In Cumberland Circuit Court.

To the Hon. L. Q. C. Elmer, *Judge of the Circuit Court of the County of Cumberland:—*

Humbly complaining, your orator, Charles S. Fithian, of the city of Bridgeton and State of New Jersey, respectfully sheweth—

1. That on the fourteenth day of March, eighteen hundred and sixty-five, "The West Jersey Canning and Pickling Company," an incorporation duly incorporated by the Legislature of New Jersey, being indebted to your orator in the sum of ten thousand dollars by their bond, dated on that day under the corporate seal of the said corporation, signed by Lorin J. Wicks, President, and attested by H. Ballard Dyer, Secretary, became bound under your orator in the sum of twenty thousand dollars, to be paid to him, his executors, administrators or assigns, with a condition thereunder written, that if the said "The West Jersey Canning and Pickling Company" should in one year from the date thereof, pay unto your orator, the just sum of ten thousand dollars, with interest thereon payable annually, then that said bond should be void.

2. That to secure the payment of the said ten thousand dollars with interest, the said "West Jersey Canning and Pickling Company," by a deed of mortgage bearing date on the same day with the said bond, conveyed unto your orator, his heirs and assigns forever, in fee simple, all that certain lot of land situate in Bridgeton aforesaid, and bounded as follows: Beginning at a stone for a corner on the south side of Irving street, and is a corner of William Harris' lot; thence along Irving street north eighty-nine degrees and one quarter, east ninety-three and one-half feet to a stone for a corner, corner also of William Hammonds' lot; thence bounding thereon, south twenty-eight degrees, west forty

feet to another corner of said Hammonds' lot; thence north eighty-nine degrees and one-quarter, east one hundred feet to a stone for a corner on the line of Bank street; thence along said Bank street south twenty-eight degrees, west one hundred and sixty-six feet to a stone for a corner, being also a corner of the Baptist burying ground; thence bounding thereon south eighty-eight degrees and three-quarters, west one hundred and sixteen feet and one-half to a stone for a corner, also corner of Eunice Garrison's lot; thence north two degrees and twenty minutes, west eighty-one feet to a stone for a corner, also a corner of Charles B. Fithian's lot and in the line of William Harris; thence north eighty-eight degrees and three-quarters, east twenty-six feet four inches to a corner; thence bounding on said Harris' land north two degrees, west one hundred and one feet to the place of beginning, containing fifty-five hundredths of an acre, more or less, together with all, and singular, the buildings, improvements, rights, liberties, hereditaments and appurtenances.

3. That said mortgage contains a condition that the same shall be void upon payment of the said sum of ten thousand dollars, with interest, at the time and in the manner in the condition of said bond set forth.

4. That said mortgage was on the sixteenth day of March, eighteen hundred and sixty-five, duly registered in the office of the Clerk of the County of Cumberland, in book R of mortgages, on folio 577, the execution of the same having been first acknowledged, and such acknowledgment certified therein as required by law.

5. That the said "The West Jersey Canning and Pickling Company," on the twenty-eighth day of April, eighteen hundred and sixty-five, by their deed dated on that day, conveyed the said mortgaged premises in fee to the said John W. Stout and Henry Ballard Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley, which deed was accepted by the said John W. Stout, Henry Ballard Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley, and on the same day of the executing of the said deed the said John W. Stout, Henry Ballard Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley entered into a written agreement with your orator, under their hands and seals, in and by which the said John W. Stout individually assumed the payment of your orator said mortgage, and became responsible for the payment of the same; and that afterwards, to wit: on the first day of November, eighteen hundred and sixty-five, the said William W. Stout, and Eleanor, his wife, conveyed all his right and interest in the said mortgaged premises to the said John W. Stout, which conveyance was also made subject to your orator's said mortgage; and that afterwards, to wit: on the eighteenth day of December, eighteen hundred and sixty-six, the said H. Ballard Dyer, and Susan,

his wife, Lorin J. Wicks, and Sarah, his wife, and Robert M. Seeley, and Matilda, his wife, made and executed a deed of conveyance for all their right and interest in said mortgaged premises, to the said John W. Stout, which deed was also made subject to the lien of your orator's said mortgage, by which said agreement and the said several conveyances, the said John W. Stout became bound in equity to your orator to pay the amount due and to become due upon said mortgage.

6. That the whole of the said principal sum of ten thousand dollars, with interest thereon from the fourteenth day of March, eighteen hundred and sixty-six, is due and payable to your orator, and that your orator has never had possession of the said mortgaged premises or received any of the rent or issues thereof.

7. That your orator has requested the said John W. Stout, who is the defendant in the suit, to pay unto him said principal and interest so due on said bond and mortgage, or to convey and release to him his interest in the said lands and premises with the appurtenances or payment to their fair value upon said mortgage debt, with which request he has refused and neglected to comply.

In tender consideration whereof, and inasmuch as your order is remediless in the premises at the common law, and can only have adequate relief in a Court of Equity; and to the end—

1. That the defendant may answer upon his oath or affirmation, according to the best of his knowledge and belief, all and singular the premises and each fact above stated.

2. That an account may be taken under the direction of this Court, of the amount due upon your orator's said mortgage.

3. That the defendant may be decreed to pay unto your orator the amount so found due, with interest thereon, and your orator's cost of this suit, by a short day, to be appointed by this Court, and that in default thereof said defendant do stand debarred and precluded of all equity of redemption in said mortgaged premises.

4. That said premises may be sold by the order of this Court, and out of the proceeds of said sale your orator may be paid the amount so found due upon his said mortgage, with interest thereon, and his lawful cost of this suit.

5. That if the proceeds of said sale shall not be sufficient to pay said amount, with interest and cost, that the said John W. Stout may be decreed to pay the deficiency.

6. That your orator may have such other relief as the nature of his case requires, and as may be agreable to equity.

May it please your honor to grant unto your orator the State writs of subpœna, issuing out of and under the seal of this Court, to be directed to the said John W. Stout, com-

manding him on a certain day and under a certain penalty therein expressed, to be and appear before your honor in this Court, and then and there to answer the premises in manner aforesaid, and to stand to abide and perform such order and decree as your honor shall make therein.

NIXON & MITCHELL,
Sol. of Court and Comp't.

In Cumberland County Circuit Court.

IN EQUITY.

CHARLES S. FITHIAN, *Complainant*,
and
JOHN W. STOUT, *Defendant*.
} *Answer.*

The answer of John W. Stout, defendant, to the bill of complaint of Charles S. Fithian, complainant, in the above stated cause. This defendant now and at all times, saving and reserving to himself all and all manner of benefit and advantage of exception that can and may be had and taken, to the many errors, uncertainties and insufficiencies and other imperfections in said complainant, said bill of complaint contained for answer thereunto or unto so much as this defendant is advised is material or necessary for him to answer unto (this defendant), answers and says, that the West Jersey Canning and Pickling Company corporation, mentioned in said bill of complaint, formally executed to the complainant, the bond dated March 14, 1865, mentioned in said bill, under the corporate seal of said company, in the sum of twenty thousand dollars, with a condition thereunder written, that if the said corporation, the West Jersey Canning and Pickling Company, should in one year from the date thereof pay to said Charles S. Fithian the sum of ten thousand dollars, with interest thereon, payable annually, then the said bond should be void. But this defendant says, that was not all the transaction connected with said bond, and this defendant denies that the West Jersey Canning and Pickling Company, the corporation aforesaid, either before or at or since the date of the aforesaid bond, was indebted to aforesaid Fithian ten thousand dollars or any part thereof; and this defendant in further answering, admits that the West Jersey Canning and Pickling Company, said

corporation formerly executed to said Fithian this mortgage mentioned in said bill of complaint on the premises described in said bill, and bearing date the said fourteenth day of March, eighteen hundred and sixty-five, the date of the aforesaid bond, and that the aforesaid mortgage was *so in form* executed as aforesaid, for the sum of ten thousand dollars, the principal sum mentioned in the condition of the aforesaid bond. That the said mortgage had therein expressed a proviso or condition that the same should be void upon payment of said ten thousand dollars with interest, at the time and in the manner set forth in the condition of the aforesaid bond. But this defendant says that was not all the transaction connected with said mortgage, and he denies that the West Jersey Canning and Pickling Company corporation aforesaid owed at any time before or at or since the date of the aforesaid mortgage, the said sum of money therein expressed in any part thereof, and he denies that there is any money due on either the said bond or on this mortgage; and this defendant in further answering says, he does not know, except as stated in said bill of complaint, that the aforesaid mortgage was acknowledged, and the said acknowledgment certified thereon as required by law, and leaves the same to be ascertained as may be directed by this honorable court.

And this defendant does not know, except as informed by said bill, that the aforesaid mortgage was recorded in the clerk's office of said county of Cumberland, as stated in said bill, and he leaves the same to be ascertained and as this honorable court may direct.

And this defendant in further answering says, he admits that on or about the twenty-eighth day of April, A. D., 1865, the West Jersey Canning and Pickling Company, by their deed of conveyance, conveyed the said premises and real estate, in fee, to John W. Stout, Henry Ballard Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley, stated in said bill of complaint, and they accepted said deed; but this defendant denies that the said moneys in said deed was paid except as herein stated, and he denies that in and by the execution, delivery or acceptance of the aforesaid deed, he, this defendant, or the other parties therein assumed, or became liable to pay said mortgage or bond or moneys therein mentioned or any part thereof; and this defendant in further answering says, that on the same day of the execution and acceptance of the aforesaid deed, he admits that he the said John W. Stout, Henry Ballard Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley entered into a written agreement with said Charles S. Fithian, under their hands and seals, but this defendant denies that in and by said written agreement, or the terms thereof, he individually assumed the payment of the aforesaid mortgage, and he de-

nies that in and by said written agreement he the said John W. Stout, became responsible for the payment of the aforesaid mortgage or any part thereof.

