A. Yes, sir.

Q. What is the total amount of proceeds of the sale of the goods and chattels?

A. $1,465.14.

Q. What were the expenses?

A. $130.29. 20

Q. What is the net amount that you received?

A. $1,334.85.

Q. I hand you No. 3, and ask you what relation that bears to *Exhibit 2?*

A. They are duplicates, excepting the last item.

Q. In No. 3?

A. In No. 3, which gives stones and boards at $9.95, which I never collected.

Q. And therefore that item does not appear in *Exhibit 2?*

A. It does not. 30

Q. Let me call your attention to *Exhibit 2*, and ask you what this list of names means in the first column?

A. They are the names of the purchasers.

Q. Purchasers of these goods?

A. Yes, sir.

Q. The second column is a description of the property purchased by those parties?

A. Yes, sir.

Q. The third column is the price given by them?

A. Yes, sir. 40

Q. Can you give us an itemized statement of the expenses in *Exhibit 2*?

A. They are on the paper in *Exhibit 2.*

Re-direct-examination (by Mr. Backes)—

Q. Which of the items in *Exhibit 2* and *3* were not sold at public sale.

A. I can't tell you.

Q. Will any of the papers tell me which of the items that were not sold at public sale?

10 *A.* I don't know.

Q. Did you sell any of those items not at public sale?

A. Yes, sir.

Q. To whom?

A. I can't recall.

Q. Where did the parties live?

A. I can't tell you.

Q. Where did the parties do business?

A. I don't know.

Q. What was the character of their business?

20 *A.* I don't know.

Q. Where did you see them when you sold to them?

A. At the public sale referred to.

Q. Was it at the time of the public sale that you sold to them?

Mr. Lanning—Objected to because the subject matter of the examination has already been examined on and is in the printed case, it appearing what the articles not sold at the public sale were and what they brought.

30 *A.* A few of the bids were held until the next day or the day following for the purpose of making an effort to obtain for these articles a price greater than the bid. In each instance a greater price was obtained and the article sold. This, however, occurred only with three or four items, the other bids being entirely satisfactory to the parties conducting the sale.

Q. What were those articles; the items that you speak of?

A. I have already answered your question.

Q. Did they relate to the machinery?

Objected to because the items appear in the printed case, having been stated by this witness when formerly on the stand.

A. In part I think they did.

Q. What were the items?

A. I don't recall at this time.

Q. Was it with reference to the mixer and breaker?

A. I can't answer definitely.

Q. Who bought the mixer and breaker? 10

A. I don't know.

Q. Was it with reference to the belting?

A. I don't know.

Q. Was it with reference to the sifter?

A. I can't answer.

By Mr. Lanning—May I ask the counsel the purpose of the line of this examination.

By Mr. Backes—He don't answer my questions; he can answer them.

Witness—I am under oath, Mr. Backes. 20

Q. Who bought the sifter?

A. I don't remember now the individual buyer of any one article conducted at that sale.

Q. I ask you the names of the individuals, as many as you can give, who purchased some of these goods at a time not at the public sale?

A. A. A. Strohecker and Mr. Stapler.

Q. In the poster of sale appears an article to be sold stated to be one grinder; have you recorded the sale of that grinder in *Exhibit 2* or *3?* 30

A. I think the grinder is one of the articles of machinery stated in *Exhibit 2* or *3*. As I am not familiar with cracker machinery I cannot distinguish the particular item. I may further say that there were two or three articles in the handbill which were discovered to be part of the real estate and were not sold at the sale or any subsequent time.

Q. Did you sell the grinder at the public sale?

A. I have already answered your question.

Q. Did you sell the grinder at private sale?

A. I have already answered your question. I don't know what the grinder was.

Q. Wasn't there several cake machines sold to McCabe, one cracker machine sold to Stapler; one mixer and breaker, doesn't appear to be sold to whom, for $225; the belting, $22.50, chute $2.00, sifter $2.00? The articles I have just read are those that appear in *Exhibits 2 and 3*, which would cover the machinery. The same articles or items appear in your poster of the mortgagee's sale. In addition to that
10 there appears one grinder. Do you say that was part of the real estate and was not sold, or do you say it was sold under one or the other names that I have read to you out of your account?

A. It may have been, or it may have been a part of the real estate and not sold.

Q. If it was part that was sold then it was included in these *Exhibits 2 and 3* of your accounting?

A. It was.

Q. You may look at the poster and accounting 2 and 3.
20 I want to call your attention to the fact that the items in your accounting and the items of machinery offered to be sold are identical with the exception of the grinder, which is not described. The other articles that were sold are described in terms. Now after that statement can you make it clear to any greater extent as to what became of the grinder? The witness may later in the day refresh himself and see whether he can answer.

Q. You advertised a horse for sale, Mr. Phillips; was that sold?

30 *A.* Yes, sir.

Q. Have you accounted for it?

A. I have.

Q. Will you show me in this paper where?

A. (The witness shows it.)

Q. In your item of expenses is a statement of horse board, $34.80; what does that cover as to time before or after you took possession under the chattel mortgage?

A. There was a livery bill amounting to that sum when the bailiff made his levy and before I took possession.

40 *Q.* Who bought the horse?

A. I don't remember.

Q. Who had the livery bill against you?

A. Mr. Hooper, on West Hanover street.

Q. Was it Mr. Hooper who bought the horse?

A. No, sir.

George E Hooper, being duly sworn, testified as follows:

Direct examination (by Mr. Backes)—

Q. What is your business, and where are you located?

A. I keep a boarding stable at 184 West Hanover street.

Q. Are you acquainted with the values of horses? 10

A. No, I am not a judge of horses.

Q. You have bought and sold horses?

A. I have some.

Q. How long have you been engaged in business—livery business?

A. Six years.

Q. And during that time, you purchased how many horses?

A. I couldn't really say.

Q. Approximately, one hundred? 20

A. No.

Q. Fifty?

A. I wouldn't say; about twenty-five; I never did much business in buying and selling.

Q. You know the horse belonging to The Capital Cracker Co.?

A. Yes, sir.

Q. That horse was boarded at your stable?

A. Yes, sir.

Q. What, in your judgment, was the value of that horse in May, 1892? 30

Mr. Lanning—Objected to as being immaterial and irrelevant.

A. I valued that horse at $100.

No cross-examination.

Silas Barkley, being sworn, testified as follows:

Direct examination (by Mr. Backes)—

Q. What is your business, and where are you located?

A. Engaged in the milling and flour business?

Q. Where?

A. Hulmeville, Pa.

Q. Did you attend the sale of The Capital Cracker Co., in May, '92?

A. I did.

Q. Did you purchase flour there?

A. I did.

Q. There is an item here in Mr. Phillips' accounting, "Silas Barkley, 19 barrels, at $3.50," do you know whether you purchased flour of that quantity at that sale?

A. That I do not know; I can't remember.

Q. You did purchase flour there?

A. I did.

Q. Did you purchase more than one lot?

A. I think I purchased two lots, although I am not positive about that.

Q. As near as you can recall, how many barrels did you purchase?

A. Indeed, I can't say.

Q. Approximate it; 100?

A. No; not more than 25 barrels, if I did that.

Q. Do you know whose flour you purchased?

A. My own that I sold.

Q. You have a bill against the Capital Cracker Co.?

A. I have.

Q. I show you a paper which is marked *Exhibit 4*, purporting to be a bill of yours against the Capital Cracker Co.; look at that and state whether that is sworn to by you?

Mr. Lanning—Objected to; the paper will show for itself.

Q. Is that your bill?

Mr. Lanning—May I ask the purpose of showing the witness this paper.

Mr. Backes—It is for the purpose of establishing the value of this flour.

Mr. Lanning—I supposed that was the purpose. I wish to interpose my objection on the ground that it is immaterial and irrelevant.

A. It is my bill.

Q. Did you sell the Capital Cracker Co. any other lot of goods excepting those stated in this bill?

A. I did before that time.

Q. What was the reasonable market value of that flour in the month of May, 1892?

Mr. Lanning—Objected to as being immaterial and irrelevant.

A. Really, I am in a fix this morning, and hadn't time to get the prices of goods. I couldn't do it without referring to my books It is very difficult to bring it to my memory. It was worth all that it was charged in that bill of that day.

Q. The bill charges the flour at $4.80 a barrel and $4.65 a barrel; do you know whether it was the same flour that you purchased that you sold in this bill?

A. Yes; the same.

Q. Did you purchase the flour of any other person belonging to any other mill at that sale?

A. No, sir.

Q. Then I understand in May, 1892, the flour was worth $4.80 and $4.65 a barrel?

A. I believe it was.

Q. What is the difference between the $4.80 and $4.66 flour?

A. I really cannot describe that at the present time.

Q. Any grade?

A. Yes; what grades there were I couldn't say.

Q. Do you know whether the $4.80 was the best?

A. The $4.80 was the best.

Q. Do you know whether the $4.65 was the last grade or an intermediate?

A. It wasn't the last; it wasn't as valuable as the $4.80.

Cross examination (by Mr. Lanning)—

Q. What flour you bought at this sale you bought as the highest bidder for it.

A. I suppose so.

Q. You were the highest bidder, weren't you?

A. I suppose I was, I know I was.

Q. Were there any other millers there besides yourself?

A. I do not know.

Q. Was there any cracker bakers there; was Mr. Stapler there?

A. Yes, sir.

Q. He was there at the time you bought this flour?

A. Yes, I believe he was.

Q. Do you remember any other cracker bakers that were there, or dealers in flour in large quantities?

A. Yes, there were quite a number.

10 *William E. Branin*, being duly sworn, testified as follows: Direct-examination (by Mr. Backes)—

Q. What is your business?

A. Constable of Mercer county.

Q. Are you also an auctioneer?

A. Yes, sir.

Q. How long have you followed the business of auctioneer?

A. More or less, fourteen years.

Q. In the city of Trenton?

20 *A.* Yes, sir.

Q. Are you also a baker by trade?

A. That's my trade.

Q. Did you conduct the sale of the goods of the Capital Cracker Company in May, 1892?

A. I did.

Q. Who employed you?

A. Mr. Phillips.

Q. Did you take possession of the goods under a chattel mortgage?

30 *A.* Yes, sir.

Q. Prior to the time of the sale?

Q. For how long a time prior to that, a week or two?

A. Yes; about ten days, I think.

Q. You are William E. Branin, named in this *Exhibit 1* poster as bailiff and auctioneer?

A. Yes, sir.

Q. What time of day was that sale begun?

A. About two o'clock.

Q. How soon after two o'clock?

A. Half an hour.

Q. Under whose direction did you conduct that sale?

A. Mr. Phillips'.

Q. Where did you begin?

A. I disremember that.

Q. State how you conducted that sale, Mr. Branin, from the beginning?

A. I don't know that I understand your question.

Q. What articles did you begin on, do you remember?

A. No, sir, I do not; it seems to me it was the biscuits. 10

Q. Did you begin to cry that sale in the regnlar manner that you cry all sales?

A. Yes, sir.

Q. While you were conducting that sale, did you have a conversation with Mr. Phillips, or get any orders from him?

A. Yes.

Q. What were they?

A. He told me on two or three occasions to hurry up and cry faster. 20

Q. Anything else?

A. He said I was slow—I wasn't selling fast enough.

Q. How often did he tell you that?

A. Three or four times.

Q. How long after you begun the sale that he spoke to you?

A. Half an hour or three quarters.

Q. Did you change your method after he made those remarks to you, or did you continue in your own way?

A. I continued in my own way; I think he spoke to me the third time before I complied with it. 30

Q. And you complied with what?

A. Selling quicker.

Q. Did you say anything to Mr. Phillips after he had spoken to you two or three times to sell quicker?

A. Yes.

Q. What did you say to him?

A. I told him I thought I would get better prices if I didn't sell so fast—there seemed to be slow bidding.

Q. Anything else? 40

A. Not that I remember.

Q. What did he say to you in reply?

A. He urged me to sell quicker.

Q. Say anything else.

A. Said he wanted to get through, that was all.

Q. How soon did he speak to you the second or third time?

A. Some little time afterwards, I don't remember how long.

10 *Q.* Was anything said by Phillips about the sale being anybody's business?

A. I said there was no use in throwing things away, and that they ought to bring better prices, and he said that wasn't any of my business.

Q. What frame of mind was he in when he directed you to hurry up?

Mr. Lanning—Objected to upon the ground that the frame of mind is an immaterial thing. The witness should testify what he said and did.

20 *Q.* Was Mr. Phillips angry?

A. He spoke quick.

Q. Was anything said about giving things away?

A. Yes; I told him that before he spoke to me sharp; I told him there was no use in giving things away.

Q. Did you make that remark to him when he first urged you?

A. I think it was the third time.

Q. After he had urged you the third or fourth time, in what manner did you conduct the sale then?

30 *A.* I sold under his direction.

Q. Sold faster?

A. Yes, sir.

Q. Faster if you would have sold if it was left to you.

A. Yes, sir.

Q. At that sale did the articles bring the best price you thought they would bring if you were left to exercise your own judgment?

A. I told them—him—they would bring more if sold slower.

Q. Was that sale conducted by you, after he urged you to hurry up, in the same deliberate manner that you would have conducted the sale as an auctioneer when you are auctioning for the best price?

Mr. Lanning—Objected as being immaterial.

A. I would have dwelt a little more on them.

Q. After you were urged to sell, will you say whether or not that sale was conducted by you regularly as an auctioneer?

A. I should have dwelt longer. 10

Q. State whether or not you could have obtained better prices if you conducted it according to your own convictions as an auctioneer.

Mr. Lanning—Objected to as being immaterial.

A. Some articles would have brought better prices.

Q. In auctioneering goods, state whether or not it is usually left to the auctioneer's judgment when to strike off goods?

A. Yes, sir.

Q. State whether or not at this auction sale, after you had been urged by Mr. Phillips the third or fourth time to sell the goods faster, were they sold by you and upon your convictions at the time that it was the best price that could be obtained? 20

A. I thought I could get more for some goods that were sold there.

Q. How long did it take you to sell those goods?

A. I was through before five o'clock—two hours and a half.

Q. At that time you had a particular knowledge of some of the articles by reason of being a baker? 30

A. I thought I had.

Q. State whether or not by reason of your peculiar knowledge you in your judgment obtained the best prices?

A. I thought I could get more for flour than what I did get.

Q. Were any of those articles struck off at the first bid?

A. I think not.

Q. Were they at the second?

A. Some of them. 40

Q. How much of a crowd had you there?

A. We had quite a crowd there before we got through.

Q. Could you in the manner in which you conducted that sale have ascertained from the crowd that you had there whether there were any other bids other than those that you had received?

A. I couldn't say.

Q. In striking off an article on second bid, could you have surveyed that entire crowd within the period to ascer-
10 tain whether there were any other bids?

A. I tried to view the crowd all the time.

Q. With the time allowed you by Mr. Phillips could you do it properly in order to satisfy yourself that there were no other bidders?

A. I can't answer.

Q. State whether or not that sale, after Mr. Phillips had directed you to sell, was conducted with a speed unusual to the speed that you assume in conducting auction sales?

A. Not entirely, I preferred dwelling a little longer on
20 some of the articles.

A. That you had not the right by reason of Mr. Phillips?

A. He was in a hurry to go on.

Cross examination (by Mr. Lanning)—

Q. Were there many articles to sell at this sale?

A. Yes, sir.

Q. Articles that brought a few cents in amount?

A. Yes, sir.

Q. As well as flour and machinery and articles of more value?

30 *A.* Yes, sir.

Q. I understand you, to say that the sale was not conducted by you any more rapidly than other sales have been?

A. Yes, sir.

Q. No more rapidly than you conduct yours?

A. No, sir.

Q. As I understand you if it hadn't been that Mr. Phillips urged you to greater speed you would not sell some articles; you would have delayed a little longer?

A. Yes, sir.

Q. I don't know that you would on all articles?

A. No.

Q. I don't know that you could have done better if you had delayed?

A. No, sir; I couldn't say that.

Q. You didn't sell a single article to Mr. Phillips that day?

A. No, sir.

Q. Was he a buyer for anything?

A. No, sir. 10

Q. And so far as you know you didn't sell anything to anybody for him?

A. No, sir.

Q. There was quite a crowd there?

A. Yes, sir.

Q. How many do you suppose?

A. About 50 or 75.

Q. You say you have had experience as an auctioneer for how many years?

A. About fourteen years. 20

Q. You have sold at a great many sales?

A. Yes, sir.

Q. Has it not been your experience that sales are apt to be better when a crowd of purchasers understand that the auctioneer will be prompt in striking off articles than if he delays?

A. Yes; that's true.

Q. Don't you, as an auctioneer, in your practice seek to impress the crowd with the fact that you intend to be prompt in striking off articles, and that if they want particular articles they must be prompt. 30

A. Yes; I often tell them that.

Redirect examination (by Mr. Backes)—

Q. You have spoken of some sales that you have conducted as fast as you did this. Do you usually, when the sale is left to you as an auctioneer, do you conduct it with the same speed as you did this?

A. It is owing to the articles.

Q. When the goods are of a valuable character, like the flour, do you usually sell with the same speed?

A. No, sir.

Recross-examination (by Mr. Lanning)—

Q. Do you remember when you sold the flour, with respect to the time in the sale, whether it was near the beginning or the latter part of the sale?

A. No, sir.

Q. Don't you remember that the flour was sold within
10 the first half-hour of the sale?

A. No, sir, I don't remember that; it seems to me it was about the middle of the sale.

Q. Was it not sold before Mr. Phillips spoke to you the third time about greater speed?

A. I think he spoke to me about selling the flour.

Q. Then do you know how many parcels the flour was sold in?

A. I don't know.

Q. More than one?

20 *A.* Yes, several parcels; seven or eight parcels.

Q. Do you remember which of the parcels you were selling when Mr. Phillips spoke to you?

A. I do not.

Q. Did you on that day see Mr. Barkley there, who bought some of the flour and who testified this morning?

A. Yes, sir.

Q. Did you see Mr. Stapler there?

A. Yes, sir.

Q. Do you remember seeing any other bakers or dealers
30 in flour?

A. Yes, sir.

Q. Do you remember who?

A. I do not; it appears to me that there were five or six others.

Q. You say there were cracker bakers there?

A. Yes, sir.

Q. Did the bidders present at that sale have an opportunity to examine the flour and various articles offered for sale?

40 *A.* Yes, sir.

William Geary, being duly sworn, testified as follows:

Direct examination (by Mr. Backes)—

Q. You are a baker in the city of Trenton?

A. Yes, sir.

Q. For the last fifteen or twenty years?

A. For the last thirty-three years.

Q. Were you at the sale of the goods of the Capital Cracker Company in May, 1892?

A. I was.

Q. Did you hear any conversation between Mr. Phillips and the auctioneer, Mr. Branin? 10

A. Heard him say hurry up, that's all.

Q. Did he hurry up?

A. I guess he did.

Q. How was that sale conducted after Mr. Branin received that instruction?

A. I couldn't say.

Q. Was it done with speed or with deliberation?

A. He drove it along a little.

Q. Did you examine any of the machinery there? 20

A. Yes; I was looking at it.

Q. Do you know the value of baker's machinery?

A. I couldn't say that I do; some of it.

Q. Have you purchased and sold or known of purchases and sales of machinery of that description?

A. Yes, sir; seen it purchased.

Q. Did you see that sifter there?

A. Yes, sir.

Q. Did you notice it particularly?

A. Yes; that was the sifter and grinder to grind cracker dust. 30

Q. They were together?

A. Yes, sir.

Q. Do you know whether they were sold together?

A. I couldn't say.

Q. Did you examine the sifter?

A. Not particularly.

Q. Did you examine the mixer and breaker?

A. Yes, sir.

Q. Can you tell us what the reasonable value of that sifter was?

Mr. Lanning—Objected to as being immaterial and irrelevant.

Q. What about the grinder?

Objected to for the same reason.

Q. The mixer and breaker?

Objected to, for the same reason.

A. I have only heard other parties say what it was
10 worth.

Mr. Lanning—I object.

Q. Speak of your own opinion?

Mr. Lanning—I object as to the value of any of this machinery, on the ground that he has not shown that he has sufficient knowledge to base an opinion on.

Q. Well, in what way?

Q. What, in your judgment, was the reasonable value of the mixer and breaker in May, 1892?

20 *A.* I think it was worth $300, second-handed.

Q. Was that second-handed?

A. Yes, sir.

Q. What was that particular mixer and breaker worth, in your judgment, at that time?

A. I couldn't say.

Mr. Lanning—Objected to, for the same reason.

Q. Did you examine the mixer?

A. I did.

Q. What, in your judgment, was the mixer worth?

30 Mr. Lanning—Objected to, for the same reason.

A. $300.

Q. The mixer alone—that didn't include the breaker?

A. No, sir.

Q. Can you give us a general idea what the breaker was worth, or can't you?

A. About $200; that is new.

Q. The mixer did I understand you to say, in your judgment was worth $300 second-handed, and the breaker $200 new?

Q. Now what was the breaker in that condition worth, in your judgment?

Mr. Lanning—Objected to because it is immaterial and irrelevant and because the witness has not shown that he has sufficient knowledge to base an opinion on?

A. About $125.

Q. From your observation of the manner in which that sale was conducted state whether or not the best prices obtainable at that sale were obtained? 10

Mr. Lanning—Objected to as being irrelevant.

A. Well, of course, all small articles brought all they were worth. Flour is a staple article. That is worth it's value most all the time. I didn't think that brought all it was worth.

Q. Was the sale conducted with haste or with deliberation?

A. I couldn't say.

Q. Did you examine the cracker machine purchased by Stapler? 20

A. No; not in particular.

Q. Do you know what they are bought and sold for—the cracker machines?

A. Not lately.

Q. What in your judgment was the value of that cracker machine sold to Stapler at the time it was sold?

Mr. Lanning—Objected to because the witness has not shown that he has any knowledge on the subject.

A. I should judge it was worth about $200. 30

Q. Here is an item of twenty nine barrels of egg biscuits sold to one party; do you know what egg biscuits were worth at that time?

A. I do not.

Q. Do you know what the tables were worth that were sold?

A. They are not considered valuable.

Q. Were they all of the same description?

A. I think so.

Q. What were they worth a piece? 40

Mr. Lanning—Objected to.

A. I think they were those long tables on the side of the building; I suppose they would bring from $10 to $15.

Cross-examination (by Mr. Lanning)—

Q. Did you bid on any of this machinery?

A. No, sir; I had no use for it.

Q. Was that the reason you did not bid?

A. That was; I went there for a purpose.

Q. What purpose?

10 *A.* To buy for the firm.

Q. You were a baker at that time?

A. I had only been out of the business three years and was just starting in again.

Q. Did you bid on the flour?

A. No; I had no authority to bid on the flour; I went there with the intention of buying a wagon.

Q. You weren't attending that sale for yourself?

A. Not for myself individually.

Q. You didn't have authority from the partnership to 20 buy anything except a wagon?

A. No; I knew we were limited as to the amount of money to purchase and fit the place out with.

Q. You realized at the time before these articles were struck off they were going cheaply?

A. Of course I placed a limit on the wagon.

Q. You knew that the flour and machinery were going comparatively cheap before they were struck off?

A. No, I didn't know what they were going to bring.

Q. When flour was bid up to $3.50 a barrel you realized 30 that was rather cheap, didn't you?

A. I thought it was being sold pretty cheap.

Q. Why didn't you bid on it?

A. I had no occasion to bid on it. We had so much money to fit out a place with.

Q. Then I repeat the question, you realized before the sale that the flour was going at a pretty cheap figure, didn't you?

A. When it was selling, yes.

Q. It was struck off to the highest bidder; don't you know?

A. Yes.

Q. Several persons there, wasn't there?

A. Yes, sir.

Q. What cracker bakers and dealers in flour and users of flour were there besides yourself?

A. Mr. Strohecker here. Mr. Stapler. A man from Lambertville who bought one of the machines; Joe Watt, I think.

Q. Anybody else?

A. No, sir. 10

Q. Do you know Mr. Thorn?

A. Yes, sir.

Q. Wasn't he there?

A. I didn't see him.

Q. Were there any Camden bakers there?

A. I know a Mr. Titus, of Newark, who was there, but not anybody from Camden.

Re direct examination (by Mr. Backes)—

Q. The barrel you bought, what did you pay for it?

A. $2.00. 20

Q. Is that a fair value?

A. I thought I was making $2.50.

Q. You say you bought a wagon, what was that wagon worth—a fair, market value, not at public auction sale?

Mr. Lanning—Objected to, because the witness hasn't shown any knowledge.

Witness—I have knowledge; I went to a wagonmaker before I bought that wagon and got the cost of a new wagon.

Mr. Lanning—Objected to as being immaterial. 30

Q. What, in your judgment, was the fair market value of that wagon?

A. $100.

Q. You paid how much for it?

A. I couldn't say; I think it was $62.50.

Q. Have any bidders against you?

A. Couple of bidders.

Q. Did he delay any on your bid?

A. I think it was about ten minutes.

Q. Did he delay any on the bid of the barrel of flour?

A. No.

Q. Did you notice whether the other flour was sold on first bid?

A. I know it wasn't on first bid.

Q. Did he linger any on the flour?

A. I think he had the third or fourth bid on it.

Re-cross examination (by Mr. Lanning)—

Q. You were the highest bidder for the wagon?

10 *A.* Yes, sir.

Q. For the $2 barrel of flour?

A. Yes, sir.

Q. You say it was an odd barrel?

A. Yes, sir; it stood by the stairs; all the rest was sold before it was discovered.

A. A. Strohecker, being sworn, testified as follows:

Direct examination (by Mr. Backes)—

Q. What is your business, Mr. Strohecker?

A. In the baking business, manufacturing business.

20 *Q.* Manufacturing what?

A. All kinds of biscuits.

Q. In Trenton?

A. Yes, sir.

Q. Did you attend the sale of the stock of the Capital Cracker Company in May, 1892?

A. Yes, sir.

Q. Did you hear any conversation between Mr. Phillips and the auctioneer?

A. Not to my recollection.

30 *Q.* Did you observe how the sale was conducted by the auctioneer?

A. Yes, sir; I took notes as he went along.

Q. What did you observe?

A. Well, I think he tried to get all he could for the goods?

Q. Did he conduct the sale with speed?

A. Well, I didn't take any particular notice of that.

Q. You know that he sold to the highest bidder?

A. Yes, sir.

Q. He sold to the highest bid that was offered?

A. Yes, sir.

Q. You know the value of goods that were sold up there, in a general way?

A. I think I do; nearly so.

Q. Do you know the value of machinery that was offered, in a general way?

A. Yes, sir; I have a line of machinery similar to what was sold out there. 10

Q. Also a knowledge of flour?

A. Yes, sir.

Q. Now, there were twenty five barrels of high-grade flour sold to Stapler for $2.75; state what, in your judgment, at that time, high grade flour was worth at market price?

Mr. Lanning—Objected to, as being irrelevant and immaterial.

A. It was worth between $4 and $5.

Q. Can you give it any nearer than that? 20

A. $4.75.

Q. What was second-grade worth?

Mr. Lanning—Objected to, for the same reason.

A. I suppose it was worth about $3.

Q. Is there that much difference in the value of high-grade and second grade?

A. Yes; there are generally three grades.

A. Is that sometimes called first, second and third?

A. Yes.

Q. Did you examine the soft-cake machines up there? 30

A. Yes, sir.

Q. What in your judgment was that worth?

Mr. Lanning—Objected to for the same reason.

A. Well, it was worth nearly $50.

Q. What was the cracker machine worth?

A. I think it cost new about $600.

Mr. Lanning—My objection extends, of course, to all this examination.

Q. What was that cracker machine worth in your judgment? 40

A. I should say $400.

Q. Did you notice the mixer there?

A. Yes, sir.

Q. What in your judgment was that machine worth at that time?

A. $150.

Q. What was the breaker worth?

A. $150.

Q. What was the grinder worth?

10 *A*. $20.

Q. What was the sifter worth?

A. $30.

Q. What was the chute worth?

A. Possibly a few dollars.

Q. What was the belting worth?

A. I couldn't say.

Q. You have bought and sold all the other articles that were sold up there?

A. Yes, sir.

20 *Q*. What was a barrel of molasses worth at that time?

A. I should judge about $15, if it was full.

Q. What is a barrel of sugar worth?

A. About the same amount?

Q. What was the ginger worth?

A. About 12 cents a pound.

Q. Did you notice the scales there?

A. Yes, sir.

Q. What were they worth?

A. About $4.

30 *Q*. What was the brown sugar worth a pound?

A. Three cents a pound.

Q. What was lard worth a pound?

A. I can't recollect what lard was worth at that time. Last year it was very high. This year it is more reasonable. Previous to that I think it was 9 cents.

Q. What is a package of Indian meal worth?

A. According to the size.

Q. What is twine worth?

A. I don't know.

40 *Q*. What is cocoanut worth?