And this defendant in further answering admits that on the first day of November, A. D., eighteen hundred and sixty-five, the said William W. Stout, and Eleanor, his wife, conveyed all his right and interest in the said premises and real estate to the said John W. Stout, but this defendant denies that the said conveyance was made by said William W. Stout and wife, subject to said mortgage of said complainant; and this defendant in further answering says that the aforesaid mortgage is not referred to in said deed made by said William W. Stout and wife to said John W. Stout, as by reference to said deed or the record thereof the same will appear, and to which last aforesaid deed and record thereof this defendant prays leave to refer if necessary so to do. And this defendant in further answering says he admits that on the eighteenth day of December, A. D., 1866, the said Henry Ballard Dyer and wife, Lorin J. Wicks and wife, and Robert M. Seeley and wife, made and executed a deed of conveyance for all their right and interest in said premises and real estates, to the said John W. Stout, but this defendant denies that the last aforesaid deed was made by them subject to said mortgage, in the bill of complainant, and this defendant in further answering says that the said mortgage is not referred to in the last aforesaid deed, as by reference to the last aforesaid deed, or the record thereof, the same will more fully appear, and to which last aforesaid deed or the record thereof this defendant prays leave to refer, if necessary so to do, for greater certainty thereof; and this defendant in further answering, denies that by the aforesaid agreements and by the said several conveyances referred to in said bill, or by either of them, he the said John W. Stout, became bound in equity to the complainant, Charles S. Fithian, to pay the amounts of money expressed in the aforesaid mortgage or said bond, the condition thereof or any part thereof; and this defendant in further answering denies that the whole of said sum of ten thousand dollars, with interest thereon from the fourteenth day of March, A. D. 1866, or any part thereof, was or is due and payable to said complainant in any wise; and this defendant in further answering says that prior to and on the day of the execution of the said mortgage, the said Charles S. Fithian controlled or owned, and *was in possession of said* real estate and *the personal property* hereinafter referred to; that the said Charles S. Fithian had been *engaged for some time before then in the business of canning* and pickling fruits, vegetables, and making jellies, preserves and sauces, and manufacturing tin cans and boxes, and in the selling thereof, and for that purpose he used the premises in ques-

tion, and the buildings, factory, machinery and implements therein, in his said business.

That a short time before date of the aforesaid mortgage, to wit: on or about the seventh day of March, eighteen hundred and sixty-five, said Charles S. Fithian began a negotiation with said John W. Stout, Henry Ballard Dyer, they the said Stout and Dyer acting for the firm of Stout, Dyer & Co., for the sale of said premises and stock and personal property by said complainant; that the members of said firm of Stout, Dyer & Co. were John W. Stout, Henry B. Dyer and William W. Stout; that in said negotiation it was understood and arranged by said Fithian and Stout, Dyer & Co., that said John W. Stout, ——— Dyer, William W. Stout and Lorin J. Wicks, should be jointly interested in the purchase of said real and personal property, and afterwards in said negotiation said Fithian urges that Robert M. Seeley should also be jointly interested with said Stout, Dyer, William W. Stout and Wicks, in the said purchase of said real and personal property; that on or about the 14th day of March, A. D. 1865, the said Fithian, pretending to act in accordance with said negotiation for such sale, *sold* and transfered formally to the West Jersey Canning and Pickling Company corporation all the following described real and personal property, being the same herein referred to.

[For Inventory, see Exhibit D 5.]

And this defendant in further answering says on or about the fourteenth day of March, A. D. 1865, the said Charles S. Fithian, as this defendant then supposed and then believed, and said Fithian represented to him to be in accordance with said negotiation and arrangements of said sale of real and personal property and real estate, formally executed titles and conveyances, as herein named, and delivered possession of the real and personal properties referred to in the aforesaid inventory, account, or schedule, to this defendant and his said associates, and as a part of said transaction of said business, the said Charles S. Fithian together with Harriet ⸗., his wife, formally executed a deed of conveyance of said *real estate and appurtenances* unto the West Jersey Canning and Pickling Company corporation aforesaid, which last aforesaid deed is dated March 14, 1865, and was in due form of law duly acknowledged by said Charles S. Fithian and his wife, and recorded in the clerk's office of the county of Cumberland, March 16th, 1865, in book C H of deeds, page 131, as and by said deed or the record thereof, reference being thereto had, the same will more fully appear, and to which said deed or the record thereof this defendant prays leave for greater certainty if necessary to refer; and this defendant in further answering, says that the act of incorporation of said corporation was first enacted by the Legislature of this State, and approved on the second day

of February, A. D. 1865; that the persons originally named therein as corporators were said Charles S. Fithian, Providence Ludlam, Lorin J. Wicks, Robert M. Seeley and James J. Reeves, as in and by said act of incorporation reference being thereto had unto the same, will more fully appear, and to which said act this defendant for greater certainty prays leave to refer if necessary so to do; and this defendant in further answering, says that the said Charles S. Fithian was mostly instrumental and interested in procuring the enactment of said act of incorporation, and that although other persons are named as corporators with him, he the said Charles S. Fithian was really the active person and controller and operator of the proceeding or business relating to said corporation, until this defendant first became interested in as part owner of said property.

And this defendant in further answering says, that as a part of said transaction relative to said sale of said real and personal property, the said the West Jersey Canning and Pickling Company incorporation, executed a chattle mortgage, bearing date said 14th of March, 1865, to the said Charles S. Fithian, for the sum of $23,900 on said property, and in and by which said chattle mortgage the said incorporation, in consideration of said $23,900, bargained and sold unto said Fithian by the name of Chas. S. Fithian therein, three boilers, one steam engine, pipes and fixtures, glassware, tin-ware, materials for making solder, building for the manufacture, juice for jellies, materials for Cumberland sauce, boxes and all lumber on the premises; also all lumber on the wharf near the steam saw mill, casks, glass, minerals, dies for metallic caps, and all their stock of fruit, vegetables meats, sauces, and all other articles not therein enumerated and then owned by the said the West Jersey Canning and Pickling Company, and thereafter to be owned by the West Jersey Canning and Pickling Company, and of use in the business carried on by said Company, which said chattle mortgage has a proviso or condition therein mentioned therein, that if the West Jersey Canning and Pickling Company or their successors should pay the said Charles S. Fithian, his executors, administrators or assigns, the sum of $23,900 secured as follows: $10,000 secured by mortgage on the real estate of the West Jersey Canning and Pickling Company, bearing even date with said chattle mortgage, with the interest due thereon in one year from the date thereof; $4,633 secured by a bond bearing even date with said chattle mortgage and due with interest therein December 1, 1865; $4,633 secured by bond bearing even date with said chattel mortgage, and due with interest thereon, February 1, 1866; $4,634 secured by bond bearing even date with said chattel mortgage, and due with interest thereon, April 1, 1866, then the said chattel mortgage should be void else to be in full

force, as in and by the said chattel mortgage or the record thereof in said clerk's office, reference being thereto had the same will fully appear, and to all of which said chattel mortgages or the record thereof this defendant prays leave to refer, if necessary so to do; and this defendant further says that the said John W. Stout, Henry B. Dyer, Lorin J. Wicks, William W. Stout, and Robert M. Seeley, at the time of the *formal execution* of the aforesaid deed by said Fithian and wife to said corporation; and at the time of the said formal transfer of said property to the said corporation, or to this defendant and his said associates, comprised formerly all the members of said corporation and all successors to the same, and were then and thereafter entitled to all the benefits and privileges of said act of incorporation so far as the same extended; and the defendant in further answering says, that the person named Lorin J. Wicks in said act of incorporation, is the same person named Lorin J. Wicks in said deed of conveyance of the date of April 28, 1865; and this defendant in further answering says, that in the afternoon of said March 14, 1865, and before the said deed of that date, and before said properties was transferred or delivered by said Fithian to said corporation, or to this defendant or his associates, the said Fithian urged the organization of said corporation by the election of officers, and by his own instrumentality, said Fithian, this complainant, was elected President, James J. Reeves elected Secretary, and Lorin J. Wicks, Treasurer of said corporation. And that immediately thereafter, said John W. Stout subscribed for $38,500 stock of said corporation.

Henry B. Dyer aforesaid subscribed for $10,000 of the said stock of said corporation.

Lorin J. Wicks aforesaid subscribed for $12,000 of the stock of said corporation.

William W. Stout aforesaid subscribed $6,500 of the stock of said corporation.

Robert M. Seeley aforesaid subscribed for $5,000 of the stock of said corporation.

That the amount of said stock so subscribed and taken amounted therein to the sum of $72,000 as aforesaid. That the said John W. Stout was induced to subscribe for said amount of stock as aforesaid by the representations then of said Fithian, that the cost of said property, real and personal, amounted to the amount set forth in the foregoing inventory and schedule, and was then all in first rate order, available and saleable in the business; and by said Fithian's representations, that the same amounted to at least $50,900, and was worth this amount; and specified in said inventory and by said Fithian's assurance and representations herein referred to. And this defendant in further answering says, that the others who subscribed as aforesaid for said amounts

of said stock were induced to subscribe for the same as aforesaid by the said representations therein of said Fithian; and this defendant in further answering, says, thereafter on the same day last aforesaid, the said Reeves resigned his office as Secretary and Director. and said Dyer was elected in the place of Reeves. And said Fithian resigned his office of President and Director, and said John W. Stout and William W. Stout were elected Directors of said corporation; and then said Wicks was elected President, said Dyer was elected Secretary, and said John W. Stout was elected Treasurer of said corporation, and that all of the formal proceedings relative to said corporation on the day last aforesaid, and prior thereto, were urged to be done by the operation and solicitations of said Fithian at the time; and this defendant in further answering, says, that afterward on the night of said March 14, 1865, the said Fithian delivered to one of the last named officers so formally elected an officer of said corporation, the aforesaid deed, so signed as aforesaid by said Fithian and his wife. And this defendant in further answering, says, that the said Providence Ludlam, Charles S. Fithian, and James J. Reeves, did not either of them at any time subscribe for any of the stock of said corporation, and were not either of them at any time, as this defendant believes and insists, a stockholder therein. And this defendant in further answering, says, that at that time, and from February 1, 1865, the said John W. Stout, Henry B. Dyer, and William W. Stout were and had been transacting business in New York city by the name of Stout, Dyer & Co., and were engaged in the business similar to what said Fithian had been engaged in, and referred to in said Act of Incorporation, and then had their store and stock of goods in New York city, and on the said delivery of said deed and real and personal property, and said fixtures by said Fithian then as paid to said Fithian, $5,000 by check, made by said Stout, Dyer & Co., and also gave said Fithian a note made by Stout, Dyer & Co., payable to him for $5,000; which said check and note said Fithian then accepted of said Stout, Dyer & Co., as part of the consideration or of the price of said real and personal property sold as herein specified, and on which said check and note the said Fithian soon thereafter received the cash, that is $10,000; and this defendant in further answering, says, that during said negotiations on or before March 14, 1865, the said Fithian and said Seeley agreed that said Fithian should take or had taken of said Seeley, said Seeley's note or obligation for $5,000, another part of said consideration or price of said property herein ennmerated, and so sold by said Fithian. And it *was* also *represented* by said Fithian to said John W. Stout, and during said negotiation of said sale of said property, that said Fithian owed said Wicks $12,000, or that said Wicks was then entitled to have in some way $12,000 of said

Fithian, and that the said Fithian made and accepted $12,000 as and for part of said consideration, or of the price of said property so sold. And this defendant in further answering, says, that although said Fithian urged that said corporation be organized as aforesaid, and that the said amount of stock in said corporation be subscribed for as herein mentioned, yet he demanded and insisted on, having and given to him the individual obligation of said Seeley for said $5,000 with additional security. Individual security, therefore, to said Fithian, and not any of the obligation of said corporation or of the stock whereof he the said Fithian had urged said subscription to be made as herein set forth. And this defendant in further answering says, that on or about the 7th day of March, 1865, in the negotiations aforesaid then with said Fithian for this said purchase of said real and personal property, the said Fithian represented to this defendant he would sell all said real and personal property herein enumerated for what the same cost—that he wished to retire from the business—that it was worth then more than its cost price, because he had got it together before the rise of prices caused by the war. And this defendant in further answering, says, that said Fithian at said interview and negotiations on March 7, 1865, exhibited to this defendant also an inventory or account of the property, and which said inventory or account was contained in a book in possession of said Fithian, which said Charles S. Fithian represented and declared to this defendant, contained an account and inventory of all said real and personal property, and the original cost thereof; that said Wicks was interested with him in the same—that the interest of said Fithian and said Wicks in the whole property would be from $33,000 to $35,000, and would not exceed $35,000; and that said Wicks had an interest or right of $10,000 in said property, making an amount in the whole, if not exceeding $35,000 for the whole of said real and personal property; and that all of said property was available and marketable and in first rate order, and that all of it would be wanted in the business that the defendant was engaged in, and that there was no dead stock in it, that he (said Fithian) had *manufactured all* the articles of said stock, or superintended the manufacturing of the same, and there was no more than what would be wanted in the business by the defendant or the aforesaid firm. And this defendant in further answering, says, that he reposed confidence then in the experience and representations of said Fithian, respecting said property, and was thereby and by the said Fithian's representations, induced to enter then in the negotiations for said purchase of all said real and personal property, and to become then interested therein as herein stated, and did not minutely examine said inventory account or book last aforesaid, that was so exhibited and referred to by said Fithian

on or about March 7, 1865; and this defendant in further answering, says, that he and said Dyer, acting for said members of said firm of Stout, Dyer & Co., upon the representations and assurance aforesaid of said complainant, then, in or about March 7, 1865, bought all of said property, including all the right and interest of said Fithian and said Wicks therein, of said Fithian, with the understanding then with the complainant that said Wicks should also be interested therein, and carry on said business with this defendant, and such others as were in and might be also engaged with defendant therein; and at the same time agreed to pay said Fithian his price, or consideration of an amount, not exceeding said $35,000 as so represented by said Fithian, $10,000 thereof to be paid by check and note as herein recited, and the balance to be secured or satisfied to said Fithian; and at the same time it was agreed by the parties to meet on March 14th, 1865, at said Fithian's office at Bridgeton, to give said checks and note therein, and to give obligations or bond and mortgage as security, and arrange the satisfaction for the balance of said consideration or price of the property to said Fithian. And this defendant in further answering says that the last aforesaid book, inventory and account so exhibited and represented by said Fithian on or about said seventh day of March, 1865, respecting said property, was left in the possession and control of said Charles S. Fithian, and that sometime prior to said meeting of said defendant and said parties on said March 14, 1865, and after the last aforesaid book, inventory and account were so shown, exhibited and represented by said Fithian to this defendant, and on, in or about March 7, 1865, and after said Fithian had so sold said property and the defendant had so entered into the negotiation for the purchase of said property as aforesaid, for the price not exceeding $35,000 as aforesaid, the said Charles S. Fithian, obtained or had another book similar in appearance to the first *aforesaid* book *exhibited* on March 7, 1865, which said other book *was not exhibited or* made known to said defendant, on or about said March 7, 1865, and said complainant *made* up or had made up without the knowledge or *consent of* this defendant, or of the members of said firm of Stout, Dyer & Co., a new or different account, or inventory of said property with amounts therein stated as the cost of the property, and larger than what were contained in the book, inventory and accounts so first shown, and exhibited by the complainant, a copy of which said new or different account or inventory is herein set forth amounting to $50,979,13, as in and by the said new and different account, or inventory, in the book now in possession of this defendant, and ready to be produced, as this honorable court shall direct, will more fully appear, and to which said new or different account or inventory and book, this defendant for further certainty prays leave to refer; and

this defendant in further answering, says, that at the said meeting of the parties on March 14, 1865, at the time of the execution of said chattle mortgage and bonds, said Fithian *did not exhibit, or refer to* the former book account or inventory first exhibited before that day to this defendant, but exhibited such new account as which he had so made up without the knowledge or consent of this defendant, or the members of said firm of Stout, Dyer & Co., to the defendant, *without informing any of the members* of the said firm that such new account or inventory has been so made, and thereby represented to, and induces this defendant and the members of said firm to believe the same was the account or inventory and book first so exhibited to this defendant by the complainant, and as containing the bona fide accounts of the real original cost of all said property, and the said complainant insisted that $50,979.13, the amount of said new account or inventory of the property; was the same account and cost of the said property so first represented, and the real cost of the property so sold by him, and thereby fraudulently induced this defendant, and the members of said firm of Stout, Dyer & Co., to believe the same to be correct, and thereby fraudulently induced this defendant, and the other members of said firm, to accept and act on the aforesaid new inventory and account, as the true and correct inventory and account of said property, and to subscribe as aforesaid for said amount of said stock of said corporation; and this defendant in further answering, says, that said Wicks has been for a considerable time, interested with said Fithian, in said property and business of said Fithian, and that on and prior to said formal transfer of said property by said Fithian to the defendant, corporation, it was understood by, and between said Fithian and said Wicks, that said Wicks had an interest of one-third in the profits of said Fithian's said business, and that said Fithian had an interest of two-thirds in said business. And this defendant, in further answering, says, that said Wicks was interested to the extent of one-third in the excess of said new inventory and accounts thereof over the first-named inventory and accounts thereof, and said Fithian was interested to an extent of two-thirds of such excess. And this defendant in further answering, says, that a considerable amount of the property mentioned in the inventory and account first exhibited to this defendant, was therein stated at a price also considerably above its true true original cost price, and said Fithian thereby fraudulently represented to this defendant such account were the real cost of said property; and that a large amount of the property specified inboth inventories and accounts aforesaid, &c., and so transferred, was, and still is, unmarketable, invaluable, *and worthless, notwithstanding the declaration* and assurances of said Charles S. Fithian respecting the cost and quality of

the personal property at and during said negotiation, and transfer thereof. And this defendant in further answering, says, that a large amount of said property contained in said book account or inventory, and the subject matter of said negotiation and sale, was composed of canned fruits, vegetables, jellies, juices and other property manufactured, and materials for that purpose, secured from the air in tight cans and vessels, and so circumstanced, that an examination of the same could not be effected without opening of said cans or vessels; that the opening of said cans or vessels for the purpose of examining such property and knowing the nature or quality of the contents thereof, would have subjected the parties interested and this defendant to a large expense and to considerable difficulty; and loss of time and the contents would probably by such opening and exposure to the air have been deteriorated in value, and that under peculiar circumstances necessarily connected with that kind of business, and the nature of the property in question, this defendant, and other members of the firm of Stout, Dyer & Co., were obliged to depend, in such negotiations and sale, and transfer, almost entirely upon the assurances of the said Charles S. Fithian respecting the cost, quality, and quantity, and nature of the property in question in said negotiation and sale. And this defendant in further answering, insists, that the real cost and true quality of sealed vessels of said property, must have been best known to the said Charles S. Fithian, who had either (as he represented) manufactured the same, or had superintended the manufacturing of the same. And this defendant in further answering, says, that the said Fithian well knew at the time of said negotiation for and transfer of said property. this defendant and the members of said firm were interested in the purchase of said property for the purpose of carrying on said business and selling canned fruits, vegetables, sauces, jellies, juices, *and similar articles by retail* or *otherwise, to various* persons and parties thereafter in different parts of the United States, in the usual and customary routine of business; and said Charles S. Fithian knew that under the circumstances, the nature and quality of such property would not in all probability be known until said cans or vessels should be opened some time thereafter by different persons in different places, who might thereafter become the purchasers thereof of this defendant, or of the members of the firm, or of his several associates, for family use or otherwise. And this defendant in further answering, says. that although by said deed executed as aforesaid by said Fithian and his wife, and by said transfer of said property by said Charles S. Fithian, to said corporation, the title of said property became, technically in law, vested in said corporation by name, yet the members of the firm herein named or the said associates, or said defendant in business, really owned

and took possession of said property in said transfer thereof, by said Fithian and said firm of Stout, Dyer & Co., paid said Charles S. Fithian said check of $5.000 thereon, and gave him said note of $5,000 thereon; and that immediately after the execution of the last aforesaid sale and transfer, the said John W. Stout, Dyer and Wicks, William W. Stout and Seeley, formed a new firm called Stout, Dyer & Wicks, and transacted the business under the name of the last-named firm in New York city and elsewhere, and that very little if any business was transacted in the name of said corporation, all of which circumstances this defendant is satisfied said Fithian very well knew. And this defendant in further answering, says, that afterward, on or about April 21, 1866, the said Charles S. Fithian received of said Stout, Dyer & Wicks seventeen dollars and eighty cents, also a note at three months for six hundred and forty-four dollars and forty-six cents, and one note payable in six months for four thousand one hundred and forty-two dollars and thirty-one cents, in full satisfaction of said bond of four thousand six hundred and thirty-four dollars, dated March 14, 1865, and executed by said corporation; and that a receipt to that effect was credited on said bond by said Fithian, and said receipt expressed to the effect that the notes when paid would be in full for said bond with interest, which date of said notes as recited by said receipt now in possession of this defendant, and ready to be produced as this Court may direct, will more fully appear, and which said receipts and bond, if necessary, the said defendant prays leave to refer. And this defendant, in further answering, says, that the said corporation had not the power to pay said bond, and said firm were in want of funds then to pay the last aforesaid bond, then and after said bond became due, the said firm gave said notes, which said notes said firm afterward paid off. And this defendant in further answering, says, that the said bond of $4,633, dated March 14, 1865, executed to said Fithian by said corporation, and the other bond of $4,633 also executed to said Fithian by said corporation, as aforesaid, of the same date, was also subsequently satisfied in full to said complainant, by said Stout, Dyer & Wicks, by their notes which they gave to him at his request, which said notes, were transferred to other parties by said Fithian, and afterward paid off to the holders thereof by said Stout, Dyer & Wicks. And this defendant in further answering, says, that also by an agreement, dated said March 14, 1865, made by the said Charles S. Fithian in writing, on the one part, and formally entered into and executed by said corporation by said Wicks as President thereof, in and by which said written agreement, the said Charles S. Fithian recited that, *Wheaeas*, he the said Charles S. Fithian, for a valuable consideration, had that day sold all his interest and property in the Canning factory, located at the corner of