A. It ranges from 9 to 12 cents.
Q. Imperial, what is meant by that?
A. They are small candies used for on top of cakes.
Q. What are they worth?
A. Eight cents a pound.
Q. Currants worth?
A. Four cents.
Q. Ten cake pans that you purchased?
A. Well, they are worth 50 cents a piece.
Q. Empty flour barrels, what are they worth?
A. As a rule 20 cents. 10
Q. Broken cakes, what is that worth a pound?
A. Half a cent a pound.
Q. How much a barrel?
A. It varies from $1.00 to $2.00.
Q. Was 12 cents a fair value for a barrel of them?
A. No, sir.
Q. What is cracker dust worth?
A. By the pound, 2½ cents.
Q. Ninety eight cracker-pans were sold, what were they worth a piece? 20
A. I don't know; if I recollect the size of those pans, about 30 cents a piece.
Q. Bread-pans?
A. About the same.
Q. Rock-candy sugar, what is that worth a pound?
A. About 3 cents.
Q. What is chocolate worth?
A. Eighteen cents.
Q. How is that, you paid 39 cents?
A. I may have got something else with it, as it has never been worth that much. 30
Q. What were macaroons worth to sell?
A. Fifteen cents a pound.
Q. Eight boxes of cakes, 124 pounds, what were they worth?
A. $5.00 for the lot.
Q. Do you know what they were?
A. I think I remember what they were.
Q. Five boxes of mixed cakes, what were they worth? 40

A. About the same amount.

Q. A 5 boxes of coffee, cakes 114 pounds, what were they worth?

A. About the same amount, $5.00.

Q. The lemon biscuits, what were they worth a pound?

A. About the same as the others.

Q. A barrel of crackers, 74 pounds, what were they worth a pound?

A. They run from 3½ to 5½, according to the grade.

10 *Q.* What were bolivars worth?

A. They generally go by the dozen.

Q. One box, 20 pounds?

A. About 5 cents a pound.

Q. Snaps worth?

A. Five cents a pound.

Q. You bought 320 empty boxes, how much are they worth?

A. About $12.00 a hundred.

Q. You got them pretty cheap, didn't you?

20 *A.* Yes; I was the only one who had use for them.

Q. Mather bought salt wafers; what were they worth a pound?

A. More or less, 12 cents a pound.

Q. Graham wafers?

A. The same figure.

Q. Cookies, 5 cookies, 128 pounds?

A. About 6 cents a pound.

Q. Three pounds peerless?

A. The same figure.

30 *Q.* What does that mean?

A. The molasses cake.

Q. What is a barrel of pretzels worth?

A. About 5½ cents a pound.

Q. What were Dandy oysters worth?

A. Four and a half cents.

Q. Nick-nacks, 171 pounds, sold to Strohecker?

A. They were worth about 5½.

Q. What is a pound of soda crackers worth?

A. In packages?

40 *Q.* Yes, sir?

A. Five and one-half cents.

Q. Milk sodas?

A. Four and one-half.

Q. What is duchess?

A. They are a soda cracker.

Q. Pony duchess crackers, what are they worth?

A. About 4½.

Q. What are plain sodas worth?

A. Four cents.

Q. One hundred empty tins, do you recall what they were worth? 10

A. I should think they cost about $45; they weren't of much value to anybody else.

Q. Why?

A. For different reasons; they had the Cracker Company's name stamped on them.

Q. Afternoon teas?

A. Fourteen cents.

Q. Eight tins of afternoon teas?

A. Fourteen to 15 cents a pound. 20

Q. Graham wafers?

A. Twelve cents a pound.

Q. Zephyr wafers?

A. Twelve cents.

Q. Three barrels of pretzels.

A. About 5½ cents.

Q. Twenty-nine barrels of egg biscuits?

A. Ten cents.

Q. These articles, some of them, you purchased yourself?

A. Yes, sir. 30

Q. You purchased them cheaper than you could manufacture them, or could purchase them at any other place?

A. Yes, sir.

Q. And the values you have given us now are a fair purchasing value?

A. Yes, sir.

Q. That would cost a dealer to purchase at?

A. Yes, sir.

Q. It is not a retail value?

A. Betwixt and between; some of those goods we were running a risk on.

Cross-examination (by Mr. Lanning)—

Q. The prices that you fixed on the implements and tools and the bakers' materials were the prices fixed, as I understand you, for new, good, first-class materials?

A. No; they were fixed at what I should think they would bring at a sale.

10 *Q.* In fixing the values that you did on the pretzels and crackers of the various kinds, were they not the values obtained in a market.

A. Some of those prices were within a half cent of what it would cost to buy them from the manufacturers.

Q. This is true of the plain sodas, duchess, milk-sodas, nick-nacks, dandy oysters?

A. Well, as near as I can remember; maybe I am a half a cent under on what they ought to be; there are considerable changes in the market.

20 *Q.* With regard to these implements that have been spoken of, and tools of various sorts, your valuation of those things is fixed upon what basis?

A. What they were worth in the market.

Q. The fact is that these things were all sold to the highest bidder at this sale?

A. Yes, sir.

Q. You saw nothing sold there that wasn't fairly sold?

A. No, sir; the cracker machine—I think the list price is $600—I saw it was going cheap, and bid on it for specu-
30 lating purposes.

Q. You went as high as you cared to go for speculating purposes?

A. Yes, sir.

Q. There were several bids on it, then?

A. Yes, sir.

Q. These materials in the way of bakers' appliances that were offered for sale that day, do you recall any of them that were stale?

A. Yes, there was some things that were more or less stale.

Q. So that the price would be quite as much as the price you fixed here?

A. No, sir.

Re-direct examination (by Mr. Backes)—

Q. What was the general condition of the goods you purchased, with reference to their fixed quality?

A. Well, I didn't buy much in the cake line, you know; I bought pans.

Q. You bought crackers and cakes?

A. Very few. 10

Q. Well, what you did buy?

A. That kind of goods can stand quite some age before it will hurt it.

Q. Was it affected in any way?

A. I couldn't say that it was any way out of the way.

Q. Did you examine the other goods there in a general way?

A. I took notice as we went along to the sale.

Q. How, in a general way, with the condition that they should be. 20

A. Well, I think it was, as near as I can remember, the majority of the cakes and crackers were pretty well burnt up.

Q. The cakes and crackers that you purchased?

A. No, not that I purchased.

Q. As to the goods that you had bought, what was the condition of those?

A. Some of the goods were closed up; you couldn't examine them; to the best of my knowledge, they were in fair condition; some of them may have been a little stale. 30

Robert Green, being duly sworn, testified as follows:

Q. You were an employee of the Capital Cracker Company?

A. Yes, sir.

Q. At the time of the sale of the goods of the Capital Cracker Company in May, 1892?

A. Yes, sir.

Q. You know the general condition of the articles, don't you?

A. Mostly.

Q. What the articles were that were there?

A. Yes, sir.

. Did you clerk the sale?

A. No.

Q. Were you present at the sale?

A. Yes, sir.

10 *Q.* Who clerked the sale?

A. Mr. Phillips.

Q. I show you *Exhibit 3*, is that in your handwriting?

A. No, sir.

Q. Whose handwriting is it?

A. I think Miss Cox.

Q. How long were you with the Cracker Company before it failed?

A. I think six months.

Q. Who was Mr. Shellenberger; he was the manager,

20 wasn't he?

A. Yes, sir.

Q. Mr. Phillips had a very limited knowledge of the business himself?

A. Yes, sir.

Q. Here is 10 pounds of ginger sold to Strohecker, do you know what you paid for ginger?

A. No.

Q. Do you know from whom you purchased it?

A. No.

30 *Q.* What did you pay for those rolling-pans sold to parties living at Camden?

Mr. Lanning—I enter my objection to all questions to this witness that relate to the prices or values of articles sold at that sale, as immaterial and irrelevant, it not appearing at all that the sale was conducted unfairly.

A. I do not know.

Q. Do you remember from whom the high grade of flour was purchased that was sold at that sale to Stapler?

A. No, not the flour specially termed the high grade; we bought from several parties.

Q. Did you buy high grade from several parties; from whom did you buy high grade?

A. Lawrenceville, Silas Barkley.

Q. From Thompson?

A. I think we did.

Q. Do you know what the company paid to Thompson for his high grade flour?

A. No. 10

Q. Could you tell from the books?

A. I think I could.

Q. I show the witness the books of the Cracker Company and ask him to state who kept them books?

A. I did, after certain date.

Q. Within six months of the failure of the Cracker Company?

A. I should say about that.

Q. From the 1st of January on?

A. I think about that. 20

Q. Have you an account on your ledger of Thompson Brothers?

A. Yes, sir.

Q. Will you refer to it and state what the price of high grade was that you paid to Thompson?

A. Yes, sir.

Q. What does the ledger account show?

A. $496.25 on the credit side.

Q. You credited him March 25th by merchandise $496.25? 30

A. Yes, sir.

Q. I show you a bill of Thompson in which they charge 100 barrels of flour $3.75, and 25 barrels of I. K. T. at $4.85 a barrel, which makes a total of $496.25. State whether that constitutes the credit as appears on the Thompson Brothers' account?

Mr. Lanning—Objected to, provided there are any books which show what this credit balance consists of?

A. I have no doubt but what it is the same item, but the credit is not in my handwriting.

Q. Do you know what you paid for the 25 barrels of I. K. T. per barrel?

A. Only from what you said a minute ago, $4.85.

Q. Don't you recall?

A. I do not.

Q. Was the I. K. T. high grade flour?

A. Yes, sir.

10 *Q.* Do you know what you paid for it?

A. I couldn't say.

Q. At that time you had knowledge?

A. Yes, sir.

Q. Do you know whether that 25 barrels of flour sold to Stapler and marked high-graded flour was the same flour that you purchased from Thompson, I. K. T.?

A. I couldn't say.

Q. Do you know whether you had any other high-graded flour at the factory excepting this I. K. T. of Thompson's?

20 *A.* Mostly a second grade of flour, and some third grade.

Q. The broken cake that you sold to Herbert, 40 barrels at 12 cents a barrel, was that your own manufacture?

A. It was their own, and had been in the factory since we began.

Q. Seventy one pans sold to McCabe, do you know what the company paid for this?

A. No.

Q. Do you know how long before the failure of the company that purchased the flour from Thompson Brothers?

30 *A.* No.

Q. Do you know whether any of their flour was used?

A. According to the books, March 25—

Q. Do you know whether any of their flour was used after it came to the factory?

A. Yes; I am quite sure.

Q. Can you tell us whose flour it was, whose make it was, at the factory at the time of the sale?

A. There were different kinds and different grades; I couldn't say how much of any one's were there.

40 *Q.* Do you know how many barrels were there?

A. I think about 116.

Q Do you know whose flour the Carrocks, of Philadelphia, purchased?

A. No.

Q. Do you know why they came here to purchase?

A. Upon receipt of circular from us advising them of the sale.

Q. Any other reasons why they purchased?

A. Not that I know of.

Q. Did you hear any conversation between Mr. Phillips and the auctioneer at the time of the sale? 10

A. I don't know that I heard it between Mr. Phillips and the auctioneer.

Q. You say you didn't hear any conversation between Mr. Phillips and the auctioneer?

A. No, sir; not that I recall.

Cross examination (by Mr. Lanning)—

Q. This broken cake you spoke of—some of it had been in the place ever since you had been in business?

A. Yes, the man bought it for to feed the hogs with. 20

Q. Did you help conduct this sale?

A. Yes, sir.

Q. You were present at this sale?

A. Yes, sir.

Q. Did you help advertise it?

A. Yes, sir.

Q. What did you do?

Mr. Backes—I object; this is not a cross-examination. Judge Lanning makes him his own witness for the purpose of relieving Mr. Green from the necessity of coming here again. 30

A. I tacked some of the posters up on the corners in that vicinity of the town and addressed envelopes to cracker bakeries—people who we thought were interested in the sale.

Q. They were posted and mailed?

A. Yes, sir.

Q. You sent notices to cracker bakeries where by mail?

A. New York, Philadelphia, Newark, Elizabeth and Camden.

Q. Any others?

A. Lambertville.

Q. Do you remember about how many you sent to cracker bakeries in Trenton?

A. I should say there was something like fifty.

Q. Have you any idea how many there were posted in Trenton?

A. They were all posted in Trenton.

Q. How many tacked up?

10 *A.* I couldn't say.

Q. Did anybody post or tack up besides yourself?

A. Yes, I think Mr. Blackwell.

Q. What Blackwell?

A. He drove a wagon for us.

Q. Were any notices mailed to Trenton parties?

A. I don't recall.

Q. Were you present during the whole of the sale?

A. Yes, sir.

Q. How long did it last?

20 *A.* In my opinion it lasted three or four hours.

Q. Began at what time?

A. Two o'clock.

Q. Do you know what time it began?

A. It began very promptly; I remember distinctly Mr. Phillips saying we have a good many things to sell and he wanted to start early and get through.

Q. Do you recall what time the sale was completed?

A. It was nearly night.

Q. Nearly six o'clock?

30 *A.* Yes, sir.

Q. Do you recall the manner in which that sale was conducted. Did you observe anything as to whether it was hurried on unduly?

A. Not unduly hurried Mr. Branin seemed to be very slow in several respects, particularly slow in knocking things down, and moving around slow before he got started.

Q. Then you didn't observe that the sale was hurried too rapidly?

A. No, sir.

Q. Did you observe whether bidders had ample opportunity to make bids for articles that were offered?

A. Yes, sir.

Q. Did they, in fact, have full opportunity to make bids?

A. Yes, sir.

Q. Was the sale conducted so rapidly as to prevent anybody from making a bid if he so desired?

A. No, sir.

Cross examination (by Mr. Backes)—

Q. Wasn't the sale delayed for a considerable time after the hour appointed? 10

A. Not to my recollection?

Q. Don't you recall that the sale would be stopped by injunction?

A. No, sir.

Q. Don't you recall Mr. Phillips saying I hope they won't get here until we get through, referring to proceedings of creditors to stop the sale?

A. No, sir; I don't recall anything.

Q. Don't you recall that it was for that reason that Mr. Branin delayed the sale? 20

A. No, sir.

Q. Did you ever attend an auction sale before this?

A. Yes, often.

Q. Did you ever see an auction sale conducted quite as fast as this?

A. I have.

Q. With the same offer of valuable articles that you had here?

A. Yes, sir. 30

Q. Do you say that you think that the articles brought the best price they could have brought if the auction sale had been properly conducted?

A. I didn't say it was improperly conducted.

Q. I ask you the same question?

A. Under an auction sale.

Q. You didn't think it was forced?

A. Not at all.

Q. Do you think $2.75 a barrel for flour that you paid $4.85 for was a fair price?

A. I couldn't say that we could do better.

Q. You could have taken and sold to the millers for that price?

A. I suppose we could.

Q. You know that flour has the same fixed value as gold?

A. No.

10 *Q.* I am speaking of the fixed value; it has a fixed value—flour at all times?

A. Well, I suppose it has.

Q. I am speaking of each grade; it has its own value?

A. Yes, sir.

Q. Don't you know that you could have taken that flour to the millers and obtained more than $2.75 on high grade that cost you $4.85?

A. I should have thought so; there were dealers there, I didn't see why they didn't bid.

20 *Q.* Did you notice that the flour was struck off more hurriedly than other articles?

A. Not in the least.

Q. Do you mean to say that the other witnesses who preceded you, and whom you have heard, are mistaken when they say there was haste, that the flour was hurridly struck off?

Mr. Lanning—The question is objected to because no witness has said so.

Q. If they have said so, are they mistaken?

30 Mr. Lanning—I object.

A. They are mistaken.

Q. What was the fair market value of the flour you had on hand at the time of the sale?

Mr. Lanning—Objected to, unless you show by the witness that he has knowlrdge of the quality and quantity.

A. I think there were different grades.

Q. I ask you as to the total?

A. I can't say.

Q. Do you remember testifying in the Mercer Circuit Court, in the case of Bisbee and others against Phillips, as to the value of flour that was in the Capital Cracker Company at the time of this failure?

Mr. Lanning—The question is objected to as not being cross-examination. I insist that if the counsel proceeds further with this cross examination he makes the witness his own.

Q. Don't you recall stating, in that case, that the flour was worth $900? 10

A. I don't recall it.

Q. I show you a paper; in whose handwriting is that; is that yours?

A. No, sir.

Q. Whose handwriting is it?

A. Well, I don't know, positively; I think it is Miss Brown's.

Q. Who is Miss Brown?

A. Mary L. Brown.

Q. A clerk of Mr. Phillips'? 20

A. I believe so.

Q. Do you know how she came to make that?

A. I do not.

Q. You are sure you didn't make up that statement?

A. I say I don't recall that statement.

Q. Do you recall making up a statement of that character?

A. At what time?

Q. April 1892?

A. I can't say now. 30

Q. Do you recall ever estimating the flour, the cost price of the flour of the Capital Cracker Company in May, 1892, at $900.

A. I can't say.

Q. Do you know whether you purchased any flour after you purchased from Thompson & Bros.?

A. No, sir.

Q. Mr. Green, did you get this $25 expenses in *Exhibit 2?*

A. Yes, sir. 40

Q. Did you keep it?

A. Yes, sir.

Q. Did you give it to anybody?

No, sir.

Q. Was that for work that you performed after Mr. Phillips took charge under his chattel mortgage?

A. After.

Q. For work before or after the sale?

A. For the sale and getting things ready for the sale.

10 *Q.* Covering a period of how long?

A. Two weeks.

Mr. Lanning—All the exhibits offered by the counsel for the receiver except *Exhibits 2* and *3* are objected to as being immaterial.

Adjourned until Wednesday, April 17th, at 3 o'clock.

WEDNESDAY, April 17th, 1895.

Depositions continued, pursuant to adjournment.

Charles I. Baumgartner, being sworn on the part of the complainant, testified as follows:

20 Direct examination (by Mr. Backes)—

Q. What is your business, Mr. Baumgartner?

A. Dry goods dealer.

Q. And where?

A. 15 and 17 East State street, this city.

Q. Did you attend the sale of the Capital Cracker Company?

A. I did; yes.

Q. In May, 1892?

A. Yes, sir.

30 *Q.* Were you there throughout the sale?

A. Not through the whole of it.

Q. How soon after the sale began did you get there?

A. I don't know how long they were selling; they were up-stairs when I got there.

Q. Was it two or three o'clock?

A. I think the sale was in the morning.

Q. No, the sale was in the afternoon. Well, had they considerable of the goods sold?

A. Yes; they had considerable of the goods sold.

Q. Half of it?

A. Yes, sir.

Q. Did you observe as to the conduct of the sale, the manner in which it was being conducted by the auctioneer?

A. I thought it was being hurried through very rapidly.

Q. Did the auctioneer dwell upon prices?

Mr. Lanning—Don't lead the witness. 10

A. Well, I thought it was being hurried. The auctioneer went from one thing to another very hurriedly. I don't think he dwelt very much on things.

Q. Do you know generally the value of those goods up there?

A. Yes, sir; because there were a good many things up there I paid for that were sold.

Q. Did those goods sell for a fair market price at that day?

Mr. Lanning—Objected as being too general, 20 not showing sufficient knowledge, either, on the part of the witness.

A. Well, I thought they were sold very cheap.

Q. You have attended auction sales before?

A. Yes, sir.

Mr. Lanning—I renew my objection made the other day to the examination of witnesses as to the value of the goods, there being nothing to show that the sale was unfairly or fraudulently conducted. This objection to apply to all questions 30 of that character asked this witness, or that may be asked of other witnesses.

Q. And you know how they are usually conducted?

A. Yes, sir.

Q. Was this auction sale conducted as deliberately as auction sales are usually conducted?

Mr. Lanning—Objected to as being too leading.

A. I thought it was hurriedly conducted; I wouldn't want my goods to be sold in that manner.

Q. Have you had auction sales of your own? 40

A. No.

Q. Did you purchase anything there, Mr. Baumgartner?

A. I purchased some wrapping paper.

Q. You paid 3¼ cents a pound?

A. Yes, sir, for some, and five cents a pound for others.

Q. State whether or not that was a fair value?

A. The one I paid 5 cents for, while I was treasurer we paid 17 cents, and the one I paid 3 cents for I think cost 7 cents a pound.

10 *Q.* You say while you were treasurer. Of what were you treasurer?

A. The Capital Cracker Company.

Q. And you were treasurer up until what period?

A. I couldn't give you the date.

Q. Until January, 1892?

A. I think it was in January, 1892, I sold my interest and resigned my position.

Q. When did you become interested in the Capital Cracker Company?

20 *A.* I think it was in May or June, 1890.

Q. And they continued to buy and sell goods until 1892?

A. Yes, sir.

Q. During that time did they purchase any machinery?

A. Yes; all of the machinery was purchased during that time.

Q. Who purchased it?

A. Mr. Shellenberger.

Q. Did you know anything as to the value of machinery?

A. No, except from the catalogues or price lists which 30 was furnished to us?

Q. And you had a selection from different catalogues?

A. Yes, sir.

Q. And did you buy pursuant to the different catalogues that you had?

A. Yes, sir; we bought the machines which answered our purpose.

Q. Do you recall the cracker machinery; was that sold to Stapler?

A. Yes, sir.

40 *Q.* You know what that was worth?

A. Well, it wasn't worth as much as we paid for it.

Q. What was it worth when you bought it?

Mr. Lanning—Objected to, as he already says he knows nothing except what he gathered from catalogues.

A. I can't recall the price we paid for it; I think it was $375.

Q. You don't recall?

A. No, sir.

Cross-examination (by Mr. Lanning)— 10

Q. You think you attended the sale in the morning?

A. Well, I won't say, Judge; it has slipped my memory.

Q. How long were you at the sale?

A. I was there less than an hour, very nearly an hour.

Q. You don't know personally how long the sale was continued?

A. No, sir; I couldn't spare the time to stay there.

Q. What was sold while you were there; give the general character of the goods that were sold?

A. The flour up stairs, lard, wrapping-paper, twine, and 20 all the things on the second floor.

Q. Was the machinery?

A. That was down stairs on the first floor.

Q. And a lot of small things were sold while you were there?

A. Yes, sir.

James Maher, being sworn on the part of the complainant, testified as follows:

Direct-examination (by Mr. Backes)—

Q. What is your business? 30

A. A baker.

Q. In the city of Trenton?

A. Yes, sir.

Q. How long have you been a baker?

A. All my life; 25 years in Trenton.

Q. Did you attend the sale of the Capital Cracker Company in May, 1892?

A. Yes, sir.

Q. When you arrived there were they selling?

A. Yes, sir.

Q. Were you one of the purchasers at that sale?

A. Yes, sir.

Q. Did you observe the speed at which that sale was conducted?

A. Well, I didn't pay particular attention as to that.

Mr. Lanning—I object to the witness stating anything he heard said there?

10 Witness—I heard some of the people around say goods were sold too cheap.

Q. When you speak of some of the people, who do you mean?

A. Those parties purchasing; they were criticising on the prices paid for some of the goods.

Q. Did you make any observation at that time?

A. No, sir; I wasn't much interested in anything only what I wanted myself.

Q. Were those articles sold at a market price?

20 Mr. Lanning—That is objected to. The question is too general; besides, it should be limited to the matters or articles concerning which the witness has knowledge.

Q. You know the value of different articles that were there?

A. Flour, lard and cakes I did, at that time; some of those cakes weren't first quality.

Q. They weren't sold for first quality?

A. No.

30 *Q.* Were those articles at that auction sale sold at a fair market price?

Mr. Lanning—I make the same objection I did a moment ago.

A. Well, I didn't consider some of them did.

Q. What did you buy there, Mr. Maher?

A. Some lard.

Q. What did you pay for that lard?

A. Four cents.

Q. What was the fair value of that lard?

40 *A.* Eight cents, or eight and one-half cents.

Q. Did anyone bid on that lard excepting you?

A. Yes, sir.

Q. How many bidders?

A. One other; Geary and myself.

Q. Did anyone bid after you?

A. No, sir.

Q. How soon was it struck off to you after you made the bid?

A. As soon as I made the bid.

Q. Struck it off immediately and waited for no other bidders? 10

A. I don't think so.

Q. Did you observe that he pursued that practice in any of the others?

A. I couldn't tell.

Q. You buy cocoanut, Mr. Maher?

A. Yes, sometimes.

Q. Is 10 cents a pound a fair price?

A. Yes; sometimes it is worth more.

Q. Did you see that up there? 20

A. I wasn't there when the sale was first started; no.

Q. Did you notice as to the flour?

A. I tried the flour.

Q. Did you notice how it was sold?

A. Yes; it was sold in lots.

Q. Was the prices dwelt upon any?

A. I couldn't say; I don't think it was; I heard some of the men say it was no price.

Q. Did you know who the party was that bought it?

A. No, but I heard some of them say— 30

Mr. Lanning—Don't tell what you heard.

Mr. Backes—Go on; let us hear what he has to say.

Witness—I heard—

Mr. Lanning—I object to it.

Q. Do you know whether it was Silas Barkely, of Hulmeville?

A. I don't know anything about it.

Q. Do you know what you were paying for high-graded flour at that time? 40

A. About $5.50 a barrel, or $5.60.

Q Did you see the grinder sold there?

A. Well, no, sir; I didn't pay any attention to those things.

Q. With reference to the lard—state whether or not, in case you were urged to bid, you would have bid more than what you did?

Mr. Lanning—I object.

A. I would.

10 *Q.* How much?

Mr Lanning—Objected to.

A. Six cents a pound; if anybody bid against me, of course, I wouldn't give full value, because I had to cart it home.

Cross examination (by Mr. Lanning)—

Q. How long were you at the sale?

A. Well, I was there from, I think, two or three o'clock until it was over.

Q. Were there a good many small things to be sold?

20 *A.* Yes, quite a lot of small things.

Q. You had an opportunity to bid on anything you wanted?

A. I had, but I didn't do it.

Q. Did the other people present have full opportunity to bid for whatever they wanted?

A. Yes, if they wanted.

Q. The sale wasn't so fast but that anyone who wanted to bid could have had an opportunity to do it?

A. I suppose so; yes.

30 *Q.* You said you had some other bidder against you, was that Mr. Geary; was he the first bidder?

A. Yes, sir.

Q. Do you remember what he bid?

A. Three and one-half cents.

Q. What did you bid?

A. Four cents. The auctioneer said he couldn't take one bid.

Q. After Mr. Geary bid?

A. Yes, sir.

Q. Then the auctioneer was hanging on to the lard in order to get another bid?

A. Yes, sir.

Q. Then you bid four cents?

A. Yes, sir.

Q. Was there an opportunity for Mr. Geary to bid after you bid?

A. I couldn't tell you.

Q. Could anyone have bid?

A. I suppose if they wanted it. 10

Fred. D. Lawshe, being sworn on the part of the complainant, testified as follows:

Direct examination (by Mr. Backes)—

Q. What is your business, Mr. Lawshe?

A. Grocer.

Q. City of Trenton?

A. Yes, sir.

Q. Did you attend the sale of the Capital Cracker Company in May, 1892?

A. I did. 20

Q. Were you a buyer there?

A. I was.

Q. Do you recall the sale of any goods to Mulford and Vreeland, of Newark?

A. I do.

Q. Do you know in what condition those goods were; did you examine them?

A. Yes; they were sealed up in cans; I couldn't get at them.

Q. Did you see them? 30

A. Yes, sir.

Q. From what you could see, tell us what condition they were in?

A. They were in good condition.

Q. Are they goods that are manufactured by the company?

A. No, sir.

Q. Of whose make or sale?

A. I think they were the New York Biscuit Company's.

Q. Of goods that the company dealt in?

A. Yes, sir.

Q. How were they sold?

A. They were sold by the pound; so much per pound.

Q. How were the goods sold to Mulford & Vreeland; in the same way, or by the entire lot?

A. That was the Newark firm; by the pound.

Q. They took the whole lot?

A. Yes; the whole lot.

Q. Did you bid on that lot of goods?

10 *A.* I don't remember.

Q. Do you know the value, the market value, of those goods; have you dealt in them?

A. I have.

Q. You know the value?

A. They vary so, it is hard to give a value.

Q. Do you know what arvenues are in tins?

A. No.

Q. Do you know what afternoon teas are in tins?

A. Yes.

20 *Q.* What were they worth at that time?

A. From 13 to 15 cents.

Q. That would be the price that you would have to pay by the single can?

A. Yes, sir.

Q. Selling, you would still get a higher price?

A. Yes, sir.

Cross-examination (by Mr. Lanning)—

Q. Did you buy much there, Mr. Lawshe?

A. I bought something like $50 worth.

30 *Q.* I see on one of the exhibits a buyer, Lawshe & Son; you are connected with the firm of Lawshe & Son?

A. Yes, sir.

Q. Did you examine these afternoon teas particularly?

A. Just looked at them.

Q. Didn't examine them carefully?

A. I couldn't get at them.

Q. If they were sealed up how could you tell what they were?

A. I couldn't tell only by the looks of them.

Q. By the label?

A. I could tell the label on the can; they are a glass can, so that you can see through them.

Q. How long were you at the sale, Mr. Lawshe?

A. I was there from the time it commenced until it got through; I should judge about two and one-half hours, or three hours.

Q. I judge there were a good many small things sold there?

A. Yes, sir. 10

John M. Bauer, being duly sworn on the part of the complainant, testified as follows:

Direct-examination (by Mr. Backes)—

Q. What's your business, Mr. Bauer?

A. Baker.

Q. Where are you engaged in business?

A. With Mr. Katzenbach.

Q. Were you never engaged in business for yourself?

A. Yes, sir.

Q. Are you now? 20

A. Yes, sir.

Q. Did you ever work for the Capital Cracker Company?

A. I did.

Q. In what capacity?

A. As foreman.

Q. Of the entire plant?

A. Yes, sir.

Q. During what period?

A. I was with them from '91, when they started, until 30 the time they began, up to March previous to the time of closing.

Q. What part of March, 1892?

A. Yes, sir.

Q. While you were there did you become acquainted with the values of machinery in the place?

A. Some of them.

Q. And the values of goods that they dealt in?

A. No; I didn't know what they paid for the goods they bought.

Q. Did they manufacture all the goods they sold?

A. No, sir.

Q. What did they manufacture that they sold?

A. The crackers and a few of the cakes.

Q. What did they sell that they bought?

A. Cakes and wafers, and such as that; I couldn't tell you the names of the different things; all the can-goods
10 were bought, I mean cakes in cans, and also the wafers, goods that were in cans; there were a great many barreled goods.

Q. That they sold but didn't manufacture?

A. Yes, sir.

Q. Are you acquainted with the values of the goods they dealt in, both manufactured and purchased?

A. No, sir; I couldn't state what the goods were worth, what they paid for them.

Q. I didn't ask you what they paid for them, but what
20 they were worth, as a baker?

A. I don't know.

Q. Did you attend the sale, in May, '92?

A. Yes, sir.

Q. Did you see some burnt cakes there?

A. Yes, sir.

Q. Were they goods that were manufactured by them, or goods that were purchased?

A. Goods that were manufactured there.

Q. And where were the burnt goods?

30 *A*. On the second floor.

Q. What were they in?

A. In barrels.

Q. Were they sold?

A. Yes, sir.

Q. Do you know who purchased them?

A. A Mr. Herbert, if I am not mistaken.

Q. Were there any other burnt goods excepting those that Mr. Herbert bought?

A. Not that I remember.

Q. In the advertisement that Mr. Phillips made of that sale appears 23 barrels of old crackers and in the sales returned appears J. Herbert, 40 barrels of broken cake; is that the same lot?

A. Yes, he bought a lot of broken cake and burnt cake together.

Q. About 40 barrels?

A. I couldn't say.

Q. Mr. Herbert was the only man that purchased them?

A. Yes, sir. 10

Q. You advertised and sold a cracker machine; what in your opinion was that cracker machine worth at the time of the sale?

A. I don't know just at present what the machine was worth at the time, but I would say—

Mr. Lanning—Objected to because the witness hasn't shown any knowledge on the subject.

Q. Were you present when that machine was purchased; was it purchased new?

A. Yes, sir. 20

Q. Was there any difference in the condition of the machine when it was sold?

A. No, sir.

Q. Was it in the same condition of usefulness when it was sold?

A. Yes, sir.

Q. What was the machine worth at the time when it was purchased.

Mr. Lanning—Objected to because the witness has not shown any knowledge. 30

Q. What was paid for that machine?

A. $600.

Q. Did you know the value of machinery at that time?

A. No, sir.

Q. Did you ever buy any?

A. No, sir.

Q. Do you know anybody who bought or sold any?

A. No, sir.

Q. Were you instrumental in the purchase of that machine? 40

A. No, sir.

Q. They had a break-up there?

A. Yes, sir.

Q. Were you present when that was purchased?

A. No, sir.

Q. Or the mixer?

A. No, sir.

Q. Or the sifter?

A. No, sir.

10 *Q.* Or the grinder?

A. No, sir.

Q. Do you know whether the articles that I have mentioned were all sold at the Cracker Company sale?

A. I don't remember.

Q. Do you know whether the grinder was sold?

A. I don't remember.

Q. The soft-cake machine, do you know whether that was sold?

A. Yes.

20 *Q.* Do you know who purchased it?

A. Mr. Watts.

Q. And where does he live?

A. Lambertville.

Q. Did you ever buy bread-pans?

A. Yes, sir.

Q. Do you know what the lot of bread-pans that were up there were worth at the time of the sale?

A. No; I do not.

Q. Do you know what they were worth apiece?

30 *A.* No, sir.

Q. What is meant by "Peerless," as advertised in Mr. Phillips' sale—is that a cracker or cake?

A. A sort of a wafer, a cracker.

Q. Did you examine this stock at the time of this sale?

A. No, sir.

Q. Not even in a general way?

A. No, sir.

Q. Is Peerless wafer or cracker of a hard substance?

A. No, sir.

40 *Q.* Or soft?

A. Well, it is not soft like cake; it is a cracker that has all the moisture taken out; it is brittle.

Q. Will it spoil in a reasonable time?

A. No.

Q. Did you know what Peerless wafers were worth at that time?

A. No, I did not.

Q. Were they manufactured by the company?

A. No, sir.

Q. From whom did they buy them? 10

A. They bought from the New York Biscuit, and also from the Poughkeepsie Cracker Co.

Q. Here is twelve boxes of cookies advertised for sale; is cookies a cake?

A. A sort of ginger-cake.

Q. Is it soft?

A. Yes, sir.

Q. Is a wafer a soft cake or cracker, or is it brittle?

A. It is brittle.

Q. Will that spoil within a reasonable time? 20

A. No.

Q. What do you call a reasonable time?

A. A month.

Q. Do they spoil quicker when the cans are open, or when they are closed?

A. If I remember, they were all in barrels.

Q. Here are seven boxes of zephyr wafers?

A. Of course they get them in boxes.

Q. Will they spoil in boxes any quicker than when they are open? 30

A. No, sir.

Q. Do you know what condition they were in at the time of the sale?

A. I do not.

Q. Three boxes of snaps advertised for sale; did you see them?

A. No, sir.

Q. What do they mean?

A. Ginger-snaps.

Q. Do they improve with age? 40

A. No, sir.

Q. Do they keep?

A. That depends altogether how they are baked.

Q. Who baked them?

A. Some they bought and some they baked.

Q. Do they spoil easy?

A. Not in cold weather.

Q. What effect has the weather on wafers?

A. They will grow musty.

10 *Q*. If they are in tight tin cans?

A. Not in a reasonable time, they won't.

Q. Or in boxes or barrels?

A. No, sir.

Q. What is meant by London coffee, 4 boxes advertised?

A. That is a sort of a sweet cake.

Q. Is it soft?

A. No, it is brittle; the moisture is taken out.

Q. Able to be kept in the same length of time as wafers?

A. Yes, sir.

20 *Q*. Five boxes of lemon biscuits, what are they?

A. They are not exactly soft.

Q. More susceptible to being spoiled by time?

A. Yes, sir.

Q. Ten boxes of Paris mixed; what is meant by that?

A. That is the same cake as the lemon biscuit only that it is made in smaller cakes.

Q. Can those goods be kept?

A. Well, they are all right for a week or so.

Q. What is the effect on them?

30 *A*. They grow musty.

Q. But still marketable?

A. No, not after a week old.

Q. Eight barrels of Trenton crackers, whose crackers are they?

A. They were manufactured.

Q. Do you know what condition they were in?

A. No, I do not.

Q. How long will crackers keep before spoiling?

A. Baked as they should be they will keep 45 weeks.

Q. Three barrels of C. C. C. crackers; is that the Capital Cracker Company?

A. Yes, sir.

Q. Five barrels of cheap sodas; who manufactured those sodas?

A. I couldn't say.

Q. When they speak of cheap sodas, does that designate the price or article; does it mean a cheaper soda from others?

A. It means cheaper than others. 10

Q. What is Duchess Soda?

A. I don't know; I don't think they had any if I remember.

Q. Don't you know what they are?

A. No.

Q. Do you know whether it is brittle?

A. It is brittle, I should say, because they are a soda cracker, and all soda crackers are.

Q. Seven barrels of lunch milks; were they manufactured by the Capital Cracker Company? 20

A. No, sir; they bought them from the Poughkeepsie Cracker Company.

Q. Were they brittle or moist?

A. Brittle.

Q Six barrels—boxes—cream sodas; were they moist or brittle?

A. Brittle.

Q. Six barrels of pretzlets; were they manufactured by the company?

A. No, sir. 30

Q. Were they moist or brittle?

A. They were brittle.

Q. And capable of being kept?

A. Yes, sir.

Q. Four tins of snaps, what is meant by that?

A. Ginger snaps.

Q. What is a bolivar; is that brittle or moist?

A. It is a large molasses cake; soft.

Q. The lemon biscuits, is that brittle or moist?

A. Well, that is not exactly brittle cake nor moist. 40

Q. Does your answer apply to the next article of egg biscuits?

A. I don't know anything about that article.

Q. What are arvenues?

A. I don't know.

Q. Or afternoon teas?

A. That I don't know.

Q. Or wakefields, or graham wafers?

A. The same as other flours, only they have graham
10 flour instead of wheat.

Q. Did you observe how the auctioneer conducted that sale on that day?

A. Yes, sir.

Q. In what manner was it conducted; with speed?

A. I thought it was rather hasty.

Q. How did he conduct himself, with reference to the striking off of articles after bids were offered; as to speed?

A. Everything was knocked down to the second bidder.

Q. Was there much competition?

20 *A.* No, sir; it was useless to dwell on things; the articles were not dwelt on, not as long as I have seen at auctions.

Q. Did you hear any conversation between Mr. Phillips and the auctioneer?

A. No, sir.

Q. Did you see the flour sold?

A. Some of it.

Q. Were you a purchaser?

A. Yes, sir.

Q. Did you know at that time the value of flour?

30 *A.* Yes, sir.

Q. Was the flour sold at a fair market value?

A. I don't think so.

Q. You know what the Capital Cracker Company paid for their high graded flour?

A. I don't remember.

Q. Do you know from whom they purchased that high graded flour?

A. Some of it was bought from Thompson, of Ohio, and some from Barclay, near Langhorne.

40 *Q.* Do you recall what grade of flour Stapler purchased?

A. I am not positive.

Q. Did you purchase some?

A. Yes, sir.

Q. What grade of flour did you buy?

A. The flour that was from Barclay.

Q. Did you buy his high graded floar?

A. His high graded winter flour.

Cross examination (by Mr. Lanning)—

Q. How much did you buy?

A. Five barrels. 10

Q. What kind of flour?

A. I don't remember the name of the flour; it was winter flour.

Q. What do you mean by "high-graded flour"?

A. Why, the high grade; there is generally three grades of flour; and there is what they call first, second and third, and the first is called the high grade.

Q. You mean high-graded flour used for cracker purposes?

A. Yes, sir. 20

Q. Or, do you mean the highest grade of flour in the market?

A. No, sir.

Q. What grade is in the market; or can you designate it?

A. The spring-wheat flour is the high grade flour, and this is winter that was used there.

Q. Did you buy the winter grade, or the spring flour?

A. They had no spring flour.

Q. Well, what is second grade flour, used in cracker bakery? 30

A. Well, I can't exactly explain.

Q. Yet you say that high-grade is winter flour?

A. Yes, sir.

Q. And when you say winter flour, I suppose you say flour from winter wheat; weren't there different grades of flour manufactured from different grades of wheat?

A. Yes, sir.

Q. And when you say "high-graded flour" you don't mean the first grade, or highest grade that is made?

A. I mean the best that is made of the winter wheat.

Q. Is that what they bought?

A. Yes, sir.

Q. From what manufacturer?

A. Mr. Barkley.

Q. That's the flour you bought?

A. Yes, sir.

Q. How many barrels of that kind of flour were there that day?

10 *A.* I don't remember.

Q. Do you recall that Mr. Stapler purchased any flour?

A. Yes, sir.

Q. Do you know what it was he purchased?

A. No, sir.

Q. What did you pay for the flour you bought?

A. I am not positive; I think it was $3 a barrel.

Q. According to the description of the flour purchased by you, as now in evidence, it appears that you bought second graded flour; what is the fair market value of 20 second graded flour?

A. I couldn't say positively what it was worth at that time.

Q. How long were you at that sale?

A. Two hours.

Q. There when it began?

A. No, sir.

Q. Were you there when it stopped?

A. No, sir.

Q. Were you there when they sold anything on the first 30 floor?

A. Yes, sir.

Q. Were you there when they sold anything on the second floor?

A. Yes, sir.

Q. Were you there when they sold the machinery?

A. Some of it.

Q. What is this machine you spoke of as having cost $600?

A. It is a machine that cuts stamps on fancy crackers.

40 *Q.* What is it called?

A. A cracker machine.

Q. How did you learn what it cost?

A. From Mr. Shellenberger.

Q. That's the only source of information you have?

A. Yes, sir.

Q. I understand you to say that you didn't examine these biscuits and crackers?

A. No, sir.

Q. Or the other articles that were sold there?

A. No, sir. 10

Q. You haven't any personal knowledge as to their condition?

A. No, sir.

Q. Don't know whether they were fresh or stale?

A. I do not.

Henry D. Phillips, being recalled, testified as follows:

Q. Have you any explanation to make with reference to the grinder that was sold?

A. I haven't thought about it since Monday.

Q. You can't tell to whom it was sold? 20

A. Not now.

Q. Nor the price realized?

A. I don't remember now.

Q. Where is the original of the sales memorandum that you made?

A. I do not kuow.

Q. From what did you make number three?

A. The party who made it made it from memorandum of sale?

Q. And who made it? 30

A. Miss Cox.

Q. Is she an employee of yours?

A. At that time.

Q. After she made, what became of it?

A. I do not know.

Q. After you got it?

A. I do not know.

Q. When did you see it last?

A. Probably when that was made.

Q. The original was in your handwriting?

A. I couldn't tell.

Q. Haven't you got that in you office at the present time?

A. I don't think I have.

Q. In *Exhibit No. 3* appears that a soft-cake machine was sold to one McCabe; does that truly state the fact?

A. If the paper says so, it's a fact.

Q. Do you know to whom the cake machine was sold?

10 *A.* I didn't examine this paper in three years, and unless the matter is fresh, it has passed out of my mind.

Q. Do you know whether that was sold at public auction?

A. All the machinery was offered at sale at public auction, and it was announced that all bids would be held for a day or two.

Q. Do you know whether that bid of McCabe's was held?

A. If it was for machinery, it was.

Q. Do you know McCabe?

20 *A.* Not personally.

Q. Don't you know that you sold that machine to Watts?

A. I have no recollection of the matter unless I refresh myself.

Q. Do you know a man by the name of Watts?

A. I know that there was a purchaser living at Lambertville.

Q. Did you have any dealings with him?

A. Not other than the sale of this machine.

Q. Do you know that machine went to Lambertville?

30 *A.* I only know what the paper says.

Q. Do you know whether you got a higher price than $40?

A. If the paper says $40, $40 was obtained for it.

Q. Was any more obtained for it?

A. Not a cent, sir.

Q. Do you know whether that machine was sent to Lambertville?

A. The machine purchased by the gentleman at Lambertville was sent to him.

40 *Q.* Did you superintend the sending of it?

A. No; Mr. Green.

Q. Were you at Lambertville to see the gentleman?

A. I was not.

Q. Did you see him at your office?

A. I did not.

Q. How much was bid for the articles marked "mixer" and "breaker," for which you have credited the concern $225?

A. I do not know.

Q. Do you know whether the mixer was sold to the party who bid the highest bid at that sale? 10

A. There were one or two machines—

Q. Confine yourself to the mixer and breaker.

A. I don't remember at this time.

Q. Do you know whether the mixer or baker went to Camden?

A. I do not recall what machinery went to Camden.

Q. Do you know whether any went to Camden?

A. Some did.

Q. Were you paid for the machine that went to Camden? 20

A. I was paid for all that was sold.

Q. Don't you know that you received $225 for the mixer and breaker?

A. I know nothing of the kind.

Q. Were all the machines of the company sold by private sale?

A. It was not.

Q. Was there any exception?

A. As I was going to say before, there were one or two machines for which I obtained a higher price than the price bid at the sale; and the highest price obtained privately was obtained and credited on that paper. 30

Q. Were there any machines which you sold afterwards for a lower price than the amounts bid?

A. Not one.

Q. What business were the parties engaged in to whom you sold the machine that went to Camden?

A. I think in the manufacture of bakers' supplies.

Q. What was the name of the firm?

A. I don't recall. 40

Q. Did you see the members of the firm yourself?

A. I saw the parties at the sale.

Q. Who negotiated the sale of the machinery that went to Camden?

A. I have not said that the goods sent to Camden were sold at private sale.

Q. Were they?

A. I do not know.

Q. Were they sold at public sale?

10 *A.* I have answered your question.

Q. Then you can't say whether the mixer or breaker was sold at private or public sale?

A. No, sir.

Q. Then you don't say the mixer was sold for the highest price at the public sale?

A. I do.

Q. Then was it sold at public sale?

A. It was offered for public sale, but whether the person who made the bid at the public sale got it I don't recall.

20 *Q.* Did you see the party who purchased the machinery that went to Camden?

A. I don't distinguish him from the other buyers.

Q. How many buyers were there who bid at the public and purchased at the private sale from you?

A. I don't recall there were any.

Q. Excepting the party in Camden?

A. Excepting none.

Q. Have you any record of that $225 in your check book stubs?

30 *A.* My check book stubs would not show it.

Q. What became of the $225?

A. It was deposited in the First National Bank.

Q. To your credit?

A. To the credit of a note originally $4,000.

Q. Was the $225 deposited to your credit and then paid over or was it deposited directly to the credit of that note?

A. I wouldn't say positively.

Q. Will you get your check books and examine your books and ascertain the name of the party?

A. My check book wouldn't show it. If I deposited in to my personal credit it wouldn't show it.

Q. Then from your knowledge you can't tell us whether any of the machinery for which you have given certain figures and for which you have debited yourself at certain figures were sold at public sale and that those figures were the highest price or figures obtained at that sale?

A. All the machinery on that statement was sold to the highest bidder, and the figures named were the highest figures offered. 10

Q. Will you look at *Exhibit No. 3* on the second page you will find there McCabe soft cake machine $40?

A. I do.

Q. Wasn't that machine sold to a man by the name of Watt; and it has been so testified by two different witnesses. Do you still adhere to your former answer, that the machines were sold to the highest bidder?

A. They were sold to the highest bidder at that sale, or at a private sale for more than the bid offered at that sale for the same article? 20

Q. Were they the identical articles sold to the person who made the highest bid for those articles at the public sale, or were they sold privately?

A. There were some two or three exceptions, where a higher price was obtained by me at a private sale than was offered at a public sale, and my recollection now is of the McCabe machine, that it was sold probably at $15 in excess of the bid at the public sale, and that price of $40 is a very large price for that machine.

Q. You never purchased any cake machines? 30

A. We were negotiating for some machines; this soft-cake machine was of no use, and because of its being of no use we ceased to manufacture soft cakes there.

Q. Can't you give us something more definite with reference to the mixer and breaker than you have?

A. When I come to testify, I will probably be able to give you the information you want.

Q. Why don't you testify now?

A. Because I can't recall the matter; it has been three years since I examined this paper. 40

Q. Do you propose refreshing your memory, and by that time you will give us any detail?

A. I can give you any detail you wish upon talking and refreshing my mind with people.

Q. You were the Secretary and Treasurer of the Capital Cracker Company?

A. At one time.

Q. At the time of its failure?

A. Yes, sir.

10 *Q.* Do you know whether you dealt with the New York Biscuit Company?

A. They did.

Q. At the time of the failure, do you know whether they owed the biscuit company any money?

A. I think they did.

Q. You made a statement of that character in this original suit, didn't you?

A. I probably did.

Q. You had a statement, didn't you?

20 *A.* Yes, sir.

Q. Have you got that handy?

A. No, sir.

Q. Have you it in your office?

A. I don't know.

Q. Is that the amount?

A. I can't tell, Mr. Backes.

Q. Could you tell from the books?

A. No, sir; I think it was a large sum for the amount of business this company did; it was a large sum and a 30 small sum, with reference to the business this company did.

Q. Can't you find that list of liabilities among your papers?

A. Not now.

Q. Will you get it later?

A. If you wish.

Q. You also dealt with the Poughkeepsie Cracker Company?

A. Yes, sir.

Q. At the time of their failure you owed them a large 40 amount of money?

A. Yes, sir.

Q. In the neighborhood of $800?

A. I think so.

Q. You were also dealing with VanWanklin, of Rocksborough?

Mr. Lanning—I object to this line of testimony on the ground that it is immaterial and irrelevant.

Q. At the time of the failure you owed them a bill of $170? 10

A. I don't know the amount.

Q. Do you know whether the company was dealing with Margerum Brothers?

A. They owed them a bill.

Q. Do you know the amount?

A. No, sir.

Q. Margerum was the complainant in this cause?

A. Yes, sir.

Q. And I believe it is in evidence you permitted him to file a bill in that connection; didn't you learn the amount 20 that was due Margerum Brothers?

A. I may have known, but don't recall.

Q. In the neighborhood of $174?

A. I don't recall.

Mr. Backes—I offer these bills: the bill of Margerum Brothers for $174.56, which shows that lard was purchased at 8 cents up to May 3d; the Poughkeepsie Cracker Company for $828.61; the bill of the New York Biscuit Company for $559.80, showing the items of goods purchased 30 and their cost price, and the bill of VanWanklin & Company for $172.85.

Mr. Lanning—I object to the offer of these bills because they are immaterial, incompetent and irrelevant.

Q. Until what time did the Cracker Company continue doing business, Mr. Phillips?

A. Some little time before the failure.

Cross-examination (by Mr. Lanning)—

Q. You say that *Exhibit No. 3* was made by Miss Cox, formerly in your employ?

A. Yes, sir.

Q. Not now in your employ?

A. No, sir.

Q. And was made, as I understand you, from an original memorandum?

A. Yes, sir.

10 *Q.* That is an original memorandum of the sales?

A. Yes, sir.

Q. And I understand that you don't recall in whose handwriting the original memorandum was?

A. No, sir.

Q. You do recall the original from which Miss Cox made *Exhibit 3* was in Mr. Green's handwriting?

A. Yes, sir.

Q. Where is that now, do you know?

A. I have not the slightest knowledge.

20 *Q.* Did you compare *Exhibit 3* with the original memorandum before the original memorandum was lost or destroyed?

A. I did.

Q. Can you say whether *Exhibit No. 3* is a true copy of it?

A. It is.

Q. You stated on your direct examination that all bids would be held a day or so, what do you mean?

A. Why, on the machinery.

30 *Q.* Then I understand that the sale it was announced that the bids on machinery would not be announced immediately but would be held a day or two?

A. When the machinery was reached the auctioneer made that announcement publicly.

Q. Was that pursuant to the terms and conditions of the sale?

A. Yes, sir.

Q. There were no machinery sold by you at private sale but what was sold for a price equal to or more than the 40 highest bid offered at the public sale?

A. Yes, sir; and all my interest was in that direction in obtaining the highest best price for everything that was sold.

Q. You sold no machinery at private sale except at a price equal to or higher than the highest price bid at the public sale?

A. That is true.

By Mr. Backes—Will you produce those terms?

A. Yes, sir.

Q. I ask you now whether any part of the machinery was allowed to go to persons who bid for it at the public sale or was it also by private contract or contracts after the public sale? 10

A. There were two, possibly three machines sold to persons who were not the highest bidders for them at that sale at a greater price than the highest bids and the others went to the highest bidders at the sale.

Mr. Backes—

Q. Can you define or state the machines that were sold to the parties who made the highest bid and to those to whom you sold at a private sale? 20

A. I have covered that already.

Q. Can you do it now?

A. I can probably.

Adjourned until Wednesday, April 24th, at 10 o'clock.

WEDNESDAY, April 24th, 1895.

Adjourned until Monday, April 29th, at 10 o'clock.

MONDAY, April 29th, 1895.

Adjourned until Wednesday, May 1st, 10 o'clock.

WEDNESDAY, May 1st, 1895, 10 o'clock.

John H. Scudder, being called on the part of the complainant, testified as follows: 30

Direct-examination (by Mr. Backes)—

Q. Mr. Scudder, are you the proprietor of the Lawrence Milling Company?

A. Yes, sir.

Q. Did you sell goods to the Capital Cracker Company?

A. Yes, sir.

Q. Between March and April, 1892?

A. Yes, sir.

Q. Did you sell the goods stated in that bill?

A. Yes, sir.

Mr. Lanning—The testimony is objected to as being irrelevant and immaterial.

10 Mr. Backes—I offer this paper and ask that it be marked.

Mr. Lanning—I object as being irrelevant.

Mr. Backes—I offer all the other papers which I have used in evidence that has not already been offered.

Mr. Lanning—I object to all of the papers offered except *Exhibits Nos. 2* and *3*, which contain statements of Mr. Phillips' account, on the ground that they are irrelevant and immaterial.

20 Mr. Backes—We rest.

Henry D. Phillips, being recalled on the part of the defendant, testified as follows:

Direct examination (by Mr. Lanning)—

Q. Did you take any personal part in advertising the property covered by your chattel mortgage, advertising for sale the property covered by your chattel mortgage?

A. Yes, sir.

Q. How was that property advertised; in what form, I mean?

30 *A.* By poster.

Q. The same as *Exhibit 1* that has been offered in evidence?

A. Yes, sir.

Q. Do you know how many of those were distributed, approximately?

A. About 500 or more.

Q. How were they distributed?

A. By mailing one to every grocer in the city of Trenton, to the chief customers of the Capital Cracker Company,

to the cracker manufacturers and dealers in the city of Trenton, Camden, Philadelphia, Somerville, Lambertville, New Brunswick, Newark, Jersey City and Brooklyn, and by a personal delivery of the driver of the sales-wagon to all the grocers in the city, and by posting the poster in several conspicuous places in Trenton.

Q. Well, as to the delivery and posting made by anyone else than yourself, you are only speaking from information?

A. Yes, from instructions given to the parties by myself.

Q. Did you personally mail any of these notices? 10

A. I mailed them all.

Q. To these various cities and grocers in Trenton?

A. Yes, sir.

Q. Did you personally post any, or deliver any, or was that done by others?

A. It was done by others.

Q. The sale was advertised to take place at one o'clock, can you tell what time it commenced?

A. Ten or fifteen minutes after one.

Q. Do you know what time you closed? 20

A. About six o'clock.

Q. Something has been said in the course of examination of witnesses by the other side as to instructions given by you to Mr. Brannin, the auctioneer, to hurry the sale; did you give him any instructions during the time the sale was proceeding of any character?

A. I did.

Q. Will you tell what?

A. Towards the close of the sale on the first floor, where there were a good many manufactured goods sold in parcels, 30 it seemed to me at the time that he was a little slow in moving from article to article, which would naturally result in one's losing the attention of buyers, and I cautioned him two or three times to not delay moving to these articles any longer than was necessary.

Q. Did you give him any instructions to knock off articles more rapidly than he was doing?

A. I did not.

Q. So far as you observed, state whether bidders had a fair opportunity to put in their bids for the articles that 40 were offered?

A. They had all the opportunity necessary.

Q. And a fair opportunity?

A. Yes, sir.

Q. Were the conditions of sale in writing?

A. Yes, sir.

Q. Have you those conditions or not?

A. Yes, sir.

Q. Have you them with you?

A. Yes, sir.

10 *Q.* Will you please produce them?

Witness produces them, and they are marked *Exhibit P 1.*

Mr. Lanning—The exhibit reads as follows: "Conditions of mortgagee's sale, May 23, 1892. 1. All articles will be struck off to the highest bidder, and in case of default in payment they will be resold and said purchasers charged with expenses of resale and the difference between his bid and the price at resale, if any.

20 "2. All purchases under twenty dollars shall be paid for in cash; those over that amount, by note, payable in thirty days, with approved endorser.

"3. All settlements to be made at the office of H. D. Phillips, Forst-Richey Building, Trenton, N. J."

Q. Was there anything said at that sale as to whether you, as mortgagee, should have time to consider whether you would accept bids or not?

A. Only when selling the machinery.

30 *Q.* When the machinery was offered for sale, what in that respect was stated?

A. The auctioneer stated that machinery would be sold, and the highest bids held; the highest bidder to be informed subsequently whether his bid would be accepted.

Q. Was there any time named during which the bid would be held?

A. The next day.

Q. The statement made by the auctioneer was under your instruction?

40 *A.* Yes, sir.

Q. Were any articles of machinery offered for sale, and the prices withheld pursuant to that statement?

A. Yes, sir.

Q. Can you recall what?

A. Soft-cake machine, cracker machine, mixer and breaker, and sifter.

Q. Was the bid for the soft-cake machine accepted or not?

A. It was not.

Q. Do you know to whom it was sold or not?

A. It was sold to a man by the name of McCabe. 10

Q. For what price?

A. $40.

Q. Was that more or less than the highest bid offered at that sale?

A. It was more.

Q. Are you able to tell what the highest bid was?

A. $25, I think.

Q. Was the highest bid for the cracker machine accepted?

A. Yes, sir.

Q. What was that highest bid? 20

A. Stapler, $170.

Q. You couldn't make a higher sale than that?

A. No, sir. It was bought to stow away.

Q. By Mr. Stapler?

A. Yes, sir; to prevent competition, and it brought more than I expected it would bring.

Q. Did you sell the mixer and breaker for a higher bid than what was offered at the sale?

A. My recollection is I did.

Q. For how much? 30

A. $225.

Q. To whom?

A. To Mr. Strohecker.

Q. Of what place?

A. Trenton.

Q. Do you recall what the highest bid offered at the sale was?

A. No, sir.

Q. You don't think Strohecker was the highest bidder, or don't you recall? 40

A. I think he was.

Q. Then do you think he gave an advance over the highest bid?

A. I think I worked an increase on it.

Q. Do you know to whom the sifter was finally sold?

A. I don't recall now.

Q. Do you know whether it was sold to the highest bidder at the sale?

A. I think it was.

10 *Q.* And for the amount of the highest bid?