Bank and Irwin streets in Bridgeton aforesaid, to the said corporation, the party of the second part therein: Therefore, in consideration of the premises agreed thereby with the said corporation that he would not enter into or engage in, directly or indirectly, in any branch of the business of canning, preserving or pickling fruit, vegetables or sauces in or any branch of the business that was then or had been carried on by him; and that he would not give his consent that William Pogue, late of the firm of Fithian & Pogue, should enter into any branch of said business without the consent of said corporation, under the penalty of $5,000. Provided, nevertheless, that the said The West Jersey Canning and Pickling Company should pay and satisfy the obligations held against them by said Charles S. Fithian as they became due; otherwise said agreement should be void, and the said corporation in and by said written agreement, agreed to pay all taxes that might be assessed in any way upon said business or property, as in and by the said agreement or the contents of said writing, reference being thereto had the same may more fully appear, and to which said agreement or inventory this defendant prays leave to refer if necessary. And this defendant in further answering, says, that the said complainant in and by the last aforesaid writing, referred to the revenue taxes on the aforesaid manufactured stores or articles so manufactured by him, and that the said Stout, Dyer & Wicks subsequently paid a large amount of money to the proper revenue officer for such taxes referred to in said writing on the manufactured articles so manufactured and sold by said Fithian. And this defendant in further answering, says, that said Charles S. Fithian had also included said taxes in the estimate and account so made up by him, as herein stated, in the aforesaid books and schedule and accounts hereinbefore referred to, and so exhibited by him in said negotiation; and this defendant insists that such payment of said taxes by Stout, Dyer & Wicks to the proper revenue officer, should have been made bysaid Charles S. Fithian, and should be allowed and deducted out of any moneys said Fithian may claim of the defendant in relation to said business or agreement. And this defendant in further answering, says, that the aforesaid mortgage of the complainant of $10,000 principal also contained in its conditions or provisos of redemption, a stipulation or agreement that the West Jersey Canning and Pickling Company corporation aforesaid, their successors or assigns, should pay to the said Charles S. Fithian said sum of $10,000, on the day and time therein before mentioned, together with lawful interest, *without* any *deduction*, *defalcation*, or *abatement* to be *made for or in respect* of any *taxes*, *charges or assessments whatever*. And this defendant in further answering, says, that the aforesaid agreement or contract so made, as aforesaid, as contained in said agreement or contract-bonds

and mortgages between the said complainant and the West Jersey Canning and Pickling Company or corporation aforesaid, although on separate papers, were, and are one entire transaction, were, and are corrupt, and erroneous, and void, and contrary to the acts of the Legislature of the State of New Jersey, entitled An act against usury, revised and approved, April 10, 1846, and the supplement thereto, approved April 12, 1864, which said act provides that no person should upon any contract take directly or indirectly for loan of any money, wares, merchandise, goods or chattels, above the amount of six dollars for the forbearance of one hundred dollars for a year, and after that rate for a greater or less sum or for a shorter or longer time; and also provides that all notes, bills, bonds, mortgages, contracts, covenants, conveyances and assurances which shall be made for the payment, or delivery of any moneys, wares, merchandise, goods or chattels so to be lent, on which a higher interest is reserved or taken than is thereby allowed, shall be utterly void; and which said supplement provides that in all cases of suits at law or in equity, to enforce any note, bill, bond, mortgage, contract, covenant, conveyance or assurance which shall be thereafter made for the payment or delivery of any money, wares, merchandise, goods or chattels lent, and on which a higher rate of interest shall be reserved or taken than there is allowed by law of the place where the contract was made, or is to be performed, the amount or value actually lent without interest or cost of suit may be recovered and no more. And if any premium or illegal interest shall have been paid to the lender, the sum so paid shall be deducted from the amount that may be due as aforesaid, and recovery had for the balance only. And this defendant further submits that although the aforesaid agreement was made by the said Charles S. Fithian of the one part, and the West Jersey Canning and Pickling Company corporation aforesaid, formerly named in said papers, contracts and agreements, of the other part, yet the name of said corporation was used by said Fithian as a mere shift or device for such corrupt, usurious and fraudulent transactions; and he knew that the said defendant, and the real individual associates were the real owners and purchasers of said property, and paid for the same as herein stated; that said corporation as a party defendants in this suit would be entitled to the benefit of the provisions of said act, and of said supplements thereto, and to plead the same. And this defendant is entitled herein, under the circumstances connected with such transaction and agreements, to set up the same defence, and plead the same matters, as the said corporation could, if defendant herein; and this defendant insists on the statutes or acts, and the supplement aforesaid, and claims the same benefits thereof as if he had specially pleaded the same. And this defendant in further answering, says, that

at the time of the said negotiation and sale of said property, and contracts aforesaid by said complainant, said complainant fraudulently represented the same to be then of first-rate quality, and put up in good order for preservation, and would keep good for sale and use in said business. And this defendant in further answering, says, that the said Charles S. Fithian fraudulently represented in, and by the accounts, books and inventory so first exhibited as aforesaid in said negotiation and sale, the cost of said property was more than it really was; and this defendant insists that the amount or price for which the said Fithian really sold said property, and which he ought to have received therefor, was *several thousand* dollars *in amount less than* what the amounts of the *inventory* accounts or schedules of said property footed up in the book or accounts so first exhibited respecting the same instead of the amount which said accounts did foot up, and that the account or price for which the said Fithian actually in said negotiation sold all of said property, and which he was entitled to have received therefore, was and is *several thousand dollars less* than what the amount of the inventory accounts and schedule of said property foots up in the said other book so exhibited by hm *in said negotiations on March* 14, 1865, at the time of the xecution of said mortgages, and for which said last amounts he so fraudulently received as aforesaid, said moneys, bonds, mortgages and notes. And this defendant in further answering, submits and insists that the said Charles S. Fithian in receiving heretofore the moneys and satisfactions as herein stated in the transaction, respecting the said sale of said property, has already fraudulently received several thousand dollars more than *all said property was worth, and has already at and since* said sale received at least five thousand dollars in money before the commencement of this suit, more than the said cost of said property at the time of said negotiation and sale thereof. And this defendant in further answering, says, a large quantity of said articles of said property so secured, as aforesaid, in said cans and vessels, and so situate as herein stated, this defendant has discovered since said sale and transfer thereof, by said Fithian, are of an inferior *quality, unsaleable, worthless and useless in said business, and not of the kind or quality represented* by said Fithian at the time of said negotiation and sale by said Fithian. And this defendant did not discover that they were of such inferior quality, unsaleable, worthless, useless in said business until after said Fithian had received said moneys so as aforesaid paid him, and not until after said Fithian had received said notes so as aforesaid given to him as herein mentioned, and which said notes being negotiable, and having been negotiated by said Fithian to other parties, as said Fithian represented to this defendant, could not be recalled. And this defendant submits that his

rights in this suit and in the premises, should not be prejudiced, by reason of said notes having been given, and moneys paid to said Fithian under the circumstances herein set forth.

And this defendant further answering, saith, that the difference between said $50,900 and the amount of the inventory, a copy of which is herein before set forth, was arranged by said Fithian and the parties in said negotiation and sale, outside of and independent of said bonds, checks and moneys, by making satisfaction to said Fithian for said $79 13, the said difference in figures. And this defendant in further answering, says, he *submits and insists that there is not anything* contained in any of the agreements, or contracts, or bonds, or deeds referred to in said bill of complaint, that can or *ought to be construed*, either in law or equity, to bind the defendant to the payment for satisfaction of the moneys mentioned in said bond and mortgages, mentioned in the complainant's bill of complaint, or that this defendant assumed the payment of said bond and mortgage, or any part thereof, or that he, this defendant, assumed at any time to pay said bond and mortgage referred to in said bill of complaint, or any part of the moneys therein contained. And this defendant in further answering, says, and insists, that among other things the item of walnut juice mentioned in said inventory, as 3,360 gallons, cost only ten cents per gallon, and was, and is, fraudulently represented in said inventory as having cost seventy-five cents per gallon; and that among other things, the item of 203 barrels in said inventory cost only one dollar per barrel, and was, and is, fraudulently represented in said inventory as having cost two dollars and fifty cents per barrel; and that the item of 1,765 gallons jelly juice in said inventory, cost only ten cents per gallon, and was, and is, fraudulently represented in said inventory, as having cost fifty cents per gallon; that the item of fifty gross pint oval bottles in said inventory, cost only five dollars per gross, and was, and is, fraudulently represented in said inventory as having cost eight dollars per gross; that the item of twelve sets of round dies in said inventory, cost only eight dollars a set, but was, and is, represented fraudulently in said inventory as having cost twelve dollars per set; that the item of six copper kettles mentioned in said inventory, cost only twenty-five dollars apiece, but was, and is, fraudulently represented in said inventory as having cost fifty dollars apiece; that the item of 550 peach-crates mentioned in said inventory, cost only twenty-five cents apiece, but was and is, fraudulently represented in said inventory as having cost one dollar apiece; that the item of 1,016 half-gallon extra bottles in said inventory cost only one dollar per dozen, but was and is, fraudulently represented in said inventory as having cost two dollars and fifty cents per dozen; that the item of five ketchup

tanks in said inventory cost only two hundred dollars, but were and are fraudulently represented in said inventory as having cost five hundred dollars. And this defendant in further answering, says, that the work bench mentioned in said inventory at a price or cost of one hundred dollars; and a tinman's cupboard mentioned therein, six dollars; and one label case mentioned in said inventory at a price of forty dollars; and twelve benches at a price of twelve dollars; and seven benches at a price of ten dollars and fifty cents, were, at said negotiation and sale, represented by said Fithian as personal property. And this defendant and the members of said firm, relying on said Fithian's representation, did not *inspect or examine the same*, and therefore believed that the said items were personal property; but this defendant says and insists that they were, and are, fixtures, and part of the said real estate, and were fraudulently embraced in said inventory, and should not have been contained in said inventory of personal property. And this defendant in further answering, says, on or about June 15, 1866, this defendant, one of the firm of Stout, Dyer & Wicks, demanded of said complainant, that the said inventory and accounts, and amounts thereof, should be corrected to the effect that the proper cost of the property therein being made right by him with this defendant, and the persons concerned with him in said business and transaction. And this defendant in further answering says that on or about the 30th day of February, A. D. 1867, this defendant caused a demand in writing to be made of said complainant, to surrender to this defendant the mortgage mentioned in the bill of complaint of $10,000 principal, and also the said mortgage on the personal property of $23,900 principal hereinbefore referred to, and also to surrender to this defendant all bonds, notes or other vouchers accompanying said mortgages, or either of them, that the same were improperly held by said Fithian, and thereby notified said complainant that he the said Fithian had received before then, all moneys that he was rightfully entitled to receive thereon, and that the same be surrendered in ten days from the date thereof, and to be canceled of record. And this defendant in further answering, says, that the complainant still improperly and unjustly retains and holds said mortgages and vouchers; and this defendant submits that the said bonds and mortgages held by the complainant, and recited, in the said bill of complaint, was by the said complainant, fraudulently procured and obtained; and this defendant insists that although the said bonds and mortgages were originally executed in the name of said corporation, and the property herein referred to, was put by the deed and papers in the name of said corporation, yet the said complainant was instrumental to have said deed and papers so arranged in the name of said corporation, as a mere shift and devise for com-

plainant's own benefit to answer the fraudulent purposes intended by him, respecting the same, and with the hope and intention on the part of the complainant of thereby rendering it more difficult for this defendant, or any other person or who might own or be in possession of the said premises, to avail himself of a defence against said mortgages mentioned in the complainant's bill; and this defendant insists that the complainant is not entitled to the relief prayed for in the complainant's bill, and that there was not at the time, or execution of said bond and mortgage, or since then, any good or valuable considerations in said bond and mortgage, or either of them, and that the same is not binding on said property or on this defendant, and should not be decreed an incumberance or lien on said premises, or on any part thereof; and that the defendant by this honorable Court, ought not to be decreed to pay any amount or any moneys on said bond and mortgages; and that the said premises or any part thereof, ought not to be decreed to be sold by the order of this Court; and that the said complainant is not entitled to any relief in this suit, against said defendant. And this defendant denies all, and all manner of unlawful combination and confederacy in the said bill charged, without this that any other matters or things material for him to make answers unto and not herein and hereby well and sufficiently answered, confessed, or avoided, or denied, traversed is true to the knowledge or belief of the defendant, which things this defendant is ready to aver, maintain and prove, as this honorable Court may direct, and prays that the Court may decree in the premises as shall be agreeable to equity and good conscience, and the defendant be hence dismissed with his reasonable cost and charges in this behalf most wrongfully sustained; and will ever pray, &c.

R. ALLEN, Jr.,
Solicitor of C., *Defendant.*

NEW JERSEY, }
Monmouth County, } ss.

John W. Stout, the above-named defendant, being duly sworn according to law, on oath saith, that the matter and things set forth in the above answer, so far as they relate to his own acts, are true, and so far as relates to the acts of others he believes them to be true.

Sworn and subscribed this 26th day of April, A. D. 1867, before me } JOHN W. STOUT.

EDMUND M. THROCKMORTON,
A Master in the Court of Chancery of said State.

Cumberland Circuit Court.

IN EQUITY.

CHARLES S. FITHIAN, *Complainant*,
and
JOHN STOUT, *Defendant*.
} *On Bills, Etc.*

Examination of witness in the above stated cause taken at my office in the city of Bridgeton on the 21st day of May, 1867, at 11 o'clock, A. M., before me, Charles E. Elmer, one of the Masters and Examiners of the Court of Chancery, in the presence of Nixon & Mitchell, Solicitors, &c., of counsel with complainant, and in the presence of R. Allen, Jr., of counsel with the defendant.

JAMES J. REEVES, a witness produced on the part of complainant, being duly sworn says: Being shown paper marked Exhibit No. 1 on part of complainant, I am one of the subscribing witnesses to the execution of this mortgage, and was present at the execution thereof, and signed it as a subscribing witness; that is my handwriting thereto (being shown paper marked Exhibit No. 2, on part of complainant). I was a subscribing witness to this bond, saw the execution of it, and that is my handwriting as witness thereto. Being shown paper marked Exhibit No. 3, on part of complainant says: I was a subscribing witness to that paper, and saw the execution thereof. Being shown Exhibit No. 4, on part of complainant; I drew this paper, but was not a subscribing witness to it— (it is admitted that the subscribing witness to this paper resides out of the State of New Jersey by Counsel of complainant and defendant). I know the handwriting of all the parties to this paper excepting that of William W. Stout, and believe that it is the handwriting of John W. Stout, H. Ballard Dyer, Lorin J. Wicks and Robert M. Seeley signed to this paper. (It is excepted on the part of the defendant to the offering of all the above exhibits in evidence and to the exhibits themselves.)

Sworn and subscribed before me this 21st day of May, A. D. 1867. } JAMES J. REEVES.

C. E. ELMER, *M. in Chancery, C. of N. J.*

ROBERT M. SEELEY, a witness produced on the part of complainant, being duly sworn (being shown Exhibit No. 4, on part of complainant) says. I am one of the firm, and have been acting as bookkeeper at the the manufactory in Bridgeton. W. H. Cramer, the subscribing witness to Exhibit No. 4, was acting bookkeeper for the same firm in New York.

I believe the name subscribed to that paper is the proper handwriting of W. H. Cramer. I don't know the handwriting of William W. Stout; the other signatures to that paper are in the handwriting of the other parties thereto.

Sworn and subscribed before me this 21st day of May, A. D. 1867. } R. M. SEELEY.

C. E. ELNER, *M. in Chancery, C. of New Jersey.*

It is still excepted on the part of defendant to the offering of the exhibits in evidence, and to the exhibits themselves.

The complainant closes his testimony.

CHARLES S. FITHIAN, *Complainant,*
and
JOHN W. STOUT, *Defendant.*
} CUMBERLAND CIRCUIT. *In Equity.*

Please take notice of the taking of evidence on the part of the defendant in the above stated cause before A. S. Jackson, Esq., Master and Examiner in Chancery of New Jersey, on Thursday, June 6, 1867, at ten o'clock A. M., at No. 7 Exchange Place, Jersey City.

R. ALLEN, JR., *Solicitor of Defendant.*

To Hon. JOHN T. NIXON, *Solicitor of Complainant.*

May 27, 1867.

[ENDORSED.]

FITHIAN *vs.* STOUT.
} CUMBERLAND CIRCUIT, *In Equity.* *Notice returnable June* 6, 1867, *At* 10 *o'clock, A. M.*

Due and legal service acknowledged June 1, 1867.

JOHN T. NIXON,
Solicitor of Complainant.

Cumberland Circuit Court.

IN EQUITY.

——:o:——

CHARLES S. FITHIAN, *Complainant*,
and
JOHN W. STOUT, *Defendant*.

Examination of witnesses in the above entitled cause, on the part of the defendant, taken before me, Abraham S. Jackson, a Master and Examiner of said Court, at my office, No. 7 Exchange Place, in Jersey City, on Thursday, the 6th day of June, A. D. 1867, at 10 o'clock, A. M., in pursuance of notice given therefor, due and legal service whereof has been admitted in writing by the Solicitor of the complainant.

Present Robert Allen, Jr., Solicitor of the defendant, and Hon. John T. Nixon, Solicitor of the complainant.

JOHN W. STOUT, the defendant, being duly sworn on his own behalf, deposes and says:

1. Where do you live?
Red Bank, New Jersey.
2. What is your business?
Canning of fruits, vegetables and preserving pickles.
3. How long have you been engaged in that business?
The first interest I took with Mr. Broadmeadow was the 22d of August, 1863.
I had no experience in the business, that is, didn't stay in the store, till 1864.
4. Who else, besides Broadmeadow, was then concerned in the business with you?
No one.
5. Did Broadmeadow sell out his interest?
He did.

6. To whom?

To me.

7. Where was the store you speak of?

Ninety-one Barclay street, New York city.

8. Who succeeded in the business, after Broadmeadow, with you, if any one?

I succeeded Broadmeadow and Stout on August 22d, 1864.

9. How long did you continue the business alone?

From 22d of August, 1864, to the 1st of February, 1865.

10. Are you acquainted with Charles S. Fithian, and for how long have you known him?

I am acquainted with Mr. Fithian. I think he called at my store, when I was alone, between August, 1864, and February, 1865—I think so; I won't be certain.

11. Where did Mr. Fithian then live, and what was his business at that time?

Between 1864 and 1865 I can't say that I knew where the man lived; he might have introduced himself and told me, but I have no recollection of it at present. His business was canning fruits and vegetables.

12. Where does Mr. Fithian now live?

At Bridgeton, New Jersey.

13. How long has he lived there?

I couldn't say.

14. How long have you known that he has lived in Bridgeton?

I think from February, 1865.

15. Where did he carry on his business you speak of?

At Bridgeton, New Jersey.

16. For how long do you know he had carried on that business then?

I understood from him two or three years before February, 1865.

17. With what property did he transact that business? and what was, as far as you know, the nature of the property?

He had real estate with buildings and factories, machinery and tools adapted to the business, I suppose.

18. How much real estate was there in quantity, about?

I think there was in the neighborhood of a quarter of an acre.

19. To whom did he transfer that factory, and when?

He transferred it to the West Jersey Canning and Pickling Company, on paper, the 14th day of March, 1855.

20. Were you present at the time of the transfer?

Yes sir.

21. Who else was present at the same time?

Mr. Dyer, Mr. Wicks, Mr. Fithian and Mr. Reeves. I don't recollect whether Mr. Seeley was present or not.

22. Where was the transfer made?

It was at Mr. Reeves' office, at night, where the money was paid. Mr. Reeves' office is at Bridgeton, New Jersey. The money was paid here, and the deed delivered at the same time.

23. How much money was then paid? How and to whom, and by whom?

There was $5,000 paid by certified check of the Importers & Traders Bank of New York city; paid by Stout, Dyer & Co. to Charles S. Fithian. It was Stout, Dyer & Co's. money.

There was a note given at that time by Stout, Dyer & Co., for $5,000, payable in one week from its date, I think. This note was given to Charles S. Fithian. There were other obligations given for the purchase, that is, in payment for the property.

There was a mortgage given for $10,000 to Charles S. Fithian on the real estate at Bridgeton, being the property purchased of him.

24. What were the other obligations you speak of which were given?

There was a bond for $4,633 33, that was due December 1st, 1865. There was another bond given for the same amount, due February 1st, 1866. And another bond given for the same amount, due April 1st, 1866. This last-named bond was for $4,633 34.

There was a chattel mortgage given as collateral for these three bonds, including the $10,000 mortgage, making in all, $23,900.

25. To whom were these obligations given?

To Charles S. Fithian.