A. Yes, sir.

Q. Your chattel mortgage covered a horse, it appears, in the evidence; state whether you have any personal knowledge of the condition of the horse at the time of the sale?

A. I have.

Q. Was he sound, or not?

A. He was not sound.

Q. Do you know what the trouble with him was?

A. He was sore in the front feet.

20 *Q.* Do you know what was done with that horse, whether anything, for treatment, while he belonged to the Capital Cracker Company?

A. Only from hearsay.

Q. Have you any personal knowledge as to whether he was put out to pasture because of tenderness of feet?

A. That was done prior to my connection with the company; I know this, the horse with great difficulty could be made to trot.

Q. And did you observe that that difficulty seemed to be 30 due from tenderness of feet?

A. From that cause and also the horse was slow.

Q. Have you any personal knowledge of the condition of the various commodities that were offered for sale that day?

A. Yes, sir.

Q. There seem to have been sold various sundries, barrels of flour; do you know whether there were different brands of flour offered on that day?

A. There were three different brands of flour.

Q. Will you tell us what you know about that subject as 40 to quantity, quality, prices, &c.?

A. The flour Stapler bought, 25 barrels, was Thompson's flour from Ohio; Barkley bought his own flour—

Q. That is, you mean Barkley bought flour manufactured by himself?

A. Yes, sir; John Bauer bought Thompson's flour and Carrick bought a third grade of flour that they had in the factory for some time which they used in connection with the material obtained from grinding stale cake and stale goods of that kind in making ginger snaps; these are all the flour sold at that sale. 10

Q. Now tell us about their various qualities and values?

Mr. Backes—Objected to because you have not laid the foundation for such a question and the witness on direct examination testified that he had no knowledge of the quality of flour.

Judge Lanning—The question is withdrawn.

Q. You say Stapler bought 25 barrels of flour of Thompson's manufacture, I think?

A. Yes, sir.

Q. Do you know whether that flour was high grade or an inferior grade? 20

Mr. Backes—Objected to because the witness has not shown his qualification.

Q. What was Thompson's high grade three and a half flour?

A. Do you mean $3.50 per barrel?

Q. Yes, sir; that is what his flour cost at that time, his high grade flour?

A. Yes, sir.

Q. Something has been said in the evidence about that flour in the market being worth $4.85 a barrel? 30

A. Yes.

Q. Was there any other flour of that grade of manufacture sold at that sale than the 25 barrels purchased by Stapler?

A. Five barrels purchased by Bauer.

Q. I notice that Stapler paid, according to the account that you presented, $2.75 a barrel, and Bauer $3.75 a barrel; were those the prices paid by them respectively?

A. Yes, sir. 40

Q. Weren't you in error as to the Bauer being a three and a half grade?

A. No, sir.

Q. Did he pay twenty-five cents more than you ought to pay?

A. Yes, sir; he did.

Q. Do you know what the other grades of flour cost the cracker company that was sold at that sale?

A. Barkley cost $4.75, and the other grade I wouldn't say, positively, what it cost.

Q. I think that you have said Barkley purchased all of his make?

A. Yes, sir.

Q. Those nineteen barrels seemed to be bought by him, which included all his manufacture?

A. Yes, sir; the barrels were sorted according to grades, prior to the sale.

Q. Now, as to the manufactured articles that seemed to have been sold at the sale, cakes, crackers, old crackers, twenty-four barrels of cracker-dust, &c., can you state anything from your personal knowledge as to their condition at the time of the sale?

A. I can.

Q. What was their condition?

A. All the manufactured goods sold at that sale on that day were stale goods.

Q. Prior to the sale, had any effort been made to get rid of the manufactured goods that were fresh and that were best marketable?

A. Yes, sir.

Q. How?

A. By sale of the driver of the wagon in Trenton, by sale to Dolton & Company, and by sale to three other people.

Q. And had the fresh manufactured goods then disposed of prior to the day of public sale?

A. They had, sir.

Q. Can you speak either from memory or from consulting the account, *Exhibit 3*, more particularly as to the condition, quality and prices of the respective articles that were

sold on that day, more particularly than you have done in my question so far asked you?

A. I can.

Q. You can speak from memory and without memorandum?

Mr. Backes—I object to the question as being entirely too general and too broad.

Mr. Lanning—Please proceed.

A. The goods sold then had been manufactured from four to six weeks, and in these I do not include the many barrels of old crackers and cakes; the prices obtained were from one-half to two-thirds, generally speaking, of what the same goods would have brought at retail if in a fresh condition. 10

Q. All cracker materials were considered stale after ten days' manufacture, and the rule with manufacturers is to take them at that time from retail dealers as stale goods.

Q. Then after that time, if disposed of at all, they were sold as stale goods, were they?

A. They were. 20

Q. Do you know anything about the condition of the wagon that was sold on that day?

A. I do.

Q. Explain what the character of that wagon was and its condition?

A. It had been used from the incorporation of the company; it had never been repaired; it needed painting, and the tires were loose.

Q. From the incorporation of the company until the date of the sale was how long a period? 30

A. Between two and three years.

Q. Do you know what it cost or not when new?

A. No, sir.

Q. In the matter of expenses annexed to *Exhibit 2* have you the bill for those expenses?

A. Yes, sir.

Q. Here?

A. Yes, sir; most of them.

Q. Amongst the expenses is an item freight bill $1.47; have you a voucher for that? 40

A. Yes, sir.

Mr. Lanning—Please produce it.

Witness produces it.

Q. You have handed me three bills of freight for .15, .22, $1 10, amounting to $1.47, together with a letter from the Pennsylvania Railroad Company. This freight bill is for goods shipped to the Cracker Company?

A. I don't take it that way.

Q. What is it?

10 *A.* I think it is freight on goods that I sold as mortgagee.

Q. There is an item of horse board, $34.80; have you any voucher for that?

A. Yes, sir; I paid it by check, which I will produce later.

Mr. Backes—We will waive the production of the check.

Witness—I paid $33.80 by check and $1 in cash.

Q. There is an item paid to Brannin, bailiff, $25; have 20 you a voucher for that?

A. Yes, sir.

Q. That is for services for constable, auctioneer, bailiff, under the chattel mortgage?

A. Yes, sir.

Q. There is another freight bill for $2.02; have you any voucher for that?

A. Not at this time.

Q. Do you know what it was paid for?

A. For the same services.

30 *Q.* As in the other freight bill?

A. Yes, sir.

Q. There is an item, Cox, $6; what is that?

A. That is for services; I paid it in check.

Q. What Cox was that?

A. Miss Cox, who was in my employ and did service there under the chattel mortgage sale.

Q. There is an item, Green, $25; what's that?

A. That is for same services; I paid that by check.

Q. Have you the check here?

40 *A.* I have his check home.

Mr. Backes—We waive the production of the check.

Q. There is an item, team, $4; what's that?

A. That is for some team service; I have forgotten what it is.

Q. Have you any voucher for it?

A. No, sir.

Q. Do you remember who you paid it to?

A. No, sir; to some teamster around town here.

Q. And for services in connection with the mortgagee's 10 sale?

A. Yes, sir.

Q. There is another item, $4.50, man; what's that?

A. For Mr. Blackwell arranging the goods previous to the sale.

Q. Have you any voucher for that?

A. I don't think I have.

Q. It was paid to him?

A. Yes, sir.

Q. There is an item, Shellenberger $20, what is that? 20

A. That is for the same thing.

Q. That is for services in connection with the mortgagee's sale?

A. Yes, sir.

Q. You paid to Shellenberger?

A. Yes, sir.

Q. There is an item, printing, MacCrellish & Quigley, $6.50; what is that for?

A. That is for printing posters.

Witness produces a duplicate receipt which is 30 offered in evidence.

Q. There is also an item, postage, $1.50; what is that?

A. That is for posters sent around town and other persons as I detailed here this morning.

Q. Mr. Blackwell has testified that he made some collections of moneys due after the constable took possession under your chattel mortgage; can you give the date when the constable took possession?

A. May 11th.

Q. Do you know what was done with the moneys that Mr. Blackwell collected after May 11th?

A. Yes, sir.

Q. State, please?

A. They were paid to me, and I paid them over to the First National Bank for a note.

Q. The book accounts were assigned to whom?

A. To the First National Bank.

Q. As security to secure what?

10 *A.* To secure a note made by the Capital Cracker Company to its own order.

Q. Who acted as attorney for collection?

A. William Holt.

Q. I show you the book called the "Order Book," which has been produced here to-day by the receiver's counsel, and call your attention to pages 264, 265 and 266, and ask you whether, under the names of W. D. Holt and William Holt, there is a record of the moneys that were collected at that time, if you know?

20 *A.* This account appears to be an account of such moneys, in the writing of Mr. Green; but I have not examined it.

Q. What moneys were collected by Mr. Blackwell were paid by him to whom?

A. To Mr. Green or to me.

Q. Was Mr. Green at the office of the factory?

A. Yes, sir.

Q. Did Mr. Green pay over moneys to you that he had collected after the constable took possession?

A. He did; yes, sir.

30 *Q.* You accounted for this to whom?

A. To the First National Bank.

Q. What moneys that were paid directly to you by Mr. Blackwell were afterwards paid to the bank?

A. Yes, sir.

Q. If I understand you that all of the moneys that came into your hands as the proceeds of sales of the mortgaged goods, after the constable took possession and before the public sale, were accounted as book accounts and transferred to the First National bank?

40 *A.* They were, sir, without a doubt.

Q. Do you know whether Mr. Blackwell sold any goods of the Capital Cracker Company after the constable took possession or delivered any?

A. He may have taken some to the freight station, but I don't think he sold any.

Q. Around town?

A. No, sir.

Q. He has said that he thought that he did deliver some and finally he said he wasn't sure that he delivered one package, if that; you don't think he delivered any around town? 10

A. No, sir.

Q. State whether or not you disposed of these goods at the best price you could get?

Mr. Backes—Objected to as illegal.

A. I did, and I don't think anybody could have got any more.

Mr. Backes—I ask that that be stricken out as illegal.

Cross examination (by Mr. Backes)— 20

Q. Mr. Green was in your employ after you took possesion under your chattel mortgage, was he not?

A. Yes.

Q. And he worked for you and you paid him $25?

A. Yes, sir.

Q. He was not in the employ of the cracker company?

A. He couldn't be.

Q. Where did you begin the sale, Mr. Phillips?

A. On the second floor.

Q. And where was the flour? 30

A. On the first floor.

Q. Did you sell all the goods that were sold at public sale on the second floor before you went to the first?

A. We did.

Q. And did you sell all at the highest price you could get there?

A. We did.

Q. At that time you were under the impression that you could not have done better?

A. More than I expected.

Q. If that is so why did you hold the machinery?

A. Because my mortgage was for $650, and there was a question in my mind as to what course I should legally pursue, and that reservation was made in order to protect my own rights and the rights of others.

Q. Then you didn't reserve the bids because the bids were inadequate?

A. That is the real reason, as I stated.

10 *Q.* The one that is implied in my question?

A. The one that I stated.

Q. That is the one you have said for the protection of yourself and other creditors?

A. Yes, and because—(interrupted).

Q. Did you regard—

Judge Lanning—I object.

Q. Did you regard the price (interrupted).

Mr. Lanning—I object; the witness is entitled to complete his answer before another question is

20 asked.

Q. Did you regard the prices bid for the machinery as an adequate and fair price at the time of that sale?

A. I did.

Q. Then it wasn't because the price was too low that you held the bids?

A. It was not.

Q. Then why didn't you let them go at that price?

A. I have answered that question three times.

Q. Answer the fourth time.

30 *A.* Because I did not know what the best thing for me to do was as my mortgage called for only $650. The reservation was made with that thing in mind, and the same day I consulted an attorney in this city who advised me to sell the machinery.

Q. You have stated on your direct examination when I was examining you that you held the machines for a higher price; is that true or not?

A. It is true in part.

Q. Then if you held it for a higher price you certainly

must have regarded the price at which they were bid as an inadequate price.

A. That is not the reason, nor the whole reason.

Q. That is one only?

A. That is a part of the whole.

Q. You said on your direct examination on the part of the receiver that you thought the breaker and mixer went to Camden; were you truthful in your statement at that time?

A. It was my impression at that time. 10

Q. Didn't you know at that time that Mr. Strohecker purchased it, and wasn't he in the room when you were testifying?

A. I didn't know at that time; I distinctly told you at that time that I hadn't examined the record for over three years.

Q. Mr. Strohecker is a baker in town?

A. Yes, sir.

Q. His presence didn't refresh your memory that you sold these articles to him? 20

A. No, sir.

Q. How much was the soft-cake machine sold for?

A. $40.

Q. And the cracker-machine?

A. $170.

Q. Breaker and mixer?

A. $225.

Q. Sifter?

A. $20.

Q. Any other machinery up there that you recall? 30

A. I think the grinder.

Q. How much was that sold for?

A. A piece of machinery was left there, because it was a part of the real estate.

Q. You don't think the grinder was sold?

A. I think what I have said and nothing more.

Q. What is your best impression?

A. My best impression is what I have already told you

Q. You say the grinder wasn't sold, or you don't know?

A. I wouldn't say. 40

Q. Was there any other machinery up there?

A. There was a piece of machinery on the second floor which was part of the real estate and was not sold.

Q. What was that called?

A. I don't know.

Q. And there was also a gas machine that was sold?

A. Yes, and some gearing.

Q. Anything else?

A. A boiler and engine.

10 *Q.* Anything else?

A. Ovens.

Q. Any other machinery?

A. Not that I recall now.

Q. Now this one machine, was it a small or a large one?

A. A good size machine.

Q. Do you know whether that was the grinder or not?

A. I do not.

Q. What is your best impression.

A. I have no impression?

20 *Q.* And you say now that you, at the present time, regard, and did at the time of sale regard, the price that you received for the machinery a fair price?

A. I distinctly do.

Q. You say that horse was not a sound horse?

A. Yes, sir.

Q. And the wagon not a good wagon?

A. Yes, sir.

Q. The horse board was how much?

A. $60.

30 *Q.* And the wagon?

A. $62.50.

Q. Does *No. 3* disclose the sales made by you at public auction excepting the machinery which was sold by you at private sale?

A. Yes, sir.

Q. Does it disclose any other item of sale?

A. Other than what?

Q. Other than the machinery sold by you at public and private sale?

40 *A.* It does.

Q. It what respect?

A. The item of one dollar for horse board.

Q. It shows three items of goods sold subsequent to the execution of the chattel mortgage and prior to the time of the sale; will you point those items out to me and specify them?

A. Yes, sir, these items: Legget, $2.27; Janeway, $32.01, and Sperry, $6.36.

Q. All of the other items excepting these three and the machinery, were sold at public auction sale? 10

A. Yes, sir.

Q. Now the first item, Legget, where were they sent?

A. Out of town parties.

Q. Janeway, where does he live?

A. Out of town.

Q. Sperry?

A. Out of town; my recollection is that we had several orders on hand and these goods being fresh we shipped them, and the goods were charged to me, and I accounted for them. 20

Q. They were shipped after you took possession?

A. Yes, sir.

Q. At what price were they shipped with reference to the price the company received in their usual course?

A. I don't know.

Q. At the regular prices?

A. I wouldn't say.

Q. What was the Legget account; what goods were sent constituting that account?

A. Some lemon biscuits and soft cake and some fresh 30 goods that he had bought.

Q. And the Janeway item of $33.01, so with reference to the Sperry?

A. Yes, sir.

Q. Can you tell us or not whether they were sent?

A. Not any more definitely than I have.

Q. Will you look at the freight bills and state whether they will refresh you memory?

A. No, sir; because they do not fix the day of the ship-

ment; but it was between the two dates between May 11 and May 23.

Q. Now these bills under *Ex. P 2* freight bills, were they the freight that you paid on those items of Legget, Janeway and Sperry?

A. I wouldn't say positively.

Q. Did you sell any other goods excepting Leggett, Janeway and Sperry between those two dates?

A. I don't think that we did.

10 *Q.* Where does Leggett do business?

A. I don't know.

Q. Did you ever see Leggett?

A. No, sir.

Q. Did you ever see Janeway?

A. No, sir.

Q. Did you ever see Sperry?

A. No, sir.

Q. Don't know where they do business?

A. No, sir.

20 *Q.* Don't know what place you sent the goods?

A. No, sir.

Q. Do you know whether these freight bills represent the Leggett, Janeway and Sperry items?

A. Not further than I have stated.

Q. You have refreshed yourself since your examination with reference to these bills?

A. I have gone over the whole matter.

Q. And more able to speak at the present time?

A. More confident to what I swear to.

30 *Q.* You say you were not a competent witness the other day?

A. I am not going to swear to anything I don't know, Mr. Backes, and you might as well know it right now.

Q. You advertised 116 barrels of flour, didn't you?

A. If the posters says so we did.

Q. After you took possession of the goods did you make an inventory of the articles there?

A. Somebody did, presumably Mr. Green.

Q. For you?

40 *A.* For the bailiff and for the purpose of the sale.

Q. In that manner did you ascertain that you had 116 barrels?

A. That is the way the number was arrived at.

Q. Mr. Green made return to you of the items that were up there?

A. Either Green or Shellenberger made the list.

Q. You accepted it as a true inventory of the articles there?

A. As approximately; it doesn't purport to be infallible.

Q. You said this morning that you purchased from three different parties while you were connected with the Capital Cracker Company? 10

A. I did not state that in that way; I said we sold three grades of flour; but we bought flour from several people.

Q. You connected yourself with that concern in January, 1892?

A. Yes, sir.

Q. And you severed your connection on May 9th, 1892?

A. That's true.

Q. During that time how many people did you buy flour of, that you know of? 20

A. Barkley, Thompson Bros., Lawrence Milling Co., Walton in Trenton, and some cheap people outside of Philadelphia.

Q. At the time of the sale you say you had three different kinds of flour at the Capital Cracker Co.?

A. Yes, sir.

Q. And whose milling?

A. One was Barkley's; the other Thompson Bros., and the other, which sold as third grade cheap flour, I think came from some one outside of Philadelphia. 30

Q. What was the name of that concern in Philadelphia?

A. I don't know.

Q. Did you buy much flour from them?

A. I don't know.

Q. Did you buy any flour while you were connected with the concern?

A. I think they did.

Q. I show you the ledger of the Capital Cracker Co;

that is the book you used in connection with your business up there?

A. The book what was used there.

Q. Well, you were secretary and treasurer of the concern, were you not?

A. I was, but I never used it.

Q. Personally you did not, but men under your employ used it?

A. The book-keeper did.

10 *Q.* Will you refer to that and tell me who you purchased flour from in Philadelphia?

A. I don't know the name.

Q. Were they large dealers?

A. I don't know; I couldn't recall the name if I saw it.

Q. Have you the list of the creditors of the Capital Cracker Company that was made up at the time you took possession, or immediately after?

Mr. Lanning—Objected to as irrelevant and immaterial.

20 *A.* The original list was turned over to Montgomery.

Q. Are you sure you haven't it among your papers?

A. I am quite sure.

Q. Do you know when you bought the flour from Barkley?

A. Indefinitely only.

Q. Will you look at your book, the ledger, and state when you purchased the flour from Barkley that was sold at the time of the sale?

A. I don't know.

30 *Q.* What does your books disclose?

A. Shows an item of five bills.

Q. What does your books show with reference to the item of five bills which have not been settled?

A. There are not five bills not settled.

Q. What is the last bill?

A. April 4th, to bill $116.25.

Q. First one preceding?

A. $240.

Q. What date?

40 *A.* February 20th.

Q. I show you a bill, marked *Exhibit 4*, by Silas Barkley, and ask you whether those dates opposite the items of Mr. Barkley correspond with those that you have?

Mr. Lanning—Objected to as irrelevant and immaterial.

A. They do.

Q. At what price did Mr. Barkley sell flour to the Capital Cracker Company?

A. $4.65.

Q. Any other price? 10

A. $4.80, and I guess some cheaper than that.

Q. The item of February 20th, 50 barrels, $4.80, and April 4th, 25 barrels, $4.65, you also purchased from the Lawrence Milling Company, J. H. Scudder, proprietor?

A. Yes, sir.

Q. Did you personally purchase that?

A. No, sir.

Q. Did you personally bargain for it?

A. I personally knew nothing of it.

Q. I show you Mr. Scudder's bill, *Exhibit 1*, May 1st; 20 what does that set forth, the bill of goods that he sold you?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Didn't you state to Mr. Scudder as he was leaving here this morning that his bill was not correct?

A. No, sir; I did not. What I did say was, we will now know that your bill is correct.

Q. You also purchased from Thompson Brothers, did you? 30

A. Yes, sir.

Q. Thompson Brothers of Ohio; will you refer to your book and see what items you have there of Thompson Brothers?

Witness refers to ledger.

Q. Do you find such an account?

A. Yes, sir.

Q. Do you find an item which has not been paid?

A. Yes, sir.

Q. What is the date; what is the amount? 40

A. March 25th; merchandise, $496.25.

Q. I show you a bill of Thompson's for 100 barrels of M. flour at $3.75, and 25 barrels of I. K. T. at $4.85, under date of March 25th, 1892; will you state whether that bill represents the same item which you have testified to?

A. Yes, but it doesn't represent the price of the goods; the freight was deducted from the price, and to estimate the price you have to deduct the freight.

10 *Q.* How much was the freight?

A. $50 or $75.

Q. Less freight, $46.75; was that the freight?

A. It was around fifty.

Q. Is that the deduction that must be made to ascertain what the company agreed to pay Thompson?

A. Yes, sir.

Q. Now you said that Barkley bought his own; Stapler bought the twenty five barrels of Thompson's "I. K. T."; what became of the one hundred barrels of "M" flour that 20 was purchased on the 25th of March, 1892, from Thompson?

A. You have not stated correctly what I did say; I said that Barkley bought the remnant of his last sale of flour, which the ledger shows he sold for $4.65, and Stapler and Barkley bought the "M" flour of Thompson, and the other lot of flour is a cheaper flour that I refer to.

Q. Do you mean to say that the flour that Carrick bought was not a remnant of Thompson's "M" flour? Do you state that positively?

30 *A.* I don't think it is; I would not say positively.

Q. Do you know of any other bills of flour against the Capital Cracker Company, excepting Lawrence Milling Company's, Thompson's and the Barkley's?

A. I do.

Q. Whose?

A. As I have said, they bought some flour outside of Philadelphia; it was a third grade flour they had for the purpose of mixing it with the grindings of old crackers and cakes for the purpose of making ginger-snaps; ginger-snaps 40 are made in that way.

Q. Isn't this third party you are speaking of a myth?

A. No, sir; it may be in your mind.

Q. Was George W. Baker the name of this Philadelphia party?

A. If you should ask me a hundred names I wouldn't know.

Q. Do you know Mulford and Vreeland?

A. I know of them.

Q. I show you a list of the creditors of the Capital Cracker Company, which is a copy of the list presented by you to the receiver; examine this list and tell me if you can designate the Philadelphia party who sold this flour to the company? 10

Mr. Lanning.—The question is not objected to, but the statement is made that counsel says it is a copy which is not proven.

Q. Do you know of any other creditors excepting those that are named on that list, and I show you *Exhibit C 2*, May 1st?

Mr. Lanning—Objected to as irrelevant. 20

A. I have not compared your statement and cannot qualify; there may be names there and there may not be.

Q. I show the original?

A. I told you I gave the whole business to Mr. Montgomery.

Q. Have you ever communicated with the party in Philadelphia since the day of the sale?

A. No, sir.

Q. Has he with you?

A. No, sir. 30

Q. Can you tell me approximately how much you owe him?

A. I don't know.

Q. Can you tell me approximately how much flour you bought from him?

A. I don't know.

Q. Can you tell me how much flour was in the factory that you bought from this party?

A. I know a party can; Mr. Green.

Q. Now Mr. Phillips, on the 25th of March, a very short 40

time before this concern failed, you purchased one hundred barrels of "M" flour from Thompson; how much of that was on hand at the time of the sale?

A. I don't think any was.

Q. How many barrels of flour did that concern use in a day?

A. I don't know.

Q. Did they use more than three barrels a day?

A. That wouldn't go anywhere making crackers.

10 *Q.* I show you a book, Mr. Phillips, entitled the case of Bisbee et al., partners, trading as Poughkeepsie Cracker Bakery Company, against Henry D. Phillips; do you recall being a defendant in such a suit?

A. I do.

Q. Do you recall taking that case to the Supreme Court on a rule to show cause?

A. I do.

Q. And you recall having the case printed?

A. Yes, sir.

20 *Q.* Look at that book and tell me if that is the book you had printed for argument?

A. Yes, sir.

Mr. Backes—That book will be marked May, 13 for complainant.

Q. You recall Mr. Phillips that that action was brought as it was alleged for deceit in that you stated on March 26th, among other things the Capital Cracker Company was solvent; you know that to be the general purport of that suit?

30 Mr. Lanning—The question is objected to as being irrelevant and immaterial.

A. I do.

Q. That cause was tried at the Mercer Circuit Court?

A. Yes, sir.

Q. At the trial do you recall you omitted making the statement that the firm was solvent?

Mr. Lanning—Objected to as being irrelevant.

A. I do.

Q. Do you recall offering a statement, which is marked

40 *Exhibit 7*, and which I now show you?

Objected to as immaterial and not as cross-examination.

A. The statement is a copy furnished to be by Mr. Shellenberger, and was not my statement and never was.

Q. But that is a statement offered at the trial in support of your statement that the concern was solvent?

Mr. Lanning—Objected to as immaterial.

A. That is a statement furnished to me by Mr. Shellenberger.

Q. Answer my question. 10

A. I think it is a copy of Mr. Shellenberger's statement to me.

Q. In whose handwriting is that statement?

A. Miss Brown.

Q. Miss Brown was your clerk?

A. Yes, sir.

Q. She was a witness called by you at that time?

A. To prove Shellenberger's statement.

Q. That was a statement offered in support of your allegation that the concern was solvent on March 26th, 1892? 20

A. Yes, sir.

Q. By that statement, Mr. Phillips, you sought to maintain at that trial that the horse and wagon, on April 1, 1892, was worth $450?

A. That was what Shellenberger wrote in his statement.

Q. That was what you sought to maintain by reason of Shellenberger's statement, that the horse and wagon, on April 1st, 1892, was worth $450?

A. That is Shellenberger's statement.

Q. And it was by this statement which Mr. Shellenberger 30 gave you and which you offered at the trial that you sought to maintain and prove that the horse and wagon on the first of April, 1892, was worth $450, did you not?

Mr. Lanning—Objected to as immaterial.

A. The statement was offered for the purpose of proving the assets and liabilities of the cracker company at that time and the horse and wagon was one of the assets at that time.

Q. And at the time of the trial, which the record shows to be held on the 17th of October, 1892, you accepted this statement as a true value of the property and the horse and 40

wagon, did you not, and sought to maintain and prove that the horse and wagon was worth $450 on the first of April, 1892, did you not?

A. Shellenberger's statement was accepted by me at the time he induced me to buy stock in the company.

Q. That was on the first of January, 1892. I show you this statement, which shows a statement written on top, resources on the first of January, 1892, and first of April, 1892; the items under the first of January, 1892, of resources, you say it is that list of items that Shellenberger gave you and the estimate that he placed on them for the purpose of inducing you to enter the company?

A. Yes, sir.

Q. Then the same statement is extended, and over the top of items appears April 1st, 1892, resources; didn't you offer that list at the time of the trial as being the resources and the value of those resources on the first of April, 1892?

A. The resources on April, 1892, were a reproduction of Shellenberger's statement on January, 1892, with a possible increase of stock on hand.

Q. Then on the 17th of October, 1892, when this trial took place, you were of the impression and conviction that the horse and wagon was really worth $450?

A. I was not.

Q. Then why at the time do you deceive that court at that time?

A. I did not.

Q. Why, then, did you maintain before the court that the total assets and resources of the Capital Cracker Company, on the 1st of April, 1892, amounted to $13,262.32, of which this $450 was one, if you did not believe that to be true?

Mr. Lanning—Objected to as being irrelevant.

A. Because the statement was made with Shellenberger's statement as a foundation, and without the reproduction of Shellenberger's statement, no justification for a statement could be made.

Q. At the time you offered that before the trial court, this *Exhibit No. 7* for the defendant, didn't you believe

that truly stated the items and the value of the resources of the company on April, 1892?

Mr. Lanning—Objected to as being immaterial.

A. I did, if you take Shellenberger's statement as true.

Q. You accepted Shellenberger's statement of the first of January, 1892, as true, when you entered the company, didn't you?

A. I did.

Q. And when you maintained before the court, by this *Exhibit No. 7*, which was offered that the total assets of the corporation on the first of April, 1892, amounted to $13,-260 32, you regarded that as true, didn't you? 10

Mr. Lanning—Objected to as immaterial.

A. The April statement, as I have stated, is founded upon Shellenberger's statement of January, and that is all there is to it.

Q. Well, admitting that to be so, you still, at the time of the trial, regarded the statement as true in order to maintain your defence?

Mr. Lanning—Objected to as immaterial. 20

A. It was not necessary for me to believe it in order to maintain my defence; the point at issue at that trial was not whether deceit had been practiced at the time of the trial, but with at some previous time, when the contract was made with the plaintiff; the truth of Shellenberger's statement is a matter of opinion.

Q. But you, at the time of the trial, regarded this statement to be true in order to maintain your defence?

A. It wasn't necessary to believe it.

Q. I repeat the question? 30

A. My answer is the same.

Q. Do you recall the issue at that trial to be whether the corporation was solvent or not on the 26th of March, 1892?

A. That was not the issue.

Q. That was one of the issues.

Mr. Lanning—Objected to because the pleadings will speak for themselves.

Q. What was the issue in the case?

A. The issue in the case was whether a man had correctly stated a conversation which he had with me on which 40

there were three living witnesses to testify in my behalf and one against.

Q. At the time of the trial will you tell me what you insisted was the value of the buildings and lot of the cracker company?

Mr. Lanning—Objected to as being utterly irrelevant.

A. I don't recall.

Q. I show you *Exhibit No. 7* at that trial; refer to that
10 paper and tell me?

Mr. Lanning—Objected to as utterly irrelevant.

A. No value was insisted at the trial; the question was whether I had received a question from Shellenberger.

Q. Who wrote that $41.50 on that exhibit now under consideration under the date of April 1st, 1892?

A. Miss Brown.

Q. Who wrote the item opposite furniture, under April 1st, 1892, $100?

A. Miss Brown.

20 *Q.* Who wrote it under January 1st, 1892, $75?

A. Shellenberger.

Q. Shellenberger write that?

A. Didn't write on that paper.

Q. Who made the increase from $75 to $100?

A. Miss Brown or Mr. Green.

Q. And they were both employees of yours at the time?

A. They were not; one was, the other was employed by the Cracker Company.

Q. For what purpose did she increase that?

30 *A.* To show the realty value of the plant April 1st, 1892.

Q. Did you give her that information?

A. I think not.

Q. Opposite the item flour, January 1st, 1892, $200, and April 1st, 1892, $900, who wrote those two items?

Mr. Lanning—Objected to as irrelevant.

A. Miss Brown.

Q. Who gave Miss Brown that $300 item?

A. Mr. Shellenberger.

Q. The item under January 1st, 1892, truly portrays the

items that Mr. Shellenberger gave you as to the resources of the company when you first went in?

Mr. Lanning—Objected to as being irrelevant.

A. If the paper is a reproduction of that which was given to me by Schellenberger it does.

Q. And what do the items, the figures opposite the same items under the date of April, 1892, represent?

A. Resources, relatively.

Q. For whom did Miss Brown get this up?

A. She got it for me. 10

Q. And you asked her to make it?

A. Yes, sir.

Q. And you had it made for the purpose of that trial?

A. I did.

Q. For the purpose of showing on the 1st of January, 1892, that Shellenberger represented to you that the concern had resources amounting to $10,235, and for the purpose of showing on the 1st of April, 1892, they amounted to $11,232?

A. That's true. 20

Q. Under the item appears machinery, $1,265, on the 1st of January, 1892, and it appears on the 1st of April, 1892?

A. It does.

Q. Didn't you believe that the machinery was worth $1,265, and that your insistment to the court was made in good faith?

Objected to as immaterial by Mr. Lanning.

A. The statement is Shellenberger's; I had nothing to do with it.

Q. In this paper appears an item in bank; under the 30 date of January 1st, 1892, it is blank, and under the date of April 1st, 1892, $602.30; is that also Shellenberger's statement?

A. $602 32 is the showing of the bank.

Q. Your statement?

A. The showing of the bank.

Q. That was for the purpose of making the total amount of the assets on April 1st, 1892, $13,232.16?

A. That's true.

Q. Now when you presented this paper to the court you 40

honestly believed that that paper spoke truly of the values of those articles?

Objected to as irrelevant by Mr. Lanning.

Q. Didn't you at that time believe it truly spoke the values of those items up there?

A. I believe that the paper was made for the purpose of proving the correctness of Shellenberger's statement.

Q. Is that as near as you can answer my question?

A. It is.

10 *Q.* If you regarded it on October 17th, at the time of the trial in the court, and you believed it at that time that the value of the machinery of the Capital Cracker Company on April 1, 1892, was worth $1,265, how can you say now that you believed you were convinced that the amount of $475, the price you received for the sale of the very same machinery, was a true and fair value?

Mr. Lanning—Objected to because the question assumes that the witness has said that $1,265 was a fair value of the machinery on April 1st, 1892, and also, it being immaterial.

20 *A.* Shellenberger's statement was an exaggerated statement, and the machinery mentioned in it is more than the machinery that was sold at the mortgagee's sale; the machinery in Shellenberger's statement included, in addition to what was sold, the boiler-engine, gas-engine, shafting and ovens.

Q. You think that in Mr. Shellenberger's estimate of $1,265 he included the boiler, gas engines, &c.; look at that statement and see whether the engine wasn't worth $365, in 30 addition to the $1,265?

A. The statement so says.

Q. Didn't Mr. Shellenberger represent to you, in addition to the machinery, that the gas machine was worth $350?

A. He gives the gas machine $350.

Q. When did you discover that Mr. Shellenberger's valuation of $1,265 was an exaggerated one?

A. How long ago? I don't know, sir.

Q. Before that time, or after?

40 *A.* I don't remember.

Q. If it was before that time, how could you honestly maintain that, in your opinion, the value of the goods in May, 1892, were as stated in this paper?

Mr. Lanning—Objected to as altogether unfair, for the reason that the issue in that cause was whether deceit had been practiced in the making of the contract on which the plaintiff sued; and the issue was not as to what the true value was, or was not, at the time of the trial.

Mr. Backes—For the benefit of the Master, I want to state that the issue at that trial was whether Mr. Phillips represented to R. G. Dun & Company, of whom the plaintiffs were subscribers with the Capital Cracker Company, on the 26th of April, 1892, was solvent; and Mr. Phillips' defense sought to maintain at that time was, that the assets exceeded the liabilities. 10

Q. Another item; Mr. Shellenberger represented to you on the first of January, 1892, a book account to be worth $1,500? 20

A. He did.

Q. At the time you represented the book accounts to be worth on the first of April, 1892, how much?

A. The uncollected book accounts were worth $3,010.

Q. In the same line, Mr. Shellenberger represented to you on the first of January, eighteen hundred and ninety-two, the machinery to be worth $1,265, did he not?

A. He did.

Q. At the time of the trial, the machinery was represented to be worth on the first of April, 1892, how much— how much did you represent it to be worth? 30

Mr. Lanning—Counsel for the defense states that he need not answer, the paper speaks for itself.

Q. Didn't you in support of your defense in October, 1892, maintain at the trial in the case of Bisbee against you, that Mr. Shellenberger represented to you that on the first of January, 1892, the machinery was worth $1,265, and that on the first of April, 1892, three months later, the machinery was worth $1,265, didn't you do that? 40

Mr. Lanning—Counsel for Mr. Phillips advises him that he need not answer that question, inasmuch as the paper speaks for itself, it already appearing that it has been offered in evidence.

Q. Mr. Brennan says that on two or three occasions you told him to hurry up and cry faster?

A. Mr. Brennan didn't say that.

Q. If he said it, was it true or not?

A. It was not.

10 *Q.* Did he say what was true?

A. I asked Mr. Brennan when he was selling on the second floor to move from article to article faster in order to retain the crowd and get better prices.

Q. Did you tell Mr. Brennan that he was slow?

A. No, sir.

Q. Did Mr. Brennan say that he thought he would get better prices if he didn't sell so fast?

A. I don't think he said that; I was looking out for myself and was getting the best possible price.

20 *Q.* Did Mr. Brennan say that there was no use in throwing things away and they ought to bring better prices, and you said to him that it wasn't any of his business?

A. No, sir; I didn't tell him that.

Re-direct examination (by Mr. Lanning)—

Q. Did you sell at the public sale all of the flour which the Cracker Company had on hand?

A. I did.

Q. And have you accounted for all of it in the statement *Exhibit 2* and *3*, here produced?

30 *A.* Yes, sir.

Edward Blackwell, being duly sworn on the part of the defendant, testified as follows:

Direct examination (by Mr. Lanning)—

Q. Mr. Blackwell, where do you live?

A. 114 Spring street.

Q. What's your business?

A. Salesman.

Q. Were you ever in the employ of the Capital Cracker Company?

A. Yes, sir.

Q. In what capacity?

A. As salesman.

Q. Did you drive the wagon around Trenton?

A. Yes, sir.

Q. How long were you engaged in that work?

A. About one year or a little over.

Q. Were you acquainted with the horse that belonged to the Cracker Company? 10

A. Yes, sir.

Q. Used horses to any extent?

A. Handled horses ever since I was 12 years old.

Q. And know something about their value?

A. Some.

Q. Do you know whether this horse was sound or unsound?

A. He was not sound.

Q. What was the matter? 20

A. He was off in front.

Q. What do you mean by that?

A. The horse had either been foundered or some way out of shape.

Q. His feet were tender?

A. Yes, sir.

Q. Do you know whether he had been treated?

A. I do not know.

Q. Do you know whether he was put out to pasture?

A. He was. 30

Q. For what purpose?

A. To help his feet and general.

Q. When was that done?

A. Really I can't recall the time exactly.

Q. As near as you can tell, before the sale made under the chattel mortgage by Mr. Phillips?

A. I think it was done in the preceding fall; he was turned out for four weeks.

Q. Did you have any difficulty in speeding the horse? 40

A. Well, there was no speed in him.

Q. In driving him along the streets state what you observed?

A. He was a horse with no ambition whatever; if you wanted him to trot you had to use the whip.

Q. Did his failure to trot seem to be due to his want of ambition or to the condition of his feet?

A. Both, I should judge.

Q. Then you think the condition of his feet was constantly manifest in his work?

10 *A.* Yes, sir.

Q. His feet were constantly tender, were they?

A. Yes, sir.

Q. What in your judgment was the fair market value of that horse?

Mr. Backes—Objected to as illegal, there being no foundation laid.

Question withdrawn.

Q. Have you dealt in any horses during your lifetime?

A. Yes, sir.

20 *Q.* Bought and sold horses?

A. Yes, sir.

Q. To any great extent?

A. Not to any great extent; I have handled some twenty or thirty horses.

Q. And up to what time have you dealt and bought horses?

A. I owned a horse, I think, the time I was working for the company.

Q. You may tell us what, in your judgment, was the fair
30 market value of the cracker company's horse at the time it was sold?

A. I think the horse was worth, in my judgment—worth about $65.

Q. Have you any knowledge of the condition of the manufactured stock that was sold there that day?

A. I know there was some stale goods there.

Q. Do you recall whether any part of the goods sold were fresh?

A. I don't think there was any fresh goods there.

Q. You, of course, know the condition of the wagon that was sold that day; state what its condition was?

A. Well, the wagon had been in use for two years and over; it needed painting, varnishing, the tires were loose and needed new felloes; I don't think that there was anything broken.

Q. Have you bought and sold wagons?

A. Yes, sir.

Q. How many?

A. I don't know; quite a number. 10

Q. Know in a general way what wagons cost?

A. To a certain extent; I bought several wagons new and second-handed.

Q. What, in your judgment, was the fair market value of this wagon on the day it was sold?

A. I wouldn't want to give over $65; I don't know what it brought.

Q. Do you know what the wagon sold for at that sale?

A. No, sir.

Q. How long have you been engaged in the business that 20 the Capital Cracker Company was engaged in?

A. A little over a year.

Q. Do you know after what period crackers are considered to be stale in the trade?

A. We used to change them every two weeks if they were left over.

Q. That is to say, if you furnished crackers to your customers and they had not succeeded in disposing of them in two weeks you exchanged them or furnished them with fresh crackers? 30

A. Yes, sir.

Q. What would be done with those crackers that were taken out?

A. Sometimes sold and broken as cracker-dust.

Q. If sold they were sold as stale goods?

A. Yes, sir.

Q. Do you know whether there were any crackers sold on that day that had been manufactured within two weeks?

A. I don't know.

Q. Do you know whether crackers were manufactured up to the day of the sale, or was there a cessation of manufacture prior to the sale?

A. I think there was a cessation.

Q. Do you know how long before the sale you stopped to manufacture?

A. I don't seem to recollect.

Q. Do you know anything about the execution of a mortgage to Mr. Phillips?

10 *A.* No, sir.

Q. Did you know anything at the time of its being made to him.

A. No, sir.

Q. You are not able to tell whether you stopped manufacture before or after that mortgage was given to him?

A. I don't know; I couldn't say.

Q. Were you present at the sale?

A. I was there about an hour.

Q. Do you recall what goods were sold, in a general way?

20 *A.* I was there when the horse, wagon and harness, and I think I was there when the coal was sold.

Q. You weren't there when the manufactured stock was sold?

A. No, sir.

Cross-examination (by Mr. Backes)—

Q. Was your position exclusively on the wagon?

A. Yes, sir.

Q. You were not in the office at all?

A. Only in settling up.

30 *Q.* How often was that?

A. Once a day.

Q. How long were you there?

A. About half an hour or three-quarters probably.

Q. When did you stop work, with reference to the time of the sale?

A. I think I stopped in May; I can't recall the date.

Q. You remember a constable going up and taking possession of the place; were you there up to that time?

A. Yes, sir.

Q. Up to the time the constable took possession under Mr. Phillips' chattel mortgage you were working?

A. Yes, sir.

Q. Were the other men working?

A. I think they were; there were some days they didn't manufacture and they were not all there.

Q. They were manufacturing up to the time they stopped?

A. Yes, sir.

Q. The factory was at work?

A. Yes, sir. 10

Q. In full operation?

A. No, not in full operation.

Q. You were engaged in ordinary business within a month prior to the time you stopped?

A. Yes, sir.

Q. Were you making any extraordinary efforts to dispose of goods during that period?

A. Yes, I tried to do all I could.

Q. Were you instructed to do so?

A. I don't know that I was. 20

Q. Why were you trying to do more during that period?

A. Well it is generally a salesman's business to do all he can.

Q. Were your efforts greater during the time preceding the date that the constable took possession to dispose of goods than at any other time during your employ?

Mr. Lanning—I enter my objection as not being cross examination, and that the counsel is bound by the witness' statement.

A. Yes, sir. 30

Q. Why?

A. Well, I think we had more goods that spring than we ever had. Not more, but different kinds, and I think there was a new brand of goods that came in and of course it gave me encouragement to sell goods.

Q. And had you that brand of goods on hand at the time that the constable took possession?

A. There may have been some.

Q. When you speak of brand of goods do you mean manufactured goods purchased by the company? 40

A. Some of them, and some of their own manufacture.

Q. Do you mean to say that during the month preceding the time the constable took possession you had on hand goods manufactured during the winter and spring?

A. Oh, no.

Q. Do you mean to say that you had on hand goods that you purchased?

A. No.

Q. Simply a brand of the new departure that took place
10 in the winter ond spring before?

A. Yes, sir.

Q. Do you know from whom the Capital Cracker Company purchased goods which they sold?

A. I do not.

Q. You have stated at the time of the sale you thought there were no fresh goods in the building of the Capital Cracker Company at the time the constable took possession?

A. I think there was.

Q. And they got stale between the time the constable
20 took possession and the time of the sale?

A. I think most of the fresh goods were disposed of after the constable took possession before the sale.

Q. Did you assist in the disposition of those goods?

A. I did.

Q. Did you sell goods after the constable took possession?

A. I think ——

Q. After you quit work, in a general way?

A. Yes, sir.

Q. Can you tell me to whom?

30 *A.* I couldn't; I don't seem to recollect.

Q. Did yon have your book?

A. I did.

Q. Could you tell if you had the wagon-book?

A. I think I could.

Q. I show you a book marked "Order Book, Wagon;" is that the book you used to enter your sales in?

A. No, sir.

Mr. Lanning—The only objection I desire to make is that this is not cross-examination, and the
40 counsel will be bound by what the witness says;

I further object to the examination of this witness upon any matters relating to sales made by him at any time as not being cross-examination, and that the counsel will be bound by whatever the witness says.

Q. What other books is there?

A. I always carried a small book.

Q. How large?

A. Ordinary hand-book.

Q. Do you find any of your orders or sales entered in that book after the constable took possession? 10

A. No.

Q. Do you find any entries of sales made by you in that book?

A. No, sir; I don't see any sales here.

Q. Can you approximate the amount of your sales after the constable took possession and before the sale?

A. No, sir.

Q. Was it $200, do you think?

A. I haven't the least idea what it was. 20

Q. Where did you make those sales, at the factory or on your route?

A. I think some of them were made at the factory and and some while I was collecting.

Q. Did you collect after the constable took possession?

A. Yes, sir.

Q. These entries on this book, which I have shown you, and which I show you, page 266, 65, 64, and part of 63, do they disclose the parties from whom you collected?

A. Yes; some of them. 30

Q. Can you tell me what amounts you collected, and from whom, by looking at that book?

A. I think I collected B. F. Paff, $9.66.

Q. Was that for goods sold at that time?

A. No, sir; for goods bought previous.

Q. Is that record in your handwriting?

A. No, sir.

Q. At the time of the sale you say you didn't think there were any fresh goods there?

A. I think most of the fresh goods were disposed of. 40

Q. Do you mean those that were manufactured yourself or those that were manufactured, or both, when you speak of fresh goods?

A. Both.

Mr. Backes—I ask for the production of the wagon book used by this witness and now in possession of Mr. Phillips.

Mr. Lanning—I am entirely willing to produce any books that are now in the possession of Mr. Phillips, but I have no knowledge of any fact upon which counsel can assert that Mr. Phillips has a book. Mr. Phillips being called on for the book says it is not in his possession; that he gave all the books to the receiver.

Q. Do you know what arvenues are, Mr. Blackwell?

A. No, sir.

Q. Do you know what afternoon teas are?

A. Yes.

Q. Did you sell articles of that description that the cracker company dealt in?

A. Yes, sir.

Q. Do you know from whom they purchased them?

A. I do not.

Q. Wasn't it the New York Biscuit Company article you sold?

A. I forget the brand.

Q. When you speak of the brand do you mean the manufacture?

A. Yes, sir.

Q. You know you dealt in zephyr wafers?

A. Yes, sir.

Q. Were any of those articles sold at the time of the public sale by Mr. Phillips?

A. I don't know.

Q. If there were articles sold do you say all of the articles up there of the manufactured goods that were sold were stale?

A. Yes, I judge so.

Q. There were eight tins of arvenues, eight tins of afternoon teas, and four tins of afternoon teas, graham wafers and zephyrs sold at that sale?

A. Yes, sir.

Q. It is in evidence that those articles were purchased from the New York Biscuit Company; it is also in evidence that those articles were sold to the Capital Cracker Company by the New York Biscuit Company after April 20th; if this is true that those articles were purchased by the Cracker Company after April 20th, and were sold by Mr. Phillips, do you say that they were stale?

A. Yes; I should think they were stale.

Q. Will one month stale those articles? 10

A. I think we have shipped goods back in less than a month.

Q. They were in tin cans?

A. Yes, sir.

Q. Did you examine the articles that I have last mentioned at the time of the sale?

A. No, sir.

Q. Would they in the ordinary course of business be stale at the time the constable took possession if they were fresh when you purchased them? 20

A. No, sir.

Q. Would they in the ordinary course of business, would they have been stale on the twenty-third of May when they were sold if they were fresh when they were purchased?

A. What day did the constable take possession?

Q. I ask you if the goods were purchased on the 28th of April and were sold on the twenty-third of May, assuming they were fresh at the time of purchase, would they be stale on the twenty-third of May?

A. I think they would. 30

Q. Did the cracker company manufacture sodas?

A. No, sir.

Q. Did you manufacture duchess?

A. No, sir.

Q. Is that a soda cracker?

A. Yes, sir.

Q. Did you manufacture biscuits?

A. A lemon biscuit.

Q. Any other cake biscuit?

A. No, sir. 40

Q. State what articles you manufactured?

A. They manufactured crackers—two brands, I think.

Q. Two brands—name them?

A. C. C. C. and Trenton.

Q. Were they an oyster cracker?

A. Yes, sir; a lemon biscuit, ginger-snap and a number of different cakes that I don't recollect now.

Q. Did you buy these same articles or articles of the same description, or did you purchase from other parties, or
10 did you manufacture exclusively?

A. I think they purchased some ginger-snaps from other parties.

Q. Any other articles that you recall?

A. No, sir.

Q. Did you examine the articles at the time of the sale to see whether they were stale or not, or are you giving it as your judgment?

A. I am giving it as my judgment.

Q. Did you know the condition at the time the constable
20 took possession; were they stale or fresh?

A. Some were fresh and some were on hand.

Q. What were on hand?

A. Some crackers and ginger-snaps.

Q. Articles the Company manufactured?

A. Yes, and articles that they purchased.

Q. Were those goods in good condition or were they stale?

A. They were in good condition at the time they were purchased.

Q. Were they in good condition at the time the constable
30 took possession?

A. As far as I know.

Q. Then there were no articles stale at the time the constable took possession excepting some articles that you had manufactured?

A. I wouldn't say but what some of the goods that we had purchased were also stale.

Q. Are you clear upon that, that some were stale?

A. Well, I think they were on hand long enough.

Q. What were on hand?

40 *A.* Graham wafers.

Q. How long?

A. I can't remember.

Q. How much?

A. I can't say that.

Q. One can?

A. I wouldn't say how many because I don't know.

Q. Why do you say you don't know?

A. Well, it is so long I don't fairly recollect, but I know there were some goods on hand.

Q. You think some were graham wafers? 10

A. Yes, I'm positive.

Q. Do you know who purchased them?

A. No, sir.

Q. The horse that you had driven; how long had you been driving him?

A. One year.

Q. Using him daily in your business?

A. Yes, except on two different occasions.

Q. Did you ever have any other horse?

A. Yes, sir. 20

Q. Did you have two horses?

A. Yes, one was my own horse.

Q. I mean in the business of the Company had you more than one horse at any one time?

A. No, sir.

Q. And had you for a year prior to the time of this sale driven this horse to the wagon exclusively.

A. Yes, sir.

Q. And the wagon also?

A. Yes, sir. 30

Q. Had they another wagon?

A. They had.

Q. Now the wagon was sold—was that the wagon used expressly and exclusively for the bakery business?

A. Yes, sir.

Q. And known as the bakers' wagon?

A. Yes, sir.

Q. Do you know what a wagon of that kind costs new?

A. I should judge $150.

Q. Did you ever purchase one? 40

A. I never purchased one.

Q. Do you know of any one who had?

A. No, sir.

Q. Do you know what the Capital Cracker Company gave for this?

A. I do not.

Q. How can you form an accurate judgment as to the value of this wagon, at the time of the sale, if you don't know the original cost price; don't you know what a wagon
10 of that kind was ever purchased or sold for?

A. By judging the price of second-hand wagons.

Q. Did you ever purchase a second hand cake wagon?

A. No, sir.

Q. Do you know of any one who ever purchased a second-hand wagon?

A. Yes, sir.

Q. In addition to this one?

A. Yes, sir.

Q. Do you know what they paid for it?

20 *A*. I think I have seen them sold at different sales; I can't recollect now at this time.

Q. What condition was it in; do you know what it sold for?

A. Fifty dollars, I think; under the hammer.

Q. You base your judgment upon that sale?

A. Yes, sir; and other second-hand wagons that I have seen sold.

Q. Now where was this sale of the fifty-dollar wagon; where did it take place?

30 *A*. I don't recollect now.

Q. How do you recall that it was sold for fifty dollars?

A. Well, I don't know.

Q. Do you know from whom the Company purchased this flour?

A. No, sir.

Q. Do you know that within a month of the time that the constable took possession that a carload of flour came into the place?

A. I don't know anything about it; I was on the wagon
40 most of the time, except morning, loading, and evening when settling up.

Re-direct examination by Mr. Lanning—

Q. Mr. Blackwell, you remember the fact of the constable going into the company's place and taking possession, do you?

A. I wasn't there when he came.

Q. Were you there after he came?

A. Yes, sir.

Q. And learned the fact that he had taken possession?

A. Yes, sir.

Q. Do you remember what was done in connectiou with the taking possession; was the plant operated after that? 10

A. No, sir.

Q. Any goods manufactured after that?

A. No, sir.

Q. You don't remember how long before the sale that was?

A. I think it was two weeks or over.

Q. You said on your direct examination that you thought you stopped work about the first week in May?

A. Yes, sir.

Q. After the constable took possession? 20

A. Yes, sir.

Q. And after the constable took possession I understand you to say you collected this Paff bill—$9.66?

A. Yes, sir.

Q. Are you clear in your recollection as to whether you sold any goods after the constable took possession or as to whether your sales all took place before the constable took possession?

Mr. Backes—Why do you hesitate, Mr. Blackwell? 30

A. I think I sold a few boxes, one or two of soda biscuits.

Q. Are you positive you did?

A. I don't recollect that I took out any canned goods after they ceased.

Q. Did you learn that Mr. William Holt had anything to do with the moneys that were collected upon book accounts?

A. No, sir.

Q. You didn't learn anything about that? 40

A. No, sir.

Q. The moneys that were collected by you were paid to whom?

A. Mr. Green.

Q. He was at the office?

A. Yes; the bookkeeper.

Q. Then you don't recall having positively collected any money after the constable took possession further than the Paff bill of $9.69?

10 *A.* Yes; I collected money besides that.

Q. Then you did collect some moneys after the constable took possession?

A. Yes, sir.

Q. And paid it to whom?

A. Mr. Green.

Q. Did you use the wagon for that purpose?

A. No, sir.

Q. In going around making collections?

A. I think not.

20 *Q.* Used your own horse?

A. Yes, I took my horse and hired a wagon.

Q. And gone as collector?

A. Yes, sir.

Q. Does that refresh your recollection any so that you can state with more clearness as to whether your work was confined entirely to making collections?

A. I can't say positively; I know I didn't have the wagon out; I am positive I hadn't the wagon out after the constable was there.

30 *Q.* Then your work was chiefly, if not wholly confined to making collections and distributing sales bills?

A. Yes, sir.

Q. Where did you distribute sales bills?

A. All over Trenton.

Q. Distributed to whom?

A. Grocers and different places.

Q. Have you any idea how many you have distributed?

A. I have not.

Q. Approximate it as near as you can?

40 *A.* About 150.

Q. You have spoken about not having used that horse on two different occasions while you were with the company; what were they?

A. The first occasion he was taken sick when we were boarding him at the stable on Front street, Furman Brothers; I don't know what was the matter; Dr. Smith was called in—

Q. Never mind details, how long was he out of use?

A. Four or five days.

Q. The second occasion was when? 10

A. I think in the Fall, when he was out to pasture, four or five weeks.

Charles Mather, being duly sworn on the part of the defendant, testified as follows:

Direct examination (by Mr. Lanning)—

Q. Where do you live?

A. East Hanover street.

Q. What's your business?

A. Grocery business.

Q. How long have you been in the business? 20

A. About ten or twelve years.

Q. You never had any connection with the Company?

A. Only to buy goods.

Q. You were one of its customers?

A. Yes, sir.

Q. You were engaged in the grocery business at the time the Company was engaged in its business?

A. Yes, sir.

Q. Did you attend the public sale of the goods made under Mr. Phillips' chattel mortgage? 30

A. Yes, sir.

Q. What time of the sale were you there?

A. I think I was there from the beginning to the end.

Q. Do you recall at what time it began?

A. I think about one o'clock.

Q. You recall what time it ended?

A. Between five and six.

Q. Do you know Mr. Brennan?

A. Yes, sir.

Q. He was the auctioneer?

A. Yes, sir.

Q. Did you observe whether there was any haste in the manner of conducting the sale?

A. I don't think there was.

Q. You are quite sure that you were there during the sale?

A. Yes, sir.

Q. Did you stay with the auctioneer during the sale of
10 the goods until the—beginning to the end?

A. Yes, sir.

Q. So you observed the manner of conducting the sale?

A. Yes, sir.

Q. Have you frequently attended public sales?

A. Yes, sir.

Q. Was there anything at all in the conduct of this sale that attracted your attention or caused you to feel that it was being pressed with undue haste or speed?

A. No, sir.

20 *Q.* Did bidders have a fair opportunity to bid for everything that was offered?

A. Yes, sir.

Q. Did you buy articles there yourself?

A. Yes, sir.

Q. Do you recall what articles you bought?

A. I bought some boxes of cake, such as drop-cakes, jumbles, crackers; well, of course I couldn't give you a list of what I bought—a set of harness.

Q. Well, now, take the crackers and manufactured arti-
30 cles that you purchased, what was their condition, fresh or stale?

A. They were all stale.

Q. Did you observe the articles manufactured that were offered for sale that day besides what you purchashed yourself as to whether they were fresh or stale?

A. Yes, sir, they were stale.

Q. Any fresh goods offered for sale that day?

A. No, sir.

Q. Taking into consideration the fact that these goods
40 were all stale, the manufactured goods, state whether in your

judgment any of them brought less than their fair market value.

Q. Were you present when the flour was offered for sale?

A. Yes, sir.

Q. Did you observe whether there were any different kinds offered?

A. Yes, sir.

Q. Do you know what kinds were offered?

A. Yes, sir; Barkley's, Hulmeville Mills, and Thompson flour; I can't recall the other brands of flour. 10

Q. Three kinds were there?

A. Yes, I think there were.

Q. The grade that you don't recall, the name of which you don't recall, can you tell us whether it was a high or cheap grade of flour?