26. What was the property for which the above money and obligations were given?

Well, it was for a factory at Bridgeton, the machinery, fixtures and tools, and stock of goods on hand, consisting of juices, sauces, catsup, canned goods and spices; tin, sheet tin or box tin, tin cans, boxes, barrels and lumber; there were other goods, which I can't think of at present, without running over them. I have a complete list of the goods bought. Real estate on which the factory stood, about quarter of an acre.

27. When did you first see the factory you speak of?

I believe it was the 8th of March, 1865.

28. Who was in company with you at that time?

Mr. Dyer, Mr. Fithian, Mr. Wicks. Mr. Fithian and Mr. Wicks had met me and Mr. Dyer at Philadelphia, to make a contract for canned goods for Stout, Dyer & Co.

29. When did Mr. Fithian first propose to sell the factory and property you speak of?

It was on the night of the 7th of March, 1865.

30. Where at?

At the American Hotel, Philadelphia.

31. Where and when did he sell the property?

The final bargain, the closing of the bargain, was at Bridgeton, New Jersey, on the 8th of March, 1865.

32. What did he say the property consisted of?

Consisted of this real estate, factory, machinery, piping, belting, kettles, tanks, &c., juices, sauces, catsup, canned goods, tin cans and jellies, boxes, boards, barrels, tools, fixtures and all the property mentioned in the account of stock showed us at the time.

33. What did the canned goods consist of, as he, Fithian, represented to you?

The canned goods stock was very light; a small quantity.

34. Question 33 repeated.

Well, he represented the canned goods as A No. 1, as he did all the goods.

35. Question 33 repeated again.

There were no peaches or tomatoes. The rest were sample cans; I don't recollect what they were. He didn't represent them any particular class of fruits.

36. What did he say he sold?

He sold us his entire stock of goods on hand, except the peaches and tomatoes. We bought of him his stock of goods on hand; that is, all his goods except the peaches and tomatoes, by account of stock already taken, which he showed us then, which he said he had taken to make up his books and to settle with Mr. Wicks, whose salary was one-third of the net profits. That this account of stock was taken at cost, what these goods had actually cost him.

And that there was nothing in this account of stock, either in quality or quantity, but what we needed in the business.

That it was all good A No. 1 stock, worth all the money it cost, and couldn't be replaced for the same money; that is, the majority of it couldn't be replaced.

And that there was nothing in the stock, if we carried on the business, but what we would have to purchase or needed, either in quality or quantity.

He gave us the reason why we couldn't buy the same goods at the same price, because of the great rise of goods caused by the war. He held out the same inducement as regards the real estate and machinery. The great rise caused by the war would make it cost a good deal more to replace it.

He also stated this account of stock was correct; that Mr. Chittenden had gone over the whole of it with a view to buy it; was anxious to buy it. The only reason he didn't buy, was, he was waiting for funds from California from his brother, which had not arrived, or he had been disappointed in receiving it, or something to that purpose. That Mr.

Chittenden would be very much disappointed in not getting the property, through our purchase.

He held out inducements with the Cumberland sauce, a particular sauce they were manufacturing; that large quantities of it had been sold at a large profit, from 40 to 100 per cent.

That he just sold $10,000 worth to Mr. Dudley, I think he said. Mr. Chittenden thought there would be a million of dollars worth of this sauce sold, if it was properly advertised.

37. Did he show you the book containing the account of stock which he referred to?

He did.

38. Have you that book with you?

I have.

(Book offered in evidence and marked Exhibit D. 1, on part of defendant.)

39. Is this the book containing the account of stock you refer to?

This is the book he showed us the first time we were in Bridgeton.

40. Does this book contain any items of matters besides the account of stock?

It does.

41. What part of this book contains the account of stock you refer to?

The back part of it.

42. Show the particular part of the book containing the items of stock you refer to.

It begins on the page headed "Account of stock taken Dec. 21, 1864."

43. And how far does it extend through the book?

It extends over twenty-five pages, I think. I counted the blank pages.

44. Give the last item of the account in ink on the last page.

"Peas do. 2,000, $10.00."

45. In whose hand-writing are the items of that account?

Robert M. Seeley's.

46. You mean by his hand-writing the pencil as well as the ink figures, do you?

I believe the pencil is his figures, and hand-writing, too.

47 What do the figures at the end of each item represent, as stated to you by Mr. Fithian?

The cost of the goods.

48. What did Mr. Fithian represent to you was the cost of the property he sold?

(Objected to as leading.)

What do you mean, the whole amount of the goods or cost of each item?

49. I mean the cost of the whole of the goods and amount of each item.

Mr. Fithian told me that his stock would amount to $32,000 or $33,000, not over $35,000.

50. When did he tell you so?

He told me so in Philadelphia and Bridgeton both.

51. Question 50 repeated.

He told me so on the 7th and 8th of March, 1865. First on the 7th of March, 1865, at the American Hotel in Philadelphia, between 11½ and 12 o'clock at night. Mr. Dyer and myself met Mr. Fithian and Mr. Wicks at the American Hotel in Philadelphia, on the 7th of March, at 9 or 10 o'clock in the morning. I won't say which. We used up most of the day, the whole what was left, in contracting for canned goods. I think it was along about—

52. Where were you when you said he told you so at Bridgeton, and who was present?

At his office in Bridgeton. Mr. Wicks, I think, and Mr. Dyer were present.

53. Was the real estate included, or not, in the $35,000?

It was.

54. Was the real estate mentioned as an item in account of stock in Exhibit D 1?

It is mentioned as an item.

55. Point out the item which mentions the real estate.

It is at the foot of the tenth page.

56. Recite the item which was intended to cover the real estate.

"Buildings, boilers, piping, &c, $6,000, as marked on last stock account."

57. You say Mr. Fithian told you on the 8th of March, 1865, that his stock would amount to $32,000 or $33,000, not over $35,000, as to cost. Was that at and during the negotiation for the purchase of the property?

(Objected to as leading.)

It was during both; at and during the negotiation.

58. Upon what representations did Stout, Dyer & Co. purchase the property of Fithian, the complainant?

On representation that this account of stock, which he had taken, was at cost; and the stock was what we wanted for the business.

We bought it on Fithian's word alone. We were no judges. I was no judge. That he, Fithian, had taken an account of stock for his own satisfaction to make up his books, as any other business man would do. I and Mr. Dyer both asked him the question over and over, if there was any bad stock, or old stock that was not available or saleable.

We asked him if there was not too much stock of some kinds. He said there was not; that there was no dead stock or unsaleable stock. It was all in prime order, just what we

wanted, and if we hadn't it, we would have to go out and purchase it.

He held out the inducement, the great profit in the business, the location for the business just right. He praised the advantages of the factory and the establishment of the business there, all he could do. That he had made a great deal of money and started the business only a short time before with only a few hundred dollars. I think the amount he told me he started business was $400.00.

59. You use the word "stock" in your last answer. What did Mr. Fithian include in the stock you speak of?

Speaking of quality and quantity he meant, or I suppose he meant, his stock; that is, his goods, sauces and so on.

60. Did Mr. Fithian include in the stock you speak of in your answer next preceding your last answer, the real estate, factory, boilers and appurtenances?

Or what did he include?

(Objected to as leading.)

Well, in speaking of the whole thing he included the whole thing. In speaking of the stock in trade, he included the stock.

61. Question 60 repeated.

In speaking he included the stock; that is, when we were speaking of too much stock we meant his merchandise; that is, the stuff he manufactured, sauces, catsups, jellies, &c.

62. Who composed the firm of Stout, Dyer & Co., on March 8, 1865.

John W. Stout (myself), Henry Ballard Dyer and William W. Stout.

63. Did Mr. Fithian, the complainant, sell his factory buildings and real estate appurtenant to the same?

He did.

64. When?

On the 8th of March, 1865.

65. When was the deed made and delivered for the real estate?

On the 14th of March, 1865.

66. Where?

At Bridgeton, New Jersey.

67. Who was present at the delivery of the deed?

John W. Stout, Henry Ballard Dyer, Lorin J. Wicks, Charles S. Fithian and Mr. Reeves—I forget his first name.

68. If the real estate was sold by him on the 8th of March, 1865, why was not the deed delivered on the same day?

Because we hadn't the money with us to make the first payment.

69. What do you mean by the first payment?

$5,000.

70. Which you have above referred to?

Yes, sir.

71. Were you present at the delivery of the deed?

I was.

72. How came the deed to be made to the West Jersey Canning and Pickling Company?

Mr. Fithian had a charter for such a company, persuaded us to organize such a company, and we done so.

73. Question 72 repeated—and at whose request?

At Mr. Fithian's request.

74. Whom do you mean by the words "we" and "us" in your answer next preceding the last?

Henry Ballard Dyer, Lorin J. Wicks and John W. Stout and Robert M. Seeley. My brother was not there. I represented him.

75. Do you know when the West Jersey Canning and Pickling Company was incorporated by the Legislature?

I don't know the exact date. I know they had the charter. I mean that such a charter had been granted. I think it was the fore-part of the year 1865.

76. Who were the first stockholders of the company?

John W. Stout, Henry B. Dyer, Lorin J. Wicks, William W. Stout and Robert M. Seeley.

77. What do you mean by those persons being the first stockholders?

They subscribed for the only stock that was taken.

78. Prior to those persons you mentioned as being stockholders, who were the officers of that corporation?

Mr. Charles Fithian was President, James J. Reeves was Secretary, Lorin J. Wicks was Treasurer.

79. About how long did Mr. Fithian occupy the Presidency of the corporation, or in other words how long was it from the time he was first inaugurated to the time he resigned?

It might have been five or ten minutes; it might have been less.

80. Who succeeded Mr. Fithian as President of that corporation?

Lorin J. Wicks.

81. Who succeeded Reeves as Secretary?

Henry B. Dyer.

82. Who succeeded Wicks as Treasurer?

John W. Stout.

83. Who suggested the resignation of the officers of the corporation?

Mr. Fithian.

84. How long time was Reeves Secretary and Wicks Treasurer of the corporation?

Only a few minutes, five or ten.

85. Where were the officers of the corporation elected?

Mr. Fithian's office at Bridgeton.

86. Where was Mr. Fithian's office you speak of?

It was located in the factory on the premises.

87. Did this corporation ever have any corporate seal?

I think not. None that I know of.

88. If there was any such seal, wouldn't you have known of it?

There was none to ours, I know.

89. What do you mean by there was no seal to ours?

I mean that we had no seal, no corporation papers of any kind.

90. Who were the directors of the West Jersey Canning and Pickling Company?

John W. Stout, Henry B. Dyer, Lorin J. Wicks, Robert M. Seeley and William W. Stout, I believe.

91. Who were the directors of that corporation immediately preceding the persons last named?

Charles Fithian, Lorin J. Wicks, James Reeves, Providence Ludlam, I think.