A. I could not.

Q. Flour varies in price from time to time?

A. Yes, sir.

Q. Are you able now to tell what the market value of these different kinds of flour was at the time of this sale or 20 not?

A. Well, that's a good while to think.

Q. The sale was on May 23d, 1892?

A. Yes, sir.

Q. Can you tell now what the market values of those different flours offered for sale was?

A. I don't think I can.

Q. Is there any way by which you can tell?

A. I could give a rough estimate.

Q. You couldn't now. 30

A. No, sir.

Q. Is there any record, or have you any memoraudum?

A. Yes; I have records through my memory; I could tell what I was paying for flour at that time.

Q. Is there any difference in the grades of flour that are used for craker purposes and flour that is used for other work?

A. Yes, sir.

Q. What's the difference?

Mr. Backes—I object; the witness hasn't shown any knowledge; for all we know, he may be talking from hearsay.

Q. As a grocer, you dealt is flour?

A. Yes, sir.

Q. And acquainted with the various brands?

A. Yes, sir.

Q. And qualities?

A. Yes, sir.

10 *Q.* Do you know what qualities are used for cracker manufacturing purposes?

A. Yes, sir.

Q. And for the manufacture of bread and other articles?

A. Yes, sir.

Q. State, please, what you know as to the difference in price of flour used for cracker manufacturing purposes and the other purposes?

A. I should judge, fifty cents less than for bread.

Q. Do you know what the quality of Barkley's flour was
20 that you saw there?

A. Barkley's sells for about 25 cents less than Thompson's.

Q. Barkley's flour you mean a dollar a barrel less than the flour of Thompson's, a Trenton manufacturer and not Thompson, the Ohio manufacturer mentioned in the evidence in this case?

A. Yes, sir.

Q. Did you see the Thompson's flour that was offered for sale on that day?

30 *A.* Yes, sir.

Q. Do you know whether the Barkley flour was inferior to the Thompson flour?

A. Yes, sir.

Q. Was it inferior or not?

A. Yes, sir.

Q. Do you know how much of the different kinds that was offered there that day?

A. I think there was about ten or fifteen barrels of flour.

Q. Of whose?

40 *A.* Barkley's.

Q. Do you remember anything about the quantity of the Thompson flour?

A. Yes.

Q. About how much do you recall?

A. I think a similar amount.

Q. Now, the other kind of flour, the name of which you can't recall, do you remember how much of that there was?

A. I am not positive of how much there was.

Q. Well, a large quantity?

A. I think a small quantity.

Q. Do you remember anything about the different grades or qualtities? Of these three kinds which, according to your recollection, was the best quality? 10

A. Thompson's.

Q. And the poorest?

A. Hulmeville, I would say, was the poorest.

Q. Now, Mr. Mather, do you know anything about the horse that was owned by the company?

A. Yes, sir.

Q. Ever examine him?

A. Yes, sir. 20

Q. Ever bought and sold horses?

A. Yes, sir.

Q. This horse was driven to your place?

A. Yes, sir.

Q. Ever examine him?

A. Yes, sir.

Q. You say you have bought and sold horses?

A. Yes, sir.

Q. How many?

A. Lots of them. 30

Q. Was this horse sound or unsound?

A. He was not sound.

Q. What was the matter with him?

A. Sore in front.

Q. What was his market value?

A. Fifty dollars.

Q. Were you subpœnaed by Mr. Backes in this case?

A. Yes, sir.

Cross-examination (by Mr. Backes)—

Q. At the time I had a consultation with you, didn't you think this sale was conducted pretty fast, unusually fast?

A. No, sir.

Q. You say Barkley's flour was the poorest that was offered up there?

A. I think it was.

Q. Did you examine that flour up there?

A. I know the brand; I don't have to examine it.

10 *Q.* Did you examine all the barrels?

A. Yes, sir.

Q. You think Thompson's was the best?

A. I think it was.

Q. What was this so-called third grade?

A. I wasn't familiar with that.

Q. Was that still better than Barkley's.

A. I think it was.

Q. You know how to examine flour?

A. Yes, sir.

20 *Q.* Do you know how many barrels there were there?

A. Forty.

Q. The poster says 116.

A. I didn't count them.

Q. Do you know what you pay for Thompson's flour in Ohio?

A. I don't.

Q. What did you pay for Barkley's flour that was sold up there at that time?

A. $4.50, about.

30 *Q.* Did you get it cheaper by large quantities?

A. Five cents a hundred cheaper.

Q. Flour is sold very close, is it?

A. Yes, sir.

Q. The articles you bought up there, what did you do with them?

A. I sold them.

Q. Did you sell those articles in your business?

A. I sold part of them, and part in other ways.

Q. Did you sell them to your customers as fresh goods?

40 *A.* No, sir.

Q. Did you sell any of them for fresh goods?

A. No, sir.

Q. Did you tell your customers whether they were fresh or stale goods?

A. The price told what they were.

Mr. Lanning—Question is objected to as irrelevant.

Q. Do you know how stale they were?

A. They were pretty hard, the jumbles and drop-cakes.

Q. How long, in your judgment, did it take to get as hard as that? 10

A. About six weeks.

Q. Did you think your drop-cakes and jumbles were six weeks old when you bought them?

A. No.

Q. How long does it take drop-cakes and jumbles to grow stale?

A. About two or three weeks; they are not fresh after two weeks; they ought to be sold the same week they are baked.

Q. Well, the other cakes—you think they were good? 20

A. No, sir; I didn't get anything but stale goods.

Q. How long were they baked, in your opinion?

A. I suppose about a month, or two months.

Q. Weren't they green?

A. No.

Q. Soft?

A. No, they were hard.

Q. Did they have maggots?

A. No; cakes don't have maggots.

Q. Could you break them with your hand? 30

A. Yes, sir.

Q. You bought them pretty cheap?

A. Yes, sir; I paid a fair price.

Q. What did you sell them for?

A. Six cents a pound.

Q. You paid more than that?

A. I beg your pardon.

Q. You bought 8 boxes of cakes at 5 cents a pound—

Mr. Lanning—Objected to as being irrelevant.

Q. And you say you sold them for 6 cents? 40

A. I sold them for 5, 6, 7 and 8; those goods were retailing at 12; I sold them for between 5 and 8.

Q. In the condition you were selling, were they retailing at 12 cents?

A. No, sir.

Q. They weren't so stale but what you could get two-thirds of the regular price; is that so?

A. I didn't get two-thirds; I worked those cakes off on country storekeepers in trade for eggs.

10 *Q.* You sold those cakes to other dealers—

A. I traded them for butter and eggs.

Q. To other dealers who would again sell them?

A. Yes, sir.

Q. Did you trade them off for fresh stock?

A. Yes, sir.

Q. And they were in that condition you could deceive a countryman?

A. They got them for five cents a pound.

Q. You said you sold them at eight cents?

20 *A.* I might have sold a box; I couldn't sell them to my customers.

Q. Did you sell any less than five cents?

A. I don't think so.

Q. Did you think five cents was a fair value for those goods?

A. Yes, sir.

Q. Have you purchased goods that the company itself manufactured?

A. I don't think I purchased much only what they manu-
30 factured at the factory.

Q. Now there were salt wafers; did they manufacture those?

A. I don't think they did.

Q. Were they stale?

A. Yes, sir.

Q. The wafer is a brittle cracker?

A. When it is fresh.

Q. What condition was in in when you purchased?

A. It was stale.

40 *Q.* Was it soft or brittle?

A. They were tough; they weren't brittle.

Q. What is it worth fresh?

A. 12 cents.

Q. Do you know what you gave for this up there?

A. I think six or seven cents a pound.

Q. What did you sell them for?

A. 10 cents a pound.

Q. Wasn't that a fair value?

A. Yes, sir.

Q. Did you examine all of the manufactured goods up there? 10

A. Yes, sir.

Q. How far had the sale progressed when you got there?

A. I was there waiting for it.

Q. You didn't buy anything in the beginning?

A. I don't know.

Q. Did you examine the canned goods?

A. Yes, sir.

Q. Did you examine to see whether they were fresh or stale? 20

A. I did; some of them.

Q. Do you remember examining eight tins of arvenues?

A. I can't recall.

Q. Do you remember examining eight tins of afternoon teas?

A. I think I saw them.

Q. Were they stale or fresh?

A. Those goods were stale.

Q. Do you know that a concern known as Mulford & Vreeland purchased those goods? 30

A. I don't know.

Q. Purchased the whole lot?

A. I don't know.

Q. Did you examine those goods; these particular articles I have reference to, Mr. Greene and Mr. Lawshe said were closed up and couldn't get at them. If that is so, how was it that you had some of them?

A. I think there was one can open.

Q. Are you positive?

A. Yes; quite positive. 40

Q. Mr. Lawshe said they were fresh; was he mistaken?

A. I think he is.

Q. Did you buy any other articles up there?

A. I bought the harness.

Q. What is it worth?

A. Seven or eight dollars.

Q. Did you sell them?

A. Yes; I got a few dollars in advance.

Q. Do you remember buying a desk?

10 *A.* Yes, sir.

Q. What did you do with it?

A. I sold it.

Q. You think you are an expert in flour?

A. Yes; I think I know good flour.

Q. Did you examine the macaroons up there that were purchased by Hart and Green?

A. Yes; I think they were stale.

Q. How stale were they?

A. About a month or six weeks

20 *Q.* How long did you think the lemon biscuits were baked that you purchased?

A. About a month or six week, more or less.

Q. About two weeks before, weren't they?

A. No, sir; about a month and a half.

Holmes S. Greene, being duly sworn on the part of the defendant, testified as follows:

Direct examination (by Mr. Lanning)—

Q. Where do you reside?

A. 273 Spring street, Trenton, N. J.

30 *Q.* What is your business?

A. In Philadelphia, in the general carpet and upholstering business.

Q. Up and down every day?

A. Yes, sir.

Q. Do you know Henry D. Phillips, of Trenton?

A. Yes, sir.

Q. Were you at any time ever connected with the company?

A. No, sir.

Q. You have a brother, Robert, who was in the employ of the company?

A. Yes, sir.

Q. Did you ever know anything about a sale of goods made by Mr. Phillips under a chattel mortgage covering chattels of the company?

A. Yes, sir.

Q. Did you attend that sale?

A. Yes, sir.

Q. At the time of the sale what was your business? 10

A. Grocer.

Q. Were you in partnership with anyone?

A. Aaron Hart.

Q. What was the partnership name?

A. Hart & Greene?

Q. Where was your store?

A. Philemon street and Montgomery place.

Q. How far was that from the factory of the Capital Cracker Company?

A. About two blocks. 20

Q. During how much of the time that the sale was going on were you there?

A. Through it all.

Q. About what time did it commence?

A. Near six.

Q. You were there the whole time?

A. Yes, sir.

Q. As grocers, were your firm dealing in any of the products manufactured and sold by the company at that time?

A. Yes, sir. 30

Q. Crackers, cakes, &c.?

A. Yes, sir.

Q. State whether you know Mr. Branin, who was the auctioneer on that occasion?

A. By sight.

Q. He was the auctioneer then?

A. Yes, sir.

Q. Did you observe anything with respect to the haste or speed in the conduct of the sale?

A. No, sir. 40

Q. State whether bidders had a full opportunity to make their bids for all articles that were offered for sale?

A. Yes, sir.

Q. Did you bid upon anything?

A. Yes, sir.

Q. Did you buy anything?

A. Yes, sir.

Q. Did you examine the manufactured articles that were offered for sale that day?

10 *A.* Yes, sir.

Q. Do you know whether the manufactured articles offered for sale were fresh or stale?

A. They were stale.

Q. Taking stock of that character; in how long a time after it is manufactured would it become stale?

A. We had a rule arranged that they were to take our goods back every week that were stale; a special arrangement with them.

Q. Then after one week they were considered as stale?

20 *A.* Yes, sir.

Q. That rule applies to what?

A. Soft cakes, jumbles, drop cakes, any soft cakes.

Q. Now about the crackers and the harder cakes?

A. They were also changed every two weeks.

Q. They were considered stale after being manufactured two weeks?

A. Yes, sir.

Q. Did the company take them back at the expiration of two weeks?

30 *A.* Yes, sir.

Q. And supply you with fresh goods?

A. Yes, sir.

Q. Did you see any fresh manufactured stock offered for sale that day?

A. No, sir.

Q. Are you able to say whether any fresh manufactured stock was offered for sale that day?

A. Not to my knowledge.

Q. Were you there the whole time?

40 *A.* Yes, sir.

Q. And with the auctioneer the whole time?

A. Yes, sir.

Q. If any fresh goods were offered, you would have seen them?

A. Yes, sir.

Q. And you recall nothing of the kind?

A. Nothing of the kind.

Q. Outside of the manufactured goods, excluding machinery, do you remember anything else that was sold there in a general way? 10

A. The flour, horse and wagon, office furniture—

Q. I notice some butter struck off to Hart and Green—24 pounds; do you recall anything about that butter as to its quality and condition?

A. It was rancid.

Q. Do you know what it was worth—the fair market value?

A. About five or six cents a pound.

Q. Do you remember seeing any cracker dust there?

A. Yes, sir. 20

Q. What was the condition of that, if you recall?

A. I don't.

Q. What is that used for?

A. Fried oysters.

Q. What would cracker dust in good condition—first-class condition—be worth?

A. Five cents a pound.

Q. Do you remember whether this was in good condition or not?

A. No, sir. 30

Q. Do you remember buying any macaroons?

A. Yes, sir.

Q. Do you remember anything about their condition?

A. They were stale.

Q. What are macaroons in first-class condition worth?

A. Fifteen cents.

Q. In first-class condition?

A. In first-class condition.

Q. You think you bought half a barrel?

A. Yes, sir. 40

Q. Do you remember anything about their condition?

A. I do not.

Q. Well, I understand you to say that all of the goods that were offered for sale were stale?

A. Yes, sir.

Q. Did you examine the flour?

A. Yes, sir.

Q. Do you remember anything about the quality that was there?

10 *A.* There were three grades: the best flour, one medium and a poor, common flour; I took samples of the flour and took them down to my partner, and we agreed on what price we would pay for the best grade; that was before the sale; the best grade was a good flour for bread purposes, and the second flour was for cooking purposes and general pastry work, and the other grade was a poor grade; had been there for some little time; it was a very cheap flour; it stood there in the building for some little time; that I didn't examine very well, as I saw it was a poor flour and we 20 didn't want it.

Q. Do you remember—can you tell us who was the manufacturer of the best grade of flour?

A. No, sir.

Q. Nor the second grade?

A. Not to my memory.

Q. What was the market value of the first-grade flour up there that you saw at the time of that sale?

A. The price of the flour; it would be worth about $4.50.

Q. Do you remember anything about the quantity of that 30 flour?

A. There wasn't so much of the good as the cheaper.

Q. When you say $4.50 you mean that is the price you paid the manufacturer of that flour?

A. Yes, sir.

Q. The second quality of flour you examined; what was the fair market value at the time of the sale?

A. It was worth $3.40 or $3.50.

Q. You, in speaking of the market values, you mean the values at private sale?

40 *A.* Yes, sir.

Q. You are not speaking of sales made under the hammer at public sale, of course?

A. No, sir.

Q. Do you know whether there were many bidders for the flour there that day?

A. There were several; I bid myself on the flour.

Q. Were there other bidders there?

A. Yes, sir.

Q. Did you bid on more than one kind of flour?

A. Yes, sir. 10

Q. You didn't bid on the poorest?

A. No, sir.

Q. You weren't the highest bidder on either?

A. No, sir.

Q. Were they bid above what you were willing to pay?

A. Yes, sir.

Q. Taking into consideration the fact that this was a public sale, state whether or not you think that these two kinds of flour brought their fair market value at a public sale for cash? 20

Mr. Backes—Objected to as illegal and the Examiner knows it.

A. I do.

Q. In purchasing flour at the price that you have named from the manufacturers at private sale would you be entitled to credit?

A. In buying flour from the manufacturers we would be entitled to thirty days, or ten days, and two per cent. off for cash.

Q. You know anything about this horse that was owned by the cracker company? 30

A. Yes, sir.

Q. Examine him?

A. Yes, sir.

Q. Frequently see him?

A. Yes, sir.

Q. Go to your place?

A. Yes, sir.

Q. Do you know whether he was sound or not?

A. He was not sound. 40

Q. What was the trouble with him?

A. Sore in front.

Q. You have dealt in horses some?

A. Yes, sir.

Q. To what extent?

A. Nearly always owned one until the last year and a half.

Q. What, in your judgment, was the fair market value at the time it was sold?

10 Mr. Backes—Objected to as illegal.

A. Fifty dollars.

Q. Did you bid on anything besides the flour?

A. Yes, sir.

Q. Many things?

A. A great many things.

Q. There has been some evidence to the effect that goods were knocked off at the second bid; do you know whether that was so or not?

A. I don't think so; I think everybody had a good show
20 to bid.

Q. In every case you know of?

A. Yes, sir.

Q. You noticed no evidence of undue haste?

A. No, sir.

Q. Full opportunity to bid, was there?

A. Yes, sir.

Cross examination (by Mr. Backes)—

Q. You are a brother of Robert Green?

A. Yes, sir.

30 *Q.* Are you related to Mr. Phillips?

A. No, sir.

Q. Did you hear any talk between Mr. Phillips and the auctioneer?

A. No, sir.

Q. Did you hear Mr. Phillips to tell the auctioneer to "hurry up"?

A. No, sir.

Q. Did you say you were always close to the auctioneer?

A. I watched the goods all sold.

Q. Did you say it didn't occur?

A. I say I didn't hear.

Q. You say the auctioneer didn't hurry that sale?

A. Not to my knowledge.

Q. Weren't some of the goods hastily struck off?

A. Not to my knowledge, sir.

Q. Did you observe an unusual and undue haste on the part of the auctioneer?

A. No, sir.

Q. Didn't you hear some of the people say that things were sold at a sacrifice? 10

A. No, sir.

Q. Didn't your brother at the time of the sale say to you that these goods were sold at a sacrifice?

A. Not to my knowledge.

Q. Didn't Mr. Phillips say to you that the goods were sacrificed?

A. No, sir; Mr. Phillips said the goods were bringing a good price.

Q. At the time of the sale didn't he complain of the smallness of the price? 20

A. He said the goods were bringing a good price.

Q. Had you a conversation with him at the time of the sale?

A. Spoke to him several times.

Q. Where did the sale begin; in what part of the building?

A. I think up stairs.

Q. And then came down?

A. Yes, sir. 30

Q. Sold all up stairs before they came down?

A. I think very nearly all.

Q. Did you hear the auctioneer and Mr. Phillips talking together?

A. Nothing more than a clerk would talk to an auctioneer.

Q. Was he the clerk?

A. He was around there taking charge of things.

Q. Do you say there were three grades of flour?

A. In my judgment. 40

Q. How many barrels of the first quality?

A. I couldn't say.

Q. You were going to bid on the first quality and also on the second, and before the sale you had made up your mind what you were going to do, and before the sale contemplated bidding for the whole lot?

A. No, sir; on ten barrels of each.

Q. Tell us, as near as you can, how many barrels of the first quality were there?

10 *A.* I should judge anywhere between 10 and 20.

Q. Do you know who bought it?

A. No, sir.

Q. Did Mr. Stapler?

A. I don't know.

Q. Twenty-five barrels sold to Stapler; do you know whether that is the same high-grade that you have spoken of as the first grade?

A. No; I don't think it is.

Q. You don't think it is?

20 *A.* I don't know.

Q. You can't say one or the other?

A. No, sir.

Q. Now, as to the intermediate quality; were there more of that than the others?

A. Yes, sir.

Q. About how many barrels of the medium?

A. Something like 30 or 40.

Q. There were 68 sold to Garrick; was it that quantity?

A. I don't know who bought it.

30 *Q.* There were more of the medium than the first or poorest quality?

A. No; I think there were more of the poorer flour.

Q. You say there was about 40 barrels of the medium?

A. That is only a guess; I don't know.

Q. How many barrels of the poor quality were there?

A. I should say about 60.

Q. Where do you think that was manufactured? Was it Barkley's?

A. No, it wasn't Barkley's.

40 *Q.* Mather testified it was Barkley's; was that true or not?

A. The poorest was not Barkley's flour.

Q. Now, you made a general statement that at the time of that sale there were no goods sold there that were fresh?

A. Not to my knowledge.

Q. Does that apply to all the manufactured goods?

A. All the manufactured goods that were in the building.

Q. You don't confine yourself to the manufactured goods they manufactured?

A. Everything that belonged to the company.

Q. What did you say macaroons were worth? 10

A. If I remember right, 15 cents.

Q. Did you buy macaroons at that time?

A. Yes, sir.

Q. Who bid at that sale, you or your partner?

A. I did.

Q. Were the macaroons purchased fresh or stale?

A. Stale.

Q. Did you know before you purchased them?

A. I knew before I purchased them.

Q. What were stale macaroons worth in the condition 20 you found them.

A. Ten cents a pound.

Q. Were they worth under the hammer?

A. No, sir.

Q. How stale were they?

A. Don't remember.

Q. How long did you think that they had been baked?

A. About a month.

Q. Were they manufactured by the Company?

A. They were not. 30

Q. Are you in the habit of paying 15 cents for stale macaroons?

A. I may have done it.

Q. Ever buy before that?

A. Fresh.

Q. Do you know that you paid 15 cents for fresh macaroons?

A. Might have done it.

Q. They weren't as stale as you regard them at this period? 40

A. They were not soft articles; I bid to make them bring as much as they could, and one or two articles were knocked off to me when I bid.

Q. You were there as an under bidder?

A. No.

Q. To see that goods brought fully as much as they were worth?

A. Yes.

Q. You were there as a puffer?

10 *A.* Yes, sir.

Q. Who got you to go there?

A. No one in papticular; I wasn't a puffer of prices.

Q. You say that soft cakes were taken back weekly; what was the rule with reference to canned goods, for instance, graham wafers, arvenues and afternoon teas?

A. As a rule they would take back the broken cakes at the end of two weeks.

Q. Did you buy a can at a time?

A. Sometimes two or three cans.

20 *Q.* How long will they last before they get stale?

A. About two weeks.

Q. How long from the time they are baked will they get stale?

A. About three weeks.

Q. Now at that sale you bought cinnamon; how much did you buy?

A. Haven't any idea.

Q. Did you get it at a bargain?

A. I couldn't say; I don't remember.

30 *Q.* You bought Indian meal?

A. Yes, sir.

Q. How much was that worth?

A. I don't know.

Q. What is a bag of Indian meal worth?

A. I don't know.

Q. What is a bag of graham wafers worth?

A. Don't know that.

Q. How long had you been a grocer before this sale?

A. Two years.

40 *Q.* Did you examine these goods before the sale?

A. A great many of them.

Q. How soon after the constable took possession did you examine them?

A. I don't remember that.

Q. You bought some excelsior there did you?

A. Don't remember buying any excelsior.

Q. You bought some drop and sultan cakes, do you remember buying them?

A. I brought drop-cakes; I don't remember it.

Q. You bought a barrel-truck? 10

A. Yes, sir.

Q. What kind of a truck was that?

A. A small hand-truck, with two wheels on it.

Q. What was it worth?

A. I would say one dollar.

Q. What was it worth if you had to buy it regularly?

A. Not much more.

Q. You say these cakes were stale; how stale were they?

A. I can't say.

Q. How old were they at the time of this sale? 20

A. Different dates.

Q. Were they over a month old?

A. Some were, and some were not quite.

Q. How much over a month?

A. Which ones?

Q. The soft cakes?

A. I don't know.

Q. How about the hard cakes, such as wafers and biscuits?

A. Some very old. 30

Q. Some were comparatively fresh?

A. No, sir.

Q. Did you examine the arvenues and afternoon teas?

A. Yes, sir.

Q. They were in glass cans?

A. Yes, sir.

Q. There were eight tins of arvenues, eight tins of afternoon teas, seven tins of graham wafers, and three tins of zephyr wafers; do you recall examining them?

A. No, sir. 40

Q. Do you recall who bought them?

A. No, sir.

Q. Could you get at them?

A. No, sir.

Q. One box was open; were they apparently of the same kind and values of those that were enclosed?

A. Yes.

Q. Were they fresh or stale?

A. Stale.

10 *Q.* How stale?

A. About five weeks.

Q. Did you know that Mulford & Vreeland purchased them?

A. No, sir.

Q. Did you observe the office fixtures?

A. Some of them.

Q. They sold a desk there?

A. Yes, sir.

Q. What was that desk worth?

20 *A.* Four or five dollars.

Q. Was it a rolling-top desk?

A. No, sir.

Q. Did you see a small desk there?

A. Yes, sir.

Q. Was it a rolling-top desk?

A. No, sir.

Adjourned until Monday, May 6th, 1895.

MONDAY, May 6th, 9 o'clock A. M.

Adam Fisher, being called on the part of the defendant,
30 testified as follows:

Direct examination (by Mr. Lanning)—

Q. Where do you live, Mr. Fisher?

A. 319 East State street.

Q. What business are you engaged in?

A. Well, I used to be in the shoe business, at that time?

Q. At that time, you mean the time of the sale?

A. Time of the sale.

Q. Of the goods by Mr. Phillips?

A. Yes, sir.

Q. You know Mr. Phillips?

A. Yes, by sight.

Q. Do you know where the factory of the Capital Cracker Company was?

A. Yes.

Q. Do you remember a sale made at that factory by Mr. Phillips as mortgagee of chattels?

A. The way it was advertised; that's all I know about it. 10

Q. Did you attend the sale?

A. Yes, sir.

Q. Do you know how long you were at that sale?

A. Well, I was there from the beginning to the end.

Q. You were there when it began?

A. Yes.

Q. Until it stopped?

A. Yes.

Q. Can you give any idea when it began?

A. Why, seems one o'clock; might be a little later; 20 seems that.

Q. Can you tell about when the sale was finished?

A. Yes; I think pretty near towards night, between five and six.

Q. Do you remember who conducted that sale as auctioneer?

A. If I was not mistaken I think it was Branin.

Q. Did you notice anything with regard to the speed with which the sale was conducted, whether it was conducted fast or slow or in the usual way? 30

A. Well, I didn't see any difference from other sales that I attended to; I attended a good many sales, but I didn't see any difference.

Q. Did you bid on any of the goods?

A. Yes, sir.

Q. State whether you had a full opportunity to bid for the things?

A. The way I stayed so long was, I wanted to buy a set of harness, and that didn't go off until the end; but the rest I didn't pay no attention; in regard to flour and lard, I 40 didn't want to buy any.

Q. State whether bidders present had a full opportunity to bid for the various articles that were offered or not?

A. Oh, yes; they had plenty of time; oh, my, the things were too slow for me.

Q. What you wanted to buy was a set of harness, and that was towards the end?

A. Yes; the harness brought more than I could give; it was bid up by halfs and quarter dollars.

Q. Did you observe any of the manufactured goods, 10 crackers, cakes, &c., that were offered for sale that day?

A. A good many things.

Q. Did you examine any of the cakes and crackers that were offered for sale with view to ascertaining whether they were fresh or stale?

A. Seemed stale.

Q. Did you examine them?

A. I did.

Q. Did you find any of them stale or fresh?

A. I didn't find any fresh.

20 *Q.* That you examined?

A. No.

Q. Did you examine any crackers?

A. No, sir.

Q. Did you examine any cakes?

A. Yes, sir.

Q. What evidence of their staleness did you find?

A. The way they tasted; they tasted pretty hard.

Q. Hard?

A. They had an old taste.

30 *Q.* Did you see a horse offered for sale that day?

A. Yes, sir.

Q. Have you ever owned any horses or bought and sold horses?

A. Yes, I owned and bought horses for the last 15 or 16 years.

Q. How many?

A. Three at the time I owned the farm.

Q. Have you bought and sold others within the last 15 or 16 years.

40 *A.* Oh, yes.

Q. Did you examine this horse that day?

A. No, because I didn't want to buy him.

Q. Do you know anything about the condition of that horse?

Mr. Backes—Objected to because the witness has just testified that he didn't examine the horse.

A. No, I didn't examine him only as he was going up and down.

Q. Did you, when you saw that horse going up and down, observe that he had blemishes? 10

A. It seemed to me he was a little lame on the front leg.

Q. What, in your judgment, was that horse worth, on the day he was sold?

Mr. Backes—Objected to as illegal.

A. $50 or $55. I can't remember what he brought.

Q. Did you see a wagon offered for sale that day?

A. Yes, sir.

Q. It is in evidence that there was a wagon which was used by the company for delivering its goods about town? 20

A. Yes; that was a top wagon.

Q. Did you buy that wagon?

A. No, sir.

Q. Did you examine it?

A. Yes, sir.

Q. Have you bought and sold wagons yourself?

A. I bought wagons; yes, and sold them.

Q. Do you know what that wagon was started at on first bid?

Mr. Backes—Which one, Judge?