I believe Robert M. Seeley, I won't say certain.

92. How long were they, or either of them, acting as directors of the corporation?

Mr. Fithian, Mr. Reeves and Mr. Ludlam acted 5 or 10 minutes. I don't think Wicks and Seeley acted longer than that day out.

93. Since the time Wicks was elected President, Dyer Secretary, and Stout Treasurer, what act has the corporation done, as a corporation?

Never done but one act, and that was to deed the real estate to the proper owners.

94. What disposition did the corporation make of the personal property which, you say, Mr. Fithian sold?

Never used the corporation with any of the personal property; never acted under it only that one day, never after that day; but that one instance of the making the deed I speak of.

95. What business did the corporation do on the day of the delivery of the deed? That is, what papers did the corporation execute?

They executed these papers here: a bond and warrant of attorney for $4,633.00, dated March 14, 1865.

A bond and warrant of attorney for $4,633.00, dated March 14, 1865.

A bond and warrant of attorney for $4,634.00, dated March 14, 1865.

Said bonds and warrants of attorney offered in evidence and marked, Exhibits D 2, D 3, and D 4, respectively, on the part of the defendant.

96. What other paper did the corporation execute at the time of the delivery of the deed?

They executed a bond and mortgage for $10,000.00, which are now held by the complainant, and the same are now being foreclosed in this suit.

Also, a chattel mortgage for $23,900.00, as collateral to the above bonds and mortgages.

97. On what property was the chattel mortgage executed; or, in other words, what property did it embrace?

(Objected to; the mortgage speaks for itself.)

It embraced the stock and fixtures bought of Charles S. Fithian.

98. When was the bond, Exhibit D 2, paid off, by whom, and how paid?

It was paid off by Stout, Dyer & Wicks, by their giving a note to C. S. Fithian for $4,587.67, and by giving him credit on account for $266.00; we give the note on the 14th day of December, 1865.

99. What do you mean by giving him credit on account?

He owed us that much money.

100. For what?

I think it was for sauce of some kind that he had sold us for full barrels, and there was not anything in it.

There wasn't anything in the barrels.

101. When was this note you speak of paid off?

Well, it was January, 1866, one month from the day the note was dated.

102. To whom?

It was made payable at the Importers' and Traders' Bank. The note was made payable to the order of Charles S. Fithian.

103. What was the amount of interest you paid on that note?

$220.63.

104. Bond, Exhibit D 3, shown to witness. How was this bond paid, and when?

Stout, Dyer & Wicks paid that by giving two notes, payable to the order of Charles S. Fithian, one for $2,126.66 for two months from Feb. 1, 1866. The other note was for $2,826.04 dated March 1st, 1866, payable three months from date.

105. When were those two notes paid?

First one was paid in April, 1866; the second one in June, 1866.

106. Where and to whom were these notes paid?

The notes were made payable to the order of C. S. Fithian, and paid at the Importers' and Traders' Bank, New York City.

107. How much interest did you pay on the last-named bond?

One item of interest was $126.66 on first note. The other item of interest $193.04 on the second note.

108. Bond, Exhibit D 4, being shown witness, he is asked:

When was that bond paid, how and to whom?

It was paid to Charles S. Fithian by Stout, Dyer & Wicks, by giving him $17.80 cash, and a note for $645.40, 3 months from date and another note for $4,142.31, 6 months from date. The notes were dated April 21, 1866, I think.

109. Whose hand-writing is that endorsed on the bond, and whose signature to the receipt?

The hand-writing is that of the complainant, and I think the body of the receipt is in his hand-writing. The signature is Fithian's.

110. What does the expression "Rec'd of Stout, Dyer & Wicks ———— Dollars for Int. to April 1, 1866," endorsed on that bond, mean?

Well, I couldn't say.

111. In whose hand-writing is the last named endorsement?

I believe it is Mr. Fithian's.

112. How much interest have you paid on this last bond?

I can't tell precisely unless I make the computation.

113. Did you pay any interest on it?

Yes, sir.

114. How much do you think you paid on it?

I believe $471.31.

115. The notes which you say were given by Stout, Dyer & Wicks to Fithian, in reference to the above named bonds, were they negotiable notes?

They were.

116. Had they been endorsed and negotiated by Mr. Fithian before they became due?

I believe they had.

117. Why do you believe he had?

Because Mr. Fithian told me he wanted to get them discounted, and the last one especially, or use it as collateral.

118. What do you mean by the last note in your last answer?

Well, I meant the two last notes mentioned on the last bond.

119. When Stout, Dyer & Wicks paid the last two notes, where were they paid?

At the Importers' and Traders' National Bank, New York.

120. Did Mr. Fithian receive the money on the last two notes from Stout, Dyer & Wicks, himself?

He did not.

121. Did Mr. Fithian himself receive the money due on the notes from Stout, Dyer & Wicks, in reference to those three bonds?

He did not.

122. Do you remember whether there were any endorsements of any persons on those notes?

I think there were several on part of the notes.

123. Have you, or Stout, Dyer & Wicks, those notes?

I believe we have part of them.

124. Where is the other part of them?

I couldn't say.

125 Were the notes, any of them, endorsed at the time Stout, Dyer & Wicks, gave Fithian the notes?

They were not.

126. Were any endorsements put on those notes at the request of Stout, Dyer & Wicks, or yourself?

No, sir.

127. What were the three bonds, and chattel mortgage, and mortgage on the real estate, and the $5,000 note, and $5,000 in money, that you have spoken of, given for?

Given for the personal and real estate we bought of Mr. Fithian.

128. Whom do you mean by "we bought of Mr. Fithian?"

I mean Stout, Dyer & Co. That is to say, John W. Stout, Henry B. Dyer, William W. Stout, were the members of the firm of Stout, Dyer & Co.

129. If the above-named members of the firm of Stout, Dyer & Co., bought the real and personal property of Mr. Fithian, why was the deed of real estate made to the corporation?

Because that firm went into the corporation business with Lorin J. Wicks and Robert M. Seeley, at the suggestion of Mr. Fithian.

130. Who were the stockholders of that corporation at the time of the delivery of the deed?

John W. Stout, Henry Ballard Dyer, Lorin J. Wicks, William W. Stout, Robert M. Seeley.

131. How came Seeley and Wicks to be stockholders with the other persons you have named, in that corporation?

Mr. Wicks made a proposition to go in with us, if we would buy Fithian out. Mr. Fithian made a proposition for Mr. Seeley and urged the matter considerably; urged our taking Seeley in as a partner.

When Fithian first urged the matter, we hadn't decided to act under the corporation.

132. When did Mr. Fithian first urge the matter of Mr. Seeley's being a partner with the others you have named?

On the 8th of March, 1865.

133. What were the relations existing between Mr. Fithian and Mr. Seeley then and before then?

Mr. Seeley was Mr. Fithian's bookkeeper.

134. When Mr. Seeley connected himself in the business with you, what amount of the stock did he take or represent?

He subscribed $5,000 to the capital stock of the corporation.

135. Was that $5,000 paid by Mr. Seeley? If so, how?

At the time of signing for the stock it was understood between the rest of us and Mr. Fithian, that he, C. S. Fithian, would take Seeley's obligation for $5,000 of the purchase money for the property which we have bought of Mr. Fithian.

136. Was that obligation given?

Mr. Seeley told me so. I never saw the obligation. Mr. Fithian told me so, Mr. Wicks told me so.

137. Who signed that obligation, if you know?

Mr. Seeley, as far as I know.

138. What amount of stock in the business did Mr. Wicks represent, or own, at the delivery of the deed?

$12,000.

139. What amount of stock did Mr. Dyer represent or own, in the business, at the delivery of the deed?

$10,000.

140. What amount of stock did John W. Stout represent or own, in the business, at the delivery of the deed?

$38,500.

141. What amount of stock did William W. Stout represent or own, in the business, at the delivery of the deed?

$6 500.

142. How was the $10,000 paid by Henry B. Dyer?

He had that amount of capital in the firm of Stout, Dyer & Co.

143. How was the $38.500 paid by John W. Stout?

He represented $25,000 of capital stock in the firm of Stout, Dyer & Co.

Stout, Dyer & Co. owed him $2,000 or $3,000 in money; the rest was paid in afterwards in money and a note of another party, William T. Corlies. I held this note against Corlies, and I paid it over to the firm as part of the $38,500.00.

144. How much was the $12,000 of the stock owned or represented by Wicks paid for?

Mr. Fithian deducted that amount from the price of the real and personal property he sold us.

145. How was the $6,500 of the stock owned or represented by William W. Stout paid for?

He represented $5,000 of the firm of Stout, Dyer & Co., and William W. Stout gave a note to Stout, Dyer & Wicks for a few days, for $1,500. That note was paid a few days afterwards. I may have given the note. I owed him (William) the money.

146. Was the $5,000 obligation which you say Mr. Seeley gave, and the $12,000 which you say was deducted for Wicks by Fithian out of the price of the property that Fithian sold, an additional consideration, besides the

$5,000 in cash, the first $5,000 note and the amounts of the above named bonds and mortgages, the price of the real and personal property, that Fithian then sold to what you call "us"? Or what was the price of that property which Fithian received for it?

$50,900.

147. Have you any memorandum of that amount?

I have.

148. Show it.

Here it is in this book.

(Book offered in evidence and marked Exhibit D 5, on part of defendant.)

149. What does this Exhibit D 5, contain?

It contains an account of the items of the property, real and personal, which we bought of Mr. Fithian.

It is contained on the first 24 pages of the book.

150. In whose handwriting are the items and figures of this account and inventory?

Robert M. Seeley's.

151. What does the figures $50,979.13, at the bottom of the 19th page, mean?

The $79.13 was thrown off to make it round numbers, I believe. The $50,979.13 means the aggregate of the inventory. I believe the $79.13 was thrown off that amount by Mr. Fithian, leaving it to stand $50,900.

152. When did you first see this book—Exhibit D 5?

I suppose I saw it on March 8th, 1865.

153. When did you first see this book—Exhibit D 5?

On the 14th of March, 1865.

154. Where?

At Mr. Fithian's office at Bridgeton.

155. Who had it there?

Mr. Fithian.

156. For what purpose?

He showed it as the correct account of stock of property, personal and real, he had agreed to sell us, on the 7th and 8th of March, 1865.

157. Did he, Fithian, exhibit on the 7th and 8th of March to you this same book account and inventory (this same book, Exhibit D 5), at the time you say he sold the said property, or not?

He did not.

158. What book account and inventory of the real and personal property you say he sold you, did Mr. Fithian show you on the 7th and 8th of March, 1865, at the time he sold the real and personal property?