Mr. Lanning—The top wagon. 30

A. I couldn't tell you exactly what it started at; but then it was quite a while before they sold it.

Q. Do you know whether there was more than one bid?

A. More than ten.

Q. Do you recall what the wagon sold for?

A. That's more than I can tell you.

Q. Do you remember that there was as many as ten bids?

A. My attention was the wagon because I thought it would suit; but then it come too high.

Q. What in your judgment was the fair market value of that wagon? 40

A. $40; I don't know what it brought.

Q. Do you remember what increases were made on the bids upon this top wagon?

A. Do you mean the bids?

Q. Yes; how they ran?

A. First a dollar; then they come to a half, and toward the last to a quarter.

Q. You bought a wagon there, what was it?

A. It was an express wagon, no top on it.

10 *Q.* Do you remember what you gave for it?

A. Yes; $15.50.

Q. Did you at any time subsequently dispose of it?

A. Yes, about eighteen months I kept it and sold it for $20; it was too heavy for an express or for one horse; it wasn't fit for pulling about with a heavy load on it.

Q. What else did you buy at that sale?

A. Three shovels, two scoop shovels and a fire shovel; I wanted the fire shovel; the three were sold together and I bought the three together.

20 Cross-examination by (Mr. Backes)—

Q. You are a shoemaker, are you not, Mr. Fisher?

A. Yes, by trade, but I don't follow it now.

Q. Yes, you followed it all your life until a few years, haven't you?

A. Yes, it is only a few years.

Q. Now long is it since you stopped?

A. Fifteen years; I didn't work on the bench.

Q. What did you do after you worked on the bench?

A. After I quit work on the bench I kept a shoe store.

30 *Q.* You followed it up to the present time?

A. No, sir.

Q. When did you stop?

A. I think I sold out to the boys in 1883.

Q. Are you judge of cake; do you like cake?

A. Yes, if they are good.

Q. Are you a good judge of cake?

A. Yes, I am pretty good judge.

Q. Can you tell fresh from stale?

A. Yes, sir.

Q. What kind of cake was it you ate that day?
A. Some round cakes.
Q. Were those cakes fresh or soft?
A. No; I don't think they were soft.
Q. What kind of cake was it?
A. Sugar on it; I don't know what they called it.
Q. Was it a baked cake or a small cake?
A. Small cake.
Q. How big?
A. It is a little bigger than a dollar. 10
Q. Don't you know what they were called?
A. No.
Q. Was it a ginger-snap?
A. No.
Q. You know a ginger-snap?
A. Yes, sir.
Q. The cake you ate wasn't like a ginger-snap?
A. No.
Q. Do you know what a pound-cake is?
A. Yes. 20
Q. Was it soft like a pound-cake?
A. No.
Q. What other kind of cake is there in the market?
A. That's more than I can tell.
Q. You don't know much about cake?
A. I eat it whenever I can get it.
Q. Do you eat cake often during the week?
A. Yes; as often as I can get it.
Q. You think you are an able judge?
A. No. 30
Q. Did you ever eat stale cake?
A. Yes; if they are not too old I can eat them.
Q. Well, these were a week or ten days old?
A. They didn't have a good taste; they hadn't the taste as a fresh cake.
Q. Were they green?
A. No.
A. Could you eat them?
A. I wouldn't want to eat many of them.
Q. Didn't you eat about a pocketful? 40

A. No, sir; I just tasted them.

Q. Didn't you fill your pockets up there?

A. I didn't do no such thing.

Q. You went to buy a horse and wagon or a set of harness and wagon.

A. Yes; a set of harness and wagon.

Q. You became impatient because they didn't sell them?

A. Well, I had to wait until they put them up.

Q. You got tired waiting?

10 *A.* Well, I got kind of tired.

Q. You became impatient?

A. No, sir.

Q. Didn't you ask Mr. Branin to hurry them up?

A. No, sir.

Q. You say they went too slow for you?

A. On some articles they hung around too long.

Q. Did you hear Mr. Phillips say anything about hurrying up the sale?

A. No; I didn't hear it.

20 *Q.* You say that Mr. Phillips didn't say that?

A. I didn't hear anything, too slow or too fast.

Q. You didn't hear Mr. Phillips say anything to the auctioneer?

A. I did not.

Q. Did you go up there to buy this covered wagon?

A. Yes; my attention was—

Q. What did you want to do with this wagon?

A. For delivering goods.

Q. A second-hand wagon would suit you?

30 *A.* As well as a new one.

Q. Did you ever buy a new wagon?

A. Yes, sir.

Q. When?

A. Six or eight years ago.

Q. When did you have this farm that you speak of?

A. '91 or '92 I sold it out.

Q. During that time you owned three horses; were they new or second-hand horses?

A. What do you mean by that—I can't get the hang of it.

40 *Q.* You think you're a judge of horses and the value of horses?

A. I had my share; I don't think I am a crack, but I can tell you pretty near what a horse is.

Q. You mean to say your judgment is not cracked?

A. I say, I can't say that when a horse is sick I can doctor him.

Q. Can you tell by looking at a horse whether he has a spavin?

A. It is stiff in the legs.

Q. Is stiffness in the legs spavin?

A. Yes; especially in the hind legs. 10

Q. Does that affect the value of the horse?

A. Yes.

Q. What is a wolf's tooth?

A. That's more than I can tell.

Q. Then you're not such a crack judge?

Judge Lanning—I object to the use of the word crack; he has used the word correct and the witness being a German, Mr. Backes has understood it cracked.

A. I can answer you better in German. 20

Q. Tell us in German?

In reply to this question the witness did answer counsel to a considerable extent in German.

Q. Did you say that you were not a correct judge or a cracked judge?

A. A cracked judge; I say I do not know everything about a horse.

Q. You saw this horse walk up and down, did you?

A. Yes, that's all.

Q. You couldn't tell whether he walked lame that day 30 because he had a nail run in his foot or because of inherent defect?

A. I didn't examine him; I seen him limp a little.

Q. You don't know that it was due to a nail?

A. No.

Q. You say that horse was worth about $50, if he was lame in front?

A. That is the outside; if I wanted the horse, I wouldn't give over $50.

Q. If that horse was not lame in front, would it be worth any more to you?

A. About $25 or $30 more.

Q. You think he was worth $50 if he was lame permanently; is that what you mean?

A. Well, that is what I say he was worth, $50, the way the horse was.

Q. Whether he was lame from a nail or some illness?

A. If you want to sell a horse, if he is lame, he don't
10 care whether it is from a nail or what it is.

Q. In your judgment, it makes no difference whether he can be cured?

A. It depends a great deal upon what it is.

Q. Did you in your business buy twine in your store business?

A. Yes.

Q. What did you have to pay for twine?

Mr. Lanning—Objected to because the kind is not stated.

20 *A.* We generally pay from twelve to fourteen cents a pound.

Q. Is that the ordinary thin twine that you buy for packages?

A. Yes, sir.

Q. Did you buy some twine at the Capital Cracker Company?

A. Yes, a little.

Q. What did you do with that?

A. Sold it to my son.

30 *Q.* Was that the same kind they had in the store?

A. No; a little better.

Q. How much was that worth?

A. I bought and sold it for the same price to them.

Q. You say you don't know what it was worth?

A. I don't remember what I gave for it.

Q. How much a pound do you think it was worth?

A. 10 or 11.

Q. You got it pretty cheap?

A. I don't know what I paid for it.

40 *Q.* Everything you got there you got pretty cheap?

A. No; I don't know.

Q. You bought some shovels?

A. Yes, sir.

Q. How many?

A. Two scoop and a fire shovel.

Q. How much was it worth?

A. I sold one and got 20 cents for it.

Q. What were they worth new?

Mr. Lanning—Objected to, because that is no criterion of the value of these shovels. 10

A. 60 cents.

Charles McCabe, being duly sworn on the part of the defendant, testified as follows:

Direct examination (by Mr. Lanning)—

Q. Where do you live, Mr. McCabe?

A. 1215 Clinton avenue.

Q. What is your business?

A. A baker.

Q. Are you engaged in that business now?

A. Yes, sir. 20

Q. Were you engaged in that business in 1892?

A. Yes, sir.

Q. Do you know where the cracker company plant was?

A. Yes, sir.

Q. Did you attend the sale made by Henry D. Phillips, mortgagee?

A. No, sir.

Q. Do you know about the time the sale was made by Mr. Phillips, mortgagee?

A. I knew the time. 30

Q. At that time did you know the horse that was owned by the company?

A. Yes, sir.

Q. Did you ever examine that horse?

A. No, sir.

Q. Do you know anything about his condition?

A. No, sir.

Q. Do you know whether that horse in the fall of 1891 was put out to pasture?

A. Yes, sir.

Q. Do you know where?

A. No.

Q. Do you know whether that company in the fall of 1891 had another horse in its use than the one that it owned, to which you have just referred?

A. Had another one; I don't recollect it; unless Mr. Blackwell's horse, that's all.

Q. Did they use Mr. Blackwell's horse?

10 *A*. Yes, sir.

Q. Did you know the wagon owned by that company which was used for delivery purposes?

A. Yes, sir.

Q. Did you ever notice the condition of that wagon?

A. No, sir.

Q. Do you know whether it was sound or not?

A. I do not.

Q. Did you become at the time, or any time afterwards, the owner of any machinery?

20 *A*. Yes, sir.

Q. Do you know anything about the sale of any machinery that was owned by the company, whether anything was sold and to whom?

A. Yes, sir.

Q. What?

A. A grinder that Mr. Strohecker bought and some other goods he bought.

Q. Did you examine that grinder?

A. Yes, sir.

30 *Q*. At the time, or prior to the sale, were you in the company's employ?

A. I don't understand.

Q. Were you in the employ of the company at any time?

A. Yes, sir.

Q. When?

A. I can't exactly tell you how long it has been.

Q. Was it up to the time you stopped business?

A. I was there the week before they stopped.

Q. And for how long a period before that, as near as

40 you can tell?

A. About five months, I should judge.

Q. What did you do as an employee of the company?

A. I used to break cracker dough.

Q. Did you become acquainted in your business with the machinery that was in the plant?

A. Yes, sir.

Q. Do you know anything about a soft-cake machine the company had?

A. Yes, sir.

Q. What was its condition? 10

A. The machinery was no good.

Q. What was the matter with it?

A. The frame on the top was cracked, and another thing, it din't cut clear; the cake generally hung to the wire.

Q. Do you know who bought that machine?

A. I don't know the man's name, but I know where he lives.

Q. Are you carrying on the bakery business for yourself?

A. No, sir.

Q. Working for some one else? 20

A. Yes, sir.

Q. Have you, in your work about bakeries, become acquainted with the cost and values of different kind of machinery?

A. No, sir.

Q. Do you know what a soft cake machine like this costs in the market?

A. Well, not particularly.

Q. Take this machine in particular; you say the framework was cracked and the dough stuck to the wires? 30

A. Yes, sir.

Q. Was that a defect in the operation of the machine or not?

A. Yes, sir.

Q. If the machine works properly will the dough stick to the wire?

A. Depends how the dough is made, a good deal.

Q. If the dough was properly made for this machine would it stick to the wires?

A. Yes, sir. 40

Q. If a machine works properly will it then stick if the machine is a perfect machine?

A. Yes, sir.

Q. Would this machine do the work right?

A. I never saw it do good work while I was there.

Q. Do you know who bought this machine?

A. No; not his name.

Q. Do you know whether the purchaser used it or not?

A. I have no personal knowledge; only information.

10 *Q.* Do you know whether there was a sifter there?

A. Yes, sir.

Q. Did you have occasion to examine that sifter as to whether it was in perfect condition or not?

A. I have never examined it.

Q. Did you use the sifter yourself?

A. Often.

Q. Using it, did you find whether it worked well or not?

A. It worked right.

Q. No defect in it?

20 *A.* Not that I know.

Cross-examination (by Mr. Backes)—

Q. Did the crack in the cake machine affect its operation?

A. Not particularly.

Q. That simply affected its sightliness, I presume?

A. It affected the value.

Q. The cake machine had a belt on top?

A. No, sir; the frame-work, on top, was cracked.

Q. How much of the frame was cracked?

30 *A.* About one-half of it.

Q. How many inches?

A. I couldn't tell you.

Q. Of course you say one half of it; how big was the crack?

A. Well, the top of the crack was that long; not over five inches.

Q. That piece that was cracked could be taken out and another piece put in?

A. I don't think it could.

Q. Wasn't simply screwed on?

A. No, sir.

Q. You don't know how that machine was constructed?

A. No.

Q. Do you think it required a new frame, or could be repaired?

A. It couldn't be repaired.

Q. Because of this crack you think they would have to throw the frame away, or could repair this particular piece?

A. They couldn't get a new frame; the only thing they could do was to get a new machine. 10

Q. Was this machine struck off to you at the sale?

A. No, sir.

Q. Were any articles struck off to you?

A. No, sir.

Q. What is your first name?

A. Charles McCabe.

William Blackwell, being duly sworn on the part of the defendant, testifies as follows:

Direct examination (by Mr. Lanning)— 20

Q. Where do you live?

A. 2 Boudinot street.

Q. What is your business?

A. Janitor of the Cadwallader school.

Q. Do you know the location of the Capital Cracker Company in 1892?

A. Yes, sir.

Q. Were you employed by that company in any capacity?

A. Yes, sir.

Q. What? 30

A. Engineer.

Q. Were you its engineer up to the time it stopped business?

A. I was, from the time it started until it stopped.

Q. Do you remember a sale made at that factory by Mr. Phillips as mortgagee?

A. I remember a sale being made by Mr. Phillips.

Q. Were you present at that sale?

A. I don't know.

Q. Do you recall when it began?

A. No, sir; I don't think I was—yes, I was.

Q. Can you recall when it began?

A. No, sir.

Q. Do you recall whether you were when it ended?

A. I don't think I was.

Q. Can you recall what articles you saw sold that day?

A. No, sir; some few barrels.

Q. What, were they empty?

10 *A.* Yes, sir.

Q. Did you recall anything else?

A. No, sir.

Q. Do you know a horse that was owned by the Company while you were there?

A. Yes, sir.

Q. Do you remember whether that horse was put out to pasture during the fall of 1891?

A. No, sir; I don't think they had another horse there.

Q. Do you know whether that horse was sound or not?

20 *A.* No, sir; I do not.

Q. Have you handled horses to any extent?

A. No.

Q. You were engineer and didn't handle horses?

A. Don't know anything about them.

Q. Do you remember the wagon they used for delivery purposes?

A. Yes, sir.

Q. Are you able to state whether that wagon was in good condition or not?

30 *A.* Wouldn't say.

Q. Do you remember the soft-cake machine?

A. Yes, sir.

Q. Did you operate it?

A. No, sir.

Q. Ever have anything to do with its management?

A. No, sir.

Q. Did you ever examine it?

A. No, sir.

Q. Did you ever notice whether the soft-cake machine

40 was in anywise imperfect?

A. It had a crack in it.

No cross-examination.

Lawrence Sheridan, being duly sworn on the part of the defendant, testified as follows:

Direct examination (by Mr. Lanning)—

Q. Mr. Sheridan, where do you live?

A. 695 Lamberton street, Trenton.

Q. What is your business?

A. Cracker and cake baker?

Q. How long have you been in the business? 10

A. Something like twenty years.

Q. Do you know the location of the old Capital Cracker Company of this city?

A. I do; yes, sir.

Q. Where have you been employed in the business of cracker baker?

A. I worked for Zimri West, of Chambersburg, David Carrick's of Philadelphia, and I worked at the Capital Cracker bakery.

Q. Did you work for the Capital Cracker Company until 20 the time that it stopped business?

A. I did; yes, sir.

Q. When did you begin?

A. About the fifteenth of January.

Q. Preceding its stopping?

A. Yes, sir.

Q. And you worked for it some four months?

A. About four months.

Q. Do you remember a sale made at that plant by Henry D. Phillips as mortgagee?

A. I do; yes, sir. 30

Q. Did you attend that sale?

A. I did.

Q. Were you there during the whole of it?

A. Yes, sir.

Q. Can you tell us about what time it began?

A. Why, somewheres around one o'clock.

Q. Can you tell what time it ended?

A. Between five and six.

Q. Were you present at the place where the goods were being sold; I mean with the crowd and close to the auctioneer and during the time of the sale?

A. Yes, sir.

Q. Close enough to hear the auctioneer cry and hear the bids?

A. Yes, sir.

Q. Did you observe anything with reference to the haste or speed with which the sale was conducted?

10 *A.* No, sir.

Q. Did you observe whether it was hastily conducted or not?

Mr. Backes—Objected to because the witness has already stated that he did not observe.

A. I didn't see any extra haste about it.

Q. Did you observe whether bidders had a full opportunity to make bids for goods that were offered or not?

A. Everybody had a chance as far as I have seen.

Q. Did you bid on anything?

20 *A.* Yes; I bid on a pair of scales there.

Q. Anything else?

A. No, sir.

Q. Did you examine any of the flour that was offered for sale that day?

A. I didn't examine it that day.

Q. Had you before?

A. Yes, sir.

Q. Were you acquainted with the kinds of flour that was offered for sale that day?

30 *A.* Yes, sir.

Q. Do you know how many kinds of flour there were offered for sale and sold?

A. Yes, sir; there was flour from Thompson Brothers, flour from Barkley and there was a cheaper grade of flour we used for ginger-snaps.

Q. Do you know where that cheaper grade of flour came from?

A. I do not.

Q. Do you know whether that company got any flour

40 from the Lawrence Milling Company?

A. Yes; they got flour from them.

Q. Do you know whether there was any flour of the Lawrence Milling Company offered for sale that day?

A. I don't know that.

Q. Do you know whether the flour that had been purchased from the Lawrence Milling Company had been used up prior to that day?

A. No, sir; I do not.

Q. Did that company sell manufactured stock other than what it manufactured itself? 10

A. Yes, sir.

Q. What do you recall?

A. Hard goods, such as coffee cakes, cookies, soda crackers, milk lunch.

Q. What did they manufacture?

A. They manufactured crackers and soft cakes—that is, on the soft-make machine.

Q. Did you examine the manufactured stock that was sold on that day?

A. No, sir. 20

Q. With a view to ascertaining whether it was fresh or stale?

A. No, sir; some of it was in quite sometime.

Mr. Backes—I object to the witness volunteering anything, I ask that the latter part be stricken out.

Q. Can you tell us how long before the sale the company had ceased to manufacture stock?

A. Why something in the neighborhood of three or four weeks, I should think; I can't say exactly. 30

Q. Within what time would the crackers—the crackers, how long before they would become stale?

A. Well, in the warm weather they are liable to turn rancid in about two weeks.

Q. Within what time would the cakes manufactured by the company become stale?

A. About the same time.

Q. Within what time would the soda crackers and other articles purchased by this company from other manufacturers become stale? 40

A. Well, in warm weather they are liable to get rancid in three weeks anyhow.

Q. When you say rancid, what do you mean?

A. Well, the warm weather is liable to turn the lard in them.

Q. Had the company manufactured any stock within such time prior to the sale as that the goods could have been fresh on that day of sale?

A. No, sir.

10 *Q*. Had this company, so far as you have had personal knowledge, purchased any goods from other parties within such period before the sale as that they could have been fresh on the day of the sale?

Mr. Backes—I object to that because there is no foundation laid, and there is no evidence here to show that this witness knows anything about the purchase of goods, and the question assumes that fact to be proven.

Mr. Lanning—In reply to this I beg to re-
20 mind counsel that the witness has said that as near as he can tell the company stopped its business some three or four weeks before the sale.

Mr. Backes—If the witness answers in the light of Judge Lanning's explanation of necessity between the time of stopping and the time of sale, I have no objection to the witness answering.

A. No, they couldn't be fresh on that day.

Q. Did you ever see a soft-cake machine there?

A Yes, sir.

30 *Q*. Did you operate it or not?

A. Sometimes I did.

Q. What was its condition?

A. Why it was cracked; the plunger was cracked, and the fingers got out of order once in awhile.

Q. Have you seen soft cake machines in other factories?

A. Yes, sir.

Q. And used them?

A. Yes, sir.

Q. Similar to this one, or not?

40 *A*. No, it was a different machine from that.

Q. Are you acquainted with the prices at which these machines are sold, new or second-hand.

A. Yes, sir.

Q. How have you become acquainted with those prices?

A. Why, I have seen the prices.

Q. Quotations in what?

A. Journals, bakers' journals.

Q. What, in your judgment, on the day of this sale, was the fair market value of this machine, considering its condition? 10

Mr. Backes—Objected to as illegal; the witness hasn't shown his qualification.

A. It was worth $40.

Q. Have you lately seen or known of the offer of any machine similar to this for sale?

A. Yes, sir; about three weeks ago.

Q. What sort of a machine was it?

A. The same make as that one.

Q. Do you know what its condition was?

A. It was represented to be in first-class condition. 20

Q. Where did you ascertain this?

A. In the Supply Journal.

Q. Was it advertised in the Supply Journal?

A. Yes, sir.

Q. At what price was it offered?

Mr. Backes—Objected to as illegal.

A. Twenty-five dollars.

Q. Did you know anything about a brake that was used in that factory?

A. Yes; I have seen the brake. 30

Q. What was it; what kind of a machine was it?

A. It was what they call a cross roller.

Q. What was the condition of that machine?

A. It was not good for their business.

Q. What was the matter with it?

A. It wouldn't do the work like work in other factories; it wasn't meant for that line of goods; it was more for soda crackers.

Q. Well, was it a perfect machine or not, or don't you know? 40

A. It wasn't perfect for that line of goods; I don't know.

Q. You don't know whether it was a good machine for soda crackers or not?

A. No; I never worked on that kind of brakes.

Q. Was there a cracker machine there?

A. Yes, sir.

Q. Did you work that?

A. Once in a while.

Q. Ever work any similar cracker machine?

10 *A.* Yes, sir.

Q. One of the same make?

A. Yes, sir.

Q. Have you any knowledge as to what those machines are worth in the market at second-hand?

A. I should say about $200.

Mr. Backes—I ask that that answer be stricken out, and the witness must not volunteer anything.

Mr. Lanning—Yes, it should be stricken out.

Mr. Lanning—Please answer the question, yes

20 or no.

Q. Have you any knowledge as to what these machines are worth at second-hand; have you had any experience in that line; in other words, have you known such machines to be sold at second-hand?

A. I have seen them advertised to be sold; I haven't witnessed any of them.

Q. You have not seen the machines advertised to know their condition?

A. No, sir.

30 Cross-examination (by Mr. Backes)—

Q. Have you been in Trenton continuously for the last three months?

A. Yes, sir.

Q. When did you first see Mr. Phillips with reference to your examination this evening?

A. To-day; he came in the bakery and served a subpœna on me.

Q. What bakery?

A. William Exton's.

Q. Have you ever been engaged in the cracker business other than as a practical cracker man?

A. No, sir.

Q. How old are you?

A. In my 34th year.

Q. Were you the head baker of the company during the time you were there?

A. Not all of the time.

Q. Any of the time?

A. Yes, sir. 10

Q. When did you take charge as head baker?

A. The 1st of April.

Q. After Mr. Bauer left?

A. Yes, sir.

Q. Were there under Mr. Bauer?

A. Yes, sir.

Q. Were you in charge of a department?

A. Yes, sir; in charge of an oven.

Q. While Mr. Bauer was there?

A. Yes, sir. 20

Q. After Mr. Bauer left, were you also in charge other than the oven?

A. Yes, sir.

Q. Any other departments—what?

A. The mixing.

Q. In that way did you become familiar with the qualities of flour that you were using?

A. Yes, sir.

Q. Do you recall that a short time before the Capital Cracker Company failed they got a car-load of flour from 30 Thompson, of Ohio?

A. They got flour from Thompson some time before that?

Q. Was it before or after you took charge as foreman?

A. Before.

Q. It is in evidence that they received it on March 25th; was that the time, as you recall it?

A. I can't tell.

Q. What did you use that flour for—the Thompson flour?

A. We used it for the C. C. cracker, and some of it we used in the Trenton cracker. 40

Q. And in making crackers did you use a poor or good quality of flour?

A. A good quality.

Q. Was Thompson's considered by you a good quality?

A. Yes, sir; the I. K. T. was considered a good quality, and the other was considered a poor quality; it was a medium.

Q. Now, you used the Lawrence Milling Company flour, didn't you?

10 *A.* Yes, sir.

Q. A great deal?

A. Well, used it for quite some time.

Q. Speaking more particularly, during the time that you were there as foreman do you recall getting flour from the Lawrence Milling Company—two or three barrels at a time?

A. Yes, sir.

Q. Getting it as they used it?

A. Sometimes they couldn't bring it there fast enough and they would bring a few barrels.

20 *Q.* It appears March 21st they furnished two barrels; 23d, 4 barrels; 26th, 9 and 7 barrels; 28th, 2 and 3 barrels; 29th, 5 barrels; 30th, 5 and 1 barrels; April 2d, 5 barrels; do you know they bought it in that order?

A. Yes, sir.

Q. And one lot of flour, for instance, they would use that before they would furnish the next?

A. Well, we didn't make the C. C. all the time; sometimes we didn't make that at all.

Q. You mean that they would pretty near run out of 30 flour before the next order was furnished; for instance, on the 23d of March you got four barrels, and the 21st you got two; now, you run out of the two before you got the next four?

A. We couldn't run that flour when we were making Trenton crackers.

Q. Weren't you in the habit of using the flour that you got from the Lawrence Milling Company almost as soon as you got it—within a day or two after?

A. No; some stayed there several days.

40 *Q.* How many barrels of flour did they use up there?

A. About seven barrels for a day's work.

Q. That is what you figured a day's work?

A. Yes, sir.

Q. You wouldn't have any more than one or two barrels open as you used it?

A. No.

Q. Now, you used Barkley's brand also?

A. Yes, sir.

Q. Was that a good quality of flour?

A. Yes, sir. 10

Q. Now, during the last month you were there, do you know of any other brand you used?

A. A cheap grade of flour; there was no brand on it.

Q. Where did you get that from?

A. I don't know.

Q. Do you know when you got it?

A. No, sir.

Q. Do you know how long it was there?

A. I don't.

Q. Was it there before you came there? 20

A. I think it was.

Q. How much was there when you came there?

A. I don't know.

Q. How much was there on the day of the sale?

A. I couldn't say.

Q. Where were you in the habit of keeping flour?

A. Up stairs.

Q. In any room?

A. It is all one room.

Q. On the day of the sale, you know there were a great many barrels there? 30

A. Yes, sir.

Q Know how many?

A. No, sir.

Q. How many of Barkley's or Thompson's?

A. No, sir.

Q. Or the Lawrence Milling Company?

A. No, sir.

Q. Now, this cheaper grade of flour that you have spoken of, do you mean to say that they were not furnished by either Thompson's or Lawrence Milling Company? 40

A. There was no brand on it.

Q. Was there more than one barrel there?

A. I don't know how much.

Q. I mean this cheaper grade?

A. I don't know.

Q. Did you use any while you were there?

A. Yes, sir.

Q. Did you have it separated from the others?

A. Yes; each lot staked off by itself.

10 *Q.* I mean during the time you were using it?

A. Yes, sir.

Q. Was there very much of this cheaper grade there?

A. I don't know.

Q. You said it was staked off?

Q. Was there three barrels of it?

A. I couldn't say that.

Q. Of whose grade was the greatest quantity there at the time of the sale?

A. I don't know.

20 *Q.* Wasn't it Thompson Brothers?

A. Yes; I think there was more Thompson Brothers.

Q. Didn't you have more of Thompson's than all the rest put together?

A. Yes, sir.

Q. Wasn't there about 93 barrels of Thompson's on h nd?

A. I don't rem mber.

Q. At the time of the sale?

A. I don't remember.

30 *Q.* Mr. Barkley has testified that he purchased nineteen barrels of his own, that was all that was there of this poorer grade; wasn't it sufficiently large in quantity to impress on your mind that there was a large amount there?

A. Well, there must have been quite some there.

Q. I am speaking of this so-called poor grade which you have referred to?

A. Yes.

Q. And the Thompson was sufficiently large to impress you that there was a whole lot there?

A. Well, the Thompson's was in the middle as you would go up the steps.

Q. Do you mean to say that some of this poorer grade which remained at the time of the sale was in that factory when you went to work in January?

A. Yes, sir.

Q. You're sure of that?

A. Yes, sir.

Q. And you can't tell me how much, not even approximately? 10

A. No, sir.

Q. Can't tell whether it was one or fifty?

A. No, sir, I can't.

Q. Has Mr. Phillips been talking to you about this cheaper grade of flour since you have been subpœnaed?

A. He asked me if I knowed what kind of flour there was up there, but I know nothing about it.

Q. Didn't you know there was a great deal of this Thompson flour from the fact that it was recently purchased?

A. No, I don't know that. 20

Q. Did you say you used the Thompson flour for manufacturing C. C. and Trenton crackers?

A. Yes, sir.

Q. Did you use any other flour for that purpose?

A. Barkley's and Lawrence Milling Company's.

Q. Did you use any of the three kinds of flour that you have spoken of for cake purposes? I mean either the Lawrence Milling Company's, Barkley's or Thompson's for manufacturing cakes?

A. Yes, for the best grade of cake. 30

Q. Do you recall the fact that Mr. Phillips took possession of the Capital Cracker Company before the sale?

A. I seen him up there.

Q. With the constable?

A. Not before the sale I didn't see the constable up there.

Q. Do you know when Mr. Phillips took possession under his mortgage?

A. No; I don't remember.

Q. You don't recall the date?

A. No. 40

Q. Were you working?

A. We worked Monday and Tuesday and closed Tuesday night.

Q. You worked right up to the time he closed down?

A. They told us Tuesday night there wouldn't be any work to-morrow.

Q. Were you working full-handed Monday night?

A. Yes, sir.

Q. And Tuesday?

10 *A.* Yes, sir.

Q. And the week before?

A. Yes, sir.

Q. Were you there close to the auctioneer during the sale?

A. Sometimes I would be.

Q. Did you hear Mr. Phillips say to the auctioneer to hurry up?

A. No, sir; I did not.

Q. You weren't close enough to hear that?

20 *A.* I was close enough, but I didn't hear it.

Q. Mr. Phillips says that he told him so and so does the auctioneer.

A. I didn't hear it.

Q. Hard cakes don't spoil as quickly as soft cakes?

A. No; they won't mould, they will get rancid.

Q. Do they get stale as quickly as soft cakes?

A. No; they do not get as stale; not as quick.

Q. Do they get as stale as quick in boxes and barrels than if they were opened?

30 *A.* Not if they are exposed to the air.

Q. Do hard cakes grow stale as quickly when they are in cans?

A. No, sir.

Q. Do you know how soon the goods are manufactured and placed in tin cans—I am speaking of hard goods, grow stale after they are manufactured.?

A. About two weeks.

Q. You said that soft cakes grow stale in two weeks?

A. Yes, sir.

40 *Q.* Do hard goods grow stale in the same length of time?

A. Yes, sir.

Q. Both will grow stale, hard and soft cakes, in the same length of time?

A. Yes, sir.

Q. That has been your experience?

A. Yes, sir.

Q You have testified about the values and prices of second-handed machines?

A. Yes, sir.

Q. Have you any knowledge other than that which you have derived out of this newspaper that you have spoken of? 10

A. Well, I have seen that machine.

Q. I didn't ask that; have you any knowledge of the value of machines other than that which you have derived from these bakers' journals, that is where you get an idea of goods; will you please answer my question whether you get your ideas from any other source?

A. No, sir.

Q. You have never examined these machines that you have read about in the bakers' journals and don't know what condition they were in? 20

A. Only what the advertisement stated.

Q. Have you purchased and sold any second-hand machines?

A. No, sir.

Q. Or any new ones?

A. No, sir.

Q. Do you know what the cracker-machine, such as they had up there, was worth, new?

A. About $600. 30

Q. That cracker-machine up there was in perfect condition, was it not?

A. No; it didn't work as good as the one I worked on before I went there.

Q. In what way was it not good?

A. It panned the crackers on top of one another.

Q. Was that the only defect you saw?

A. We had a great deal of trouble with it.

Q. Did you try to remedy that defect?

A. Yes; but it would get the same way again. 40

Q. Do you think that affected its value, $100?

Judge Lanning—The question is objected to as leaving out of consideration the fact that it was a second-hand machine.

Q. How much flour would you use in the manufacture of cake, daily?

A. That would depend upon what kind of cake you would make.

Q. What was your average?

10 *A.* I couldn't say that; some time we would have to make cake by hand, and we couldn't work as fast as the machine; there was some we had to make by hand.

Q. Taking machine and hand together, what consumption of flour would you make?

A. We couldn't have any certainty about it.

Q. Well, approximate it?

A. I am swearing to what I know?

Q. Well, for instance, the information that you derived from the newspaper journals, you have sworn to those as a 20 fact?

A. Well, you can answer them if you want to; they wouldn't put them in if the machine wasn't there to sell?

Q. How do you know that—don't you know that newspapers frequently advertise to fill up space?

A. Not trade journals, don't.

Q. Did you ever work on trade journals?

A. No, but I have been there.

Q. Where?

A. In Crandall and Godley's, New York.

30 *Q.* You made two qualities of cake up there, did you?

A. Well, we made what we call machine and hand cake.

Q. Any difference in the material used?

A. Yes, a difference in the material.

Q. Was there as much hand as there was machine?

A. No, sir.

Q. Quarter as much?

A. No, sir.

Q. Was there one hundred times as much of hand as there was by machine?

40 *A.* No, sir.

Q. Was there a tenth as much ?

A. I guess there was a tenth.

Q. Did you use any of the Thompson flour in the making of cake by hand ?

A. Yes, sir.

Q. Didn't you use this so called poorer quality of flour in making cake by machine ?

A. Ginger snaps we did ; we run molasses and coffee cakes and lemon biscuit.

Q. Out of this poorer quality ? 10

A. No, the poorer quality for ginger snaps.

Q. Did you ever hear anyone say where you got this poorer quality from ?

A. No, sir.

Q. Don't know what part of the country it came from ?

A. No, sir.

Q. Do you know whether there were any unopened barrels of flour in the bakery at the time you stopped work on Tuesday ?

A. I do not. 20

Q. Do you know when you had used any prior to your stopping work ?

A. We used it that day. Ginger snaps was the last made.

Q. Where up stairs was this poorer quality kept ?

A Towards the window.

Q. Towards the west ?

A. Yes, sir.

Q. Was there any other quality in its immediate neighborhood ? 30

A. Well, there was lots of flour about.

Q. How much space did this poor quality take up ?

A. I couldn't say.

Q. In barrels or boxes ?

A. In boxes.

Q. Had no mark on at all ?

A. No.

Q. Was there any unopened ?

A. I didn't see them.

Q. Of this poor quality ? 40

A. I didn't see any.

Q. I ask you whether there was any of this poor quality up there at the time that you quit work?

A. Yes there was some there.

Q. Was there as much there as the Lawrence Milling Company?

A. I don't know; couldn't say.

Q. Was there any there of the Lawrence Milling Company?

10 *A.* I don't remember.

Q. Was there any there of Barkleys?

A. Yes.

Q. You remember that?

A. Yes.

Q. Don't remember anything about Lawrence Milling Company?

A. No, sir.

Q. Did you keep all the flour up-stairs?

A. Yes, sir.

20 *John H. Backes,* being duly sworn on the part of the complainant, testified as follows:

I was employed as counsel for the receiver, and a demand was made upon Mr. Phillips for a list of creditors of the Capital Cracker Company. This demand was made in the month of July, 1892. Mr. Phillips furnished me with that list, and he claims that I still have it. We have made an examination, but we haven't it. We have had three or four litigations. It has been lost. However, at that time a brother of mine, who was in my employ, made a copy which 30 is marked *Exhibit No. 1.* The creditors, with the exception of three or four very small ones for less than ten dollars a piece, presented their claims. I have them here. I have examined their bills. I offer this paper in evidence I have received

Mr. Lanning—The paper is objected to as irrelevant and immaterial in this examination, which is solely for the purpose of accounting.

The receiver has advertised for the creditors to present their claims, and, as I have stated, with the exception of

two or three they have been presented. I offer those bills and ask that the examiner mark them.

Mr. Lanning—You say you offer bills; I suppose you mean you offer the claims presented to the receiver by creditors. The offer of these claims is objected to as irrelevant and immaterial.

I offer the claim of E. W. Baker, $16. I offer myself as a witness because I desire to close the case this evening, and Mr. Montgomery, who has the same knowledge I have, is not present. I also offer the list of creditors and the claims for the purpose of showing that the Capital Cracker Company did not purchase flour from parties other than Thompson, Barkley and the Lawrence Milling Company, which fact is also borne out by the books of the company.

Mr. Lanning—The offer for that purpose is objected to as incompetent.

I am through with my examination.

Mr. Lanning—There is no cross-examination.

Mr. Backes—I offer the declaration and plea in the case of Joseph B. Bisbee, trading as the Poughkeepsie Cracker Company, against Henry D. Phillips, in the New Jersey Supreme Court; I also offer that part of the record in that case which appears on page 171 of the printed book, being a statement offered by Mr. Phillips at that trial in support of his defence, whereby he sought to maintain that the Capital Cracker Company was solvent on March 26th, 1892, and Mr. Phillips' testimony in that case. I offer in addition to that the entire record of the case of Bisbee against Phillips in the New Jersey Supreme Court. In lieu of the original record, I offer the printed book. That is all.

Mr. Lanning I object to the pleadings, exhibits, testimony and record of the case of Bisbee against Phillips, just offered by the counsel for the receiver, and to each and every part thereof, on the ground that it is irrelevant and immaterial.

All rest.

EXCEPTIONS TO MASTER'S REPORT.

(Filed July 2, 1895.)

Exceptions taken by the defendant Henry D. Phillips to the report of Gardner H. Cain, one of the Masters of this Court, to whom it was referred to state an account of the value of the goods, chattels and personal property of the Capital Cracker Company, appropriated by the said defendant and sold under and by virtue of a certain chattel mortgage, dated May 9, 1892.

10 *First*—For that the said Master has, in and by his said report, stated the value of sundry articles sold by the defendant as aforesaid as follows, to wit:

1 barrel of molasses, at	$15 00	instead of		$5 50
1 barrel of sugar, at	15 00	"	"	5 00
Ginger, at	1 20	"	"	50
Lard, 417 pounds, at	33 36	"	"	16 68
35 pounds twine, at	4 20	"	"	2 45
Paper, at	30 80	"	"	15 40
Paper, at	9 18	"	"	2 70
20 10 cake pans, at	5 00	"	"	50
Empty flour barrels, at	10 20	"	"	2 30
Empty sugar barrels, at	4 40	"	"	1 54
25 barrels high grade flour, at	111 25	"	"	68 75
19 barrels of Barclay's flour, at	91 20	"	"	66 50
Pans, at	21 30	"	"	3 55
Cracker machine, at	400 00	"	"	170 00
98 cracker pans, at	29 40	"	"	14 70
34 bread pans, at	10 20	"	"	3 91
3 barrels of flour, at	10 20	"	"	8 70
30 64 barrels of flour, at	217 60	"	"	169 60
320 empty boxes, at	32 00	"	"	8 80
1 barrel of flour, at	4 50	"	"	2 00
1 mixer $150.00, and 1 breaker $150.00, being	300 00	"	"	225 00

Whereas the said Master ought to have stated and certified said values at the lesser amounts hereinabove particularly mentioned, instead of the larger amounts,

Second—For that the said Master has, in and by his said report, charged against the said defendant the following amounts, to wit:

From Frank Duffield	$15 00
For stone, sand and lumber	7 00

Whereas the defendant is not properly chargeable with either of said items, there being no proof that he received the same.

Third—For that the said Master has, in and by his said report, refused to allow the said defendant for the following 10 items, to wit:

Amount paid Branin, bailiff	$25 00
Amount paid Miss Cox for labor	6 00
Amount paid Mr. Green for labor	25 00
Amount paid for hire of team	4 00
Amount paid to laborer for services	4 50
Amount paid Mr. Shellenberger for labor	20 00
Amount paid for printing posters and notices of sale,	6 00
Amount paid for postage	1 50

Whereas the said Master ought to have allowed to the 20 said defendant each and every of the above items, as expenses incurred by the defendant upon the sale of said goods and chattels.

In all which particulars the report of the said Master is, as the said defendant Henry D. Phillips is advised, erroneous, and the said defendant, by his exceptions hereinabove set forth, shows cause against the confirmation of the said Master's report, and humbly insists that the exceptions hereinabove mentioned and set forth should be sustained and the report of the said Master accordingly modified. 30

W. M. Lanning,
Soli itor and of Counsel with D fendant.

OPINION.

[Filed October 15, 1895.]

MONTGOMERY
vs.
PHILLIPS.

On exceptions to Master's report.

Mr. William M. Lanning for exceptant.

Mr. John H. Backes, contra.

BIRD, V. C. I think in every case where a creditor has lien upon the goods of his debtor, in which other creditors as well as the debtor have an interest, which goods are of universal consumption and have a known or certain market value, it is the duty of the creditor having such lien, if he takes the responsibilty of selling the same without foreclosing his lien, to sell such goods for such market price and to account for the same, less the actual expenses of such sale. To apply this rule in this case will be to sustain the Master and to overrule the exceptions. It is apparent that it was only necessary for Mr. Phillips to offer the articles mentioned in these items to dealers in the city of Trenton to receive the market value. I do not think that there would have been any excuse offered had that which had been wheat and converted into flour still retained its original state. All would say that it then would have been the duty of Phillips to cart that grain to the nearest market and sell it for the then market price. He was dealing with this property at his peril. The case is more strongly against him than in the ordinary case of trover or replevin, or even trespass. In those cases the question generally is, which of the two suitors is the real owner, the whole interest being in the one or the other. In the case before me Phillips was not the owner of the title; he only had a supposed lien upon it. The debtor, the corporation, was interested and so were all its other creditors. Phillips was, therefore, bound to exercise the highest degree of caution or vigilance.

Nor is the principle changed by the fact that the court below had adjudged his lien to be a valid one. I rest my conclusions upon the ground that his lien was valid; but

charge him because, attempting to deal with the property as chattel mortgagee, he was under every obligation to his debtor and to other creditors to realize the fair market value for those articles which are of universal consumption or use, and have a market value every day in the year and be sold for such value.

There seems to be a very well settled rule of law which I apprehend must control in this as in other cases. I think that where any person seizes upon the goods of another and disposes of them he must account to the owner for the full and fair value thereof, notwithstanding any consideration that he may have received therefor upon a sale. This seems to be the well settled law in this State.

Thompson v. *Thompson, Coxe 159;*
Woolley v. *Carter, 2 Hal. 85;*
Hopple v. *Hicbee, 3 Zab. 342;*
Outcalt v. *Durling, 1 Dutcher 443, 448;*
Longstreet v. *Phile, 10 Vroom 63, 71;*
McFadden v. *Whitney, 22 Vroom 391, 396;*
Woodside v. *Adams, 11 Vroom 426.*

I go now to the case of *Bird* v. *Davis, 1 McCarter 467, 475,* (Cited in *Jones on Chattel Mortgages,* § *708*), a case enough like the present, supposing Phillips to have a valid lien to elicit particular attention. In that case a mortgagee sold the chattels covered by his mortgage at public sale. In that case the Chancellor said "the complainants were therefore authorized to sell the goods. The evidence warrants the conclusion that the sale was made upon full notice to the defendant personally, and opportunity afforded him to redeem; that the sale was duly advertised, and was in all respects fair, the goods being sold for the best price that could be obtained. The defendant can only claim to be credited with the net proceeds of the sale. * * * If, however, the defendant can show before the master that the articles were sold unfairly, and at an under price, he will be permitted to do so and will be allowed their fair value."

This rule is so reasonable as to command my unqualified assent, and to hold that it should not only be my guide as a general principle, but that the case now under consideration is within it, were it not for the fact that Phillips held such

a prominent and controlling position in the company when the chattel mortgage was given that it may well be said of him that while he had an interest as mortgagee, he was also one of the principal mortgagors. If under such circumstances he could sell at all, it certainly is proper to require of him the utmost vigilance and to hold him responsible for the full and fair value of the goods. In the case cited, *Bird* v. *Davis, Supra*, the validity of the mortgage was established and consequently the mortgagee had a right to sell. See also *Voorhees* v. *Melick, 9 C. E. Gr. 305; S. C., 10 C. E. Gr. 523.*

In this case an effort to sustain the mortgage as a valid instrument has failed, and with that failure vanished the right of Phillips to intermeddle. Hence, as I have stated above, he had so intermeddled at his peril. This makes the condition of the rule laid down by the Chancellor in *Bird* v. *Davis* eminently applicable; that is, that notwithstanding a mortgagee who has established his mortgage may seize upon and sell the chattels included therein, yet it may be inquired whether or not the sale was fair and reasonable and the chattels sold produced their full value.

I have referred to these general principles and the authorities which sustain them in order to show that the Court of Errors must have intended what the import of the language of the decree of reversal expresses when it says "that the said Henry D. Phillips should account for the value of the goods, chattels and personal property of the Capital Cracker Company, by him appropriated and sold under and by virtue of the said deed of mortgage." He is required to account for their value, not what they sold for. This is justified up on the fact that he was not in truth a *bona fide* mortgagee and acted at his peril in seizing upon and selling these chattels.

As above intimated, such wrong-doer cannot protect himself by the assertion that he had an apparent title. The question of title is almost universally to be decided in actions of trover, and very frequently in actions of trespass, as the cases cited show. And it is certainly very clear that if a wrong doer were to be held liable for only what he might realize in such cases, the invasion of another's rights by

carrying away his goods and disposing of them under a claim of property would be greatly encouraged. It is therefore extremely doubtful whether any reasonable ground can be presented for a modification of the rule laid down in the cases cited.

Perhaps it ought to be remarked that all controversy whatever of this nature might have been avoided had Phillips not so hastened the sale of these goods as to make it effectual before the appointment of a receiver. I infer from the time of filing the bill that this sale took place after the bill was 10 filed. Had his lien been valid, and had he awaited the appointment of the receiver and a sale by him, he would have been protected, in case he established his lien to the extent of the fund realized from the sale, whether the goods brought their full value or not. In that event the sale would have been lawful.

I can find no just grounds for sustaining the exceptions since it has not been demonstrated that the findings of the master were in any material respects erroneous.

As the second and third exceptions have not been adverted 20 to in the brief of counsel for the exceptant I take it for granted that he supposed that they would be sustained in case the first exception should be, and would be, overruled in case the first exception should be. The complainant is entitled to costs.

FINAL DECREE.

[Filed October 12, 1895.]

This cause coming on to be heard in the presence of John H. Backes, of counsel with the complainant, and William M. Lanning, of counsel with the defendant, and it appear- 30 ing that by a decree of this Court made in this cause on the ninth day of April, eighteen hundred and ninety-five, among other things it was ordered, adjudged and decreed that the defendant Henry D. Phillips account for the value of the goods, chattels and personal property of the Capital Cracker Company by him appropriated and sold under and

by virtue of the deed of mortgage set forth in the said decree, and for that purpose it be referred to Gardner H. Cain, Esq., one of the Masters of this Court, to ascertain and report the value of the said goods, chattels and personal property so appropriated and sold; and upon reading and filing a report made in pursuance of the said decree by the said Master, bearing date on the twenty-seventh day of June, eighteen hundred and ninety-five, by which report it appears that the value of the said goods, chattels and personal property, including the interest thereon to the date of said Master's report, was the sum of two thousand four hundred and eleven dollars and eighty-six cents; and upon reading the exceptions filed thereto by the said defendant, Henry D. Phillips, and upon hearing the arguments of counsel thereon: It is, on this twelfth day of October, eighteen hundred and ninety-five, by Alexander T. McGill, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this Court, doth order, adjudge and decree that the said exceptions to the said Master's report be overruled, with costs; and that the said report and all the matters and things therein contained do stand ratified and confirmed; that the said Henry D. Phillips pay to the complainant, John A. Montgomery, Receiver of the Capital Cracker Company, within twenty days from the date of the service upon him of a copy of this decree and the taxed bills of costs, the sum of two thousand four hundred and eleven dollars and eighty-six cents, together with interest thereon from the twenty-seventh day of June, eighteen hundred and ninety-five, being the date of the said Master's report; and also the sum of one hundred and thirty-eight dollars and fifty five cents, being the costs taxed in the Court of Errors and Appeals of the State of New Jersey upon the appeal of the above cause in said court, together with the costs in this cause to be taxed.

ALEX. T. MCGILL, *C.*

Respectfully advised.

JOHN T. BIRD, *V. C.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between HENRY D. PHILLIPS, *Appellant,* and JOHN A. MONTGOMERY, RECEIVER, &c., *Respondent.*	On Appeal.

PETITION OF APPEAL. 10

[Filed November 1st, 1895]

To the Honorable the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Henry D. Phillips, the 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 Alexander T. McGill, Chancellor of the State of New Jersey, bearing date the twelfth day of October, in the year eighteen hundred and ninety-five, in a cause wherein the said John A. Montgomery, Receiver, 20 &c., was complainant, and your petitioner and others were defendants, in this respect, to wit, that the said decree adjudges that the exceptions filed by your petitioner to the Master's report in said cause be overruled with costs, and that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that your petitioner pay to the complainant, John A. Montgomery, Receiver, &c., within twenty days from the date of the service upon your petitioner of a copy of said decree and the taxed bill of costs, the sum of two thousand four hun- 30 dred and eleven dollars and eighty-six cents, together with interest thereon from the twenty-seventh day of June, eighteen hundred and ninety five, being the date of the said Master's report, and also the sum of one hundred and thirty-eight dollars and fifty-five cents, being the costs taxed in the Court of Errors and Appeals of the State of New Jersey

upon the Appeal of the said cause in said court, together with the costs in this cause to be taxed. And your petitioner humbly appeals from the said decree upon the ground that the same is erroneous, for each and every of the reasons particularly set forth in the exceptions filed to said Master's report as aforesaid, and further, for the reason that the said final decree is in sundry other respects manifestly unjust and inequitable. Your petitioner therefore prays that the said final decree of the said Chancellor may be reversed and set
10 aside, and that the said exceptions to said Master's report may be decreed to be sustained, and that your petitioner may have such further and other relief in the premises as to this honorable court shall seem meet and proper.

And your petitioner will ever pray, etc.

W. M. LANNING,
Solicitor and Counsel for Appellant.

ANSWER.

[Filed November 14, 1895]

The answer of the above-named respondent to the petition
20 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 twelfth day of October 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 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
30 agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

JOHN H. BACKES,
Solicitor and of Counsel with Respondent.

EXHIBIT NO. 2.

RECEIPTS, MORTGAGEE'S SALE, MAY 23, 1892, CAPITOL CRACKER CO., TRENTON, N. J.

Lawshe Gage	$0.40
Lawshe & Son, 1 bbl. Molasses	5.50
" " " Sugar	5.00
John Caminade, Bowls	.60
L. Lawshe, Alum	.10
A. Strohecker, Soda	.75
J. McCabe, Ammonia	1.50
Hart & Green, Cinnamon	.50
Jno. Strohecker, 10 lbs. Ginger at .05 lb	.50
Stapler, Scales	4.50
John M. Bauer, Brown Sugar, 202 lb. at .03	6.06
John Caminade, Salt	.50
" " pans, rolling, 5	.25
" " tins, by sink	.25
James Maher, lard, 417 lbs. at .04 lb	16.68
Holmes Green, 3 bags graham, 1 " Indian meal } at .75	3.00
Stapler, empty boxes, 49 at .10 piece	4.90
O. Fisher, twine, 35 lbs. at .07 lb	2.45
Baumgartner, paper at .03¼ lb	15.40
" white paper 54 lbs. at .05 lb	2.70
J. Caminade cocoanut, 10 lbs. at .10 lb	1.00
Hart & Green, butter, 24 " " .05 "	1.20
Strohecker, imperial " " " .04 "	.96
Caminade, currants, 75 lbs. " .04 "	3.00
Caminade, bowl	.05
Strohecker, 10 cake pans at .05 piece	.50
Stapler, paper bags,	1.75
Strohecker, empty bbls. (flour), .04½	2.30
Lawshe, " " (sugar), .07	1 54
" old crackers, 24 lbs., at .32½	7.80
Hart & Green, excelsior	.50
Strohecker, canvas	3.00
Stapler, high-grade flour, 25 lbs., at $2 75 bbl	68.75
J. Baur, 2nd grade, 5 bbls. at $3.75 bbl	18.75
S. Barkley, (B) 19 bbls., at $3 50 bbl	66.50
J. F. Herbert, broken cake, 40 bbls., at .13 bbl	4.80
Lischer, rope (small)	.30
English, " (large)	1.50
Runyon, eggs	.20
Hart & Green, cracker dust, 6 lbs., at .03 lb	.18
Caminade, lard kegs	.05
Watson, cracker dust, 1,000 pkgs., .05 per 100	.50

Strohecker, extract lemon	$0.35
Lischer, cotton seed oil	.40
Lawshe, orange extract	.25
Fischer, scoop-shovels, 3, at .32½ piece	.97
Runyon, coal	2.75
McCabe, soft-cake machine	40.00
" pans, 71, at .05 piece	3.55
Stapler, cracker machine	170.00
Carrick, cracker-pans, 98, at .15 piece	14.70
Strohecker, bread-pans, 34, at 11½ piece	3.91
" rock-candy sugar, 215 lbs., at .03½	7.53
Herbert, 3 bbls, at $2.90 bbl	8.70
Carrick, 3rd grade flour, 64 bbls., at $2.65 bbl	169.60
Lawshe, wheel-barrow	2.00
Strohecker, tools	1.80
Caminade, spade	.40
Barrett, cake & 2 boxes	.80
Strohecker, chocolate, 6 lbs., at 39	2.34
Hart & Green, macaroni, 6 lbs., at .15 lb	.90
" " drops & sultan fruit, 7 lbs., at .05 lb	.35
Lawshe, bollivers, 10 lbs., at .05½	.55
" jumbles, 7 lbs., at .06 lb	.42
McCrellish, saw	.45
Green, barrel truck	.45
Snyder, ladder	.90
C. W. Mather, 8 boxes cake, 124 lbs., at .05 lb	6.20
Lawshe, 6 boxes (mixed cake), .03½	3.58
Mather, 5 boxes (mixed cakes), 82 lbs., at .03½	2.87
" 5 bxs. (coffee cakes), 114½ lbs., at .03	3.43
" lemon biscuit, 62½ lbs., at .03½	2.18
" 1 barrel crackers, 74 lbs., at .02	1.48
Barrett, 1 box bolivers, 20 lbs., at .03	.60
Lawshe, 1 box " 17 " " .03	.51
English, snaps, 20 lbs., at .04½	.90
Strohecker, empty boxes, 320, at .02¾ ea	8.80
Caminade, 1 bbl. flour	2.00
Lawshe, 2 bxs. graham w., 24 lbs., at .06	1.44
" snaps, 46 lbs., at	1.61
" ½ box crackers, 5 lbs., at .10	.50
Mather, salt wafers, 81 lbs., at .05	4.05
Lawshe, 5 cookies, 128 lbs., at .03½	4.48
Paff, 5 cookies, 153 lbs., at .03½	5.31
" 3 peerless, 64½ lbs., at .05½	3.55
Lawshe, 2 " 28 " " .05½	1.54
" waste cake, 1 bbl	.20
" " " 3 " at .20	.60
Renz, 1 pretzels, 50 " " .05	2.50
Lawshe, 1 " 54 " " .04¾	2.56
Paff, 1 " 51 " " .04¾	2.41
Hart & Green, ½ " 15 " " .04	.60

Lawshe,	dandy oysters, 40 lbs., at .01¾	$0.70
Paff,	" "	.50
Lawshe,	" "	.50
Strohecker,	" "	.50
MacCrellish,	" "	.50
Strohecker,	nick-nacks, 171 lbs., at .04¼	7.27
Barrett,	sodas, 1 lb. pack,, 45 at .03 pkg.	1.35
Strohecker,	3 " 135 lbs., at .03	4.05
Paff,	2 " 90 lbs., at .03	2.70
Lawshe,	2 " 90 lbs., at .03	2,70
Strohecker,	2 milk sodas, 108½ lbs., at .03½	3.80
Lawshe,	1 " " 63 lbs., at .03½	2.20
Paff,	1 " " 56½ lbs., at .03½	1.98
English,	1 " " 57½ lbs., at .03½	2.00
Levy,	1 " " 52 lbs., at .03½	1.56
"	1 Dutchess, 63½ lbs., at .03	2.16
Lawshe,	1 " 53½ lbs., at .03	1.60
Paff,	1 " 54 lbs., at .03	1.62
English,	1 " 52½ lbs., at .03	1.58
Barrett,	1 " 53 lbs., at .03	1.59
Stapler,	plain sodas, 269 lbs., at .03	8.07
Mather, desk (large)		5.00
Paff, desk (small)		2.50
English, 3 chairs at 27½ each		.82
Mather, ink stand		.20
" harness		6.75
Caminade, wagon (covered)		62 50
Fisher, "		15.50
Strohecker, yolkoline,		2.50
Davis & Bainbridge, cement,		16.00
F. Leggett, bill		2.27
Janney, "		33.01
Sperry, "		6.36
Mulford & Vreeland, 100 empty tins at .11		11.00
8 tins Arvenus, 42¾ at .05		2.14
8 " afternoon tea, 45¾ at .05		2.29
4 " " " 28 at .10		2.80
7 " graham wafers, 53¼ at .07½		4.00
3 " zephyr " 14 at .10½		1.47
2 bbls. pretzellettes, 162½ at .04		6.50
29 " egg biscuits, 934 at .09¼--86.46		
	Less 2 16	84.24
Horse		60.00
Wm. Kairer, paper		5.00
	3 boxes	6.00
	5 bbls. crackers,	11.50
	rocks	3.00
	peels	3.00
	iron.	3.00

Wm. Kairer, Tables	$3.00
Mixer & brake	225.00
Side-board	2.00
Belting at 15 foot	22.20
Shute	2.00
Sifter	20.00
Box	5.00
N. J. School F. Co., 1 Basket	.80
1 pr. Scales	10.50
1 safe	24.50
Branin, vanilla	.50
raisins	3.00
brooms	.37
T. B. Trose, Elizabeth, bill	1.03
Dolton & Co. "	2.38
	1,485.14

EXPENSE.

Horse board	34.80
Freight bill	2.02
Branin, bailiff	25.00
Freight, 1.10—.22—.15	1.47
Box	6.00
Green	25.00
Team	4.00
Man	4.50
Shellenberger	20.00
Printing, McC. & Quigley	6.00
Postage	1.50
	130.29

Receipts	1,485.14
Expenditures	130.29
Balance	1,354.85