He showed Exhibit D 1.

159. What is the difference in the amounts of the inventory of the property, real and personal, as exhibited in these two books?

It shows a difference of about $200.

170. Can you explain the difference?

The true difference is $159.40, I think.

161. In the Exhibit D 1, are the figures $50,804.98. What do they comprise as to amount?

The cost of the real and personal property, as stated in that book; that book, D 1, Mr. Fithian said contained the cost price of all the real and personal property that he sold us.

162. Of the items of the account contained in D 1, which make up the amount of $50,804.98, which of them were not included in the sale which Mr. Fithian then made?

Tomatoes, $2,223.77.

Peaches, $17,072.21.

We were not to take any tomatoes or peaches. There were other things there which we didn't get. The peaches and tomatoes above referred to amount to $19,295.98, and were not included in the sale.

163. Were the items of tomatoes and peaches, amounting to $19,295.98, included at any time in the sale or negotiation respecting the property between Mr. Fithian and the other parties?

They were not.

164. Are the items of tomatoes and peaches, or either one of them, or the above-named cost price thereof, or any part thereof, included in the above-named $50,900?

They are not.

165. You have said there were some articles which Mr Fithian sold the other parties which they did not get; name these articles.

I said there were other articles in this account of stock which we didn't get. I mean the account of stock in D 1, dated Dec. 21, 1864. He sold us all the goods he had on hand on the 8th day of March, 1865, with the exception of the tomatoes and peaches. He sold to us all the real and personal property that he had on hand on the 8th day of March, 1865, with the exception of the tomatoes and peaches.

166. Question 165 repeated.

Oysters to the amount of $171.67.

Oyster catsup was short $11.67.

Salad cream was short $58.

Mustard was short $14.50.

Asparagus was short $190.13.

Red pepper sauce was short $353.60.

There were several other articles which I have not got. The books, I suppose, will show the difference.

167. Can you show, on inspecting the books, all the articles you or the purchasers did not get?

I can.

168. Has the amount of the articles which you say you, or the purchasers, did not get, ever been made up, or satisfied to you, or your partners, by Mr. Fithian?

It has not.

169. Did Mr. Fithian, at the time of the delivery of the deed, delivery of the mortgages and payment of the first $5,000 you have spoken of, show the account of stock in the Book D 1, to you or your partners?

He did not.

170. How did you get possession of D 1?

I took it out of our safe at Bridgeton.

171. When?

I think it was in March or April, 1867.

172. After the time you say Mr. Fithian showed you the account of stock in D 1, on March 8th, 1865, when did you next see that book?

I think it was in December, 1866.

173. Where?

Our office in Bridgeton.

174. Where do you reside?

At Red Bank, Monmouth county, New Jersey.

175. How long have you resided there?

Since 1852.

176. Were you often at Bridgeton, at the factory you speak of, after March 8th, 1865?

Some 6 or 8 times a year; may be a dozen.

177. After you became interested in that factory, who superintended it and its business at Bridgeton?

Mr. Seeley and Mr. Wicks.

178. When did you first know there were two books containing an account of the real and personal property you say Mr. Fithian sold you or your partners?

I think it was in December, 1866.

JOHN W. STOUT.

And thereupon the examination was adjourned to Friday, June 7th, 1867, at 10 o'clock A. M., at the same place; at which time and place the examination was resumed in the presence of the counsel of the respective parties.

179. Where was the first time, after March 8th, 1865, that you saw the book Exhibit D 1, again?

I think it was in December, 1866.

180. How did you come to see the book D 1, in December, 1866?

I was at the factory at Bridgeton to gather information as to the cost of these goods, having understood by Mr. Wicks and Mr. Seeley, that the figures that were on the account of stock shown us March 14, 1865, was not the true cost of the

stock, fixtures and other articles which were in that list, which went to make up the $50,900.

Then Mr. Wicks made the remark that there was another book, the book he, Mr. Fithian, had showed us on the 8th of March, that had the true cost to most of the goods, fixtures, &c., and real estate. Mr. Wicks stated that the cost in the first book was not correct; that the goods, fixtures, tools, &c., didn't cost the sum opposite the articles; that the walnut juice did not cost what was set down on the first book by some 500 per cent.; that the walnut juice was of no use to us, we wouldn't use it up if we were in business for our natural life.

181. Have you ever seen the walnut juice yourself?

I don't think I ever saw it. I have seen the barrels which were said to have walnut juice in.

182. What do you mean by the word "goods," which you use in evidence?

I mean catsups, sauces, jellies, juices and canned goods, &c.

183. Has there any of the walnut juice been sold since Fithian sold it to you and your associates?

It has neither been sold nor used.

184. Do you know how much the quantity really is, of that walnut juice, at present on hand in your possession?

I could not say how much there is.

185. The amount of 3,360 gallons of walnut juice—is that the amount which Fithian sold to you and your associates of that article, as expressed in Exhibit D 2, at 75 cents per gallon?

That is.

186. Was there any deduction made, in either the quantity or the price of the walnut juice, by Mr. Fithian, with you and your associates, or either of you?

There was no deduction, either in quantity or price.

187. Do you know what was the true cost, or what ought to have been the true cost or price of the walnut juice?

From 10 to 15 cents per gallon; not over 15 cents.

188. What other article do you complain of as being incorrect in the account or inventory of the property?

Five catsup tanks.

189. State what was, or ought to have been, in your negotiation with Mr. Fithian, the true cost or price of the five catsup tanks?

The true cost ought to have been $200 for the five tanks.

190. The item, 5 tomato catsup tanks $500, in the account, or book Exhibit D 5, is that the item you refer to in your last answer?

It is.

191. State any other articles of property that Mr. Fithian sold to you and your associates, or to the corporation, that

were set down by him in Book D 5 at either beyond the true price, or that were worthless or unmarketable?

The following were worthless: 1 wooden bather, $10; lot of muslin sash, $75; 8 timber cap dies, $24; lot of bone dust, $10; Cumberland sauce show cards, $125; lot of labels, $945; 2 barrels of hominy, $14. That is all I have got at present. There is something mostly worthless, lot of glass sash.

192. What do you mean by saying, that is all I have got at present?

That I haven't sorted all the worthless goods out of the stock and tools, fixtures, &c., bought of Mr. Fithian, or that was in that $50.900.

193. State what articles, or property, that Mr. Fithian sold you, or your associates, which were and are part worthless, and are contained in Exhibit D 5.

Lot of glass sash, put down at $137.50, worth $25; 1 iron bather, put down at $10, worth 50 cents, sold for that; 732 five gallon tin cans, put down at 50 cents a piece, worth less than 25 cents apiece; awning iron and cover, put down at $6, worth $1; 2 tomato—(I won't put that), 1,765 gallons of jelly juice, put down at $882.50, that was worthless on account of the tin cans being bad that it was put in. This was part worthless. I couldn't say what it was worth. That's all that is part worthless. There are some other articles that are worthless.

194. State what other articles that are worthless, of the property in question.

Two candle moulds, $18; 1 old door frame, $2; printing plate, $152.50; 1 barrel of sage, $12.50; 65 pounds of ground nutmegs, $97.50; 3,360 gallons of walnut juice, put down at $2,520. This is the same article I have before stated. There may be others; I haven't seen all the stock. I had to take Mr. Fithian's representation for it, and rely upon his statement alone, for I had no experience in the business; did not know what the goods were worth, nor the quality that ought to be, nor the quantity for such a business. I should never have bought the goods, hadn't he represented them just what we wanted both in quality and quantity; that the whole thing, real estate, fixtures, tools and all the stock on hand would not exceed $35,000; that we thought it would be $33,000; that was the amount we bought on the 8th of March, 1865.

195. The item of 6 copper kettles mentioned in Exhibit D 5, cost what apiece?

$50 apiece.

196. What do you mean, that these kettles cost $50 apiece?

Cost Stout, Dyer & Wicks $50.

197. What was the true cost of those kettles?

$25 apiece.

198. Name any other articles of the property in question, contained in Exhibit D 5, that you know of in respect to their cost or price being different from what is enumerated in said Exhibit.

1,016 half gallon X bottles cost $1 a dozen, was put down at $2.50 a dozen; 2 tomato tanks cost $50, was put down at $100; 1 case of drawers cost $25, put down at $35; 550 peach crates, cost $137.50, was put down at $550; 55,717 tin cans, cost $5,571.70, was put down at $6,128.87; 203 empty barrels, cost $304.50, was put down at $507.50. This should be barrels, not empty barrels; 50 gross pint oval bottles, cost $5 per gross, was put down at $8 per gross; 12 cooking tanks, cost $12 apiece, was put down at $15 apiece; 20 stools, cost 50 cents apiece, was put down at $1 apiece; 112 wooden trays, cost 20 cents apiece, was put down at 30 cents apiece; 100 galvanized iron trays, cost $1.75 apiece, was put down at $2.25 apiece; 1 press, cost $50, was put down at $70; 12 sets of round dyes, cost $8 apiece, was put down at $20 apiece; 25 gallons of peach brandy, cost $1.50 a gallon, was put down at $2.50 a gallon; 50 pounds of mace, cost $1 a pound, was put down at $1.70 a pound; 145 gallons of jelly juice in bottles, cost 50 cents a gallon, put down at $1 a gallon; 4,392 boxes, cost 20 cents apiece, was put down at 24 cents apiece; 1,000 boxes, cost 20 cents apiece, was put down at 20½ cents apiece; Cumberland sauce in bottles (396 dozen pints), cost $54 a gross, 50 per cent. off, was put in at $54 a gross, 40 per cent. off; 2,050 half-pints Cumberland sauce, cost $30 a gross, 50 per cent. off, was put in at $30 a gross, 40 per cent. off. Mr. Fithian was very particular in these two items, saying that the above prices, 40 per cent. off, was the exact cost; that he was positive of; 1,765 gallons of jelly juice, part of it cost 9 cents per gallon, part 30 cents per gallon, was put down at 50 cents a gallon. That is all I think of at present.

199. What do you mean, in speaking of these articles, by the expression "put down," which you use?

Put down in the second Book Exhibit D 5, in the list of real and personal property sold by Mr. Fithian to us, and represented as the cost of the real and personal property.

200. What put down?

The price of the different articles.

201. Has Mr. Fithian ever made any allowance to you, or your associates, at or since signing or executing of the bonds named in your evidence, for any of the excess of price, or in regard to the amount of the price of the articles so put down, that you complain of?

He has not.

202. Have you complained to Mr. Fithian concerning the excess of the price of the articles you speak of, or demanded

that he should correct the errors you complain of, connected with the negotiation and sale with him?

I have.

203. When and where?

On the 15th of June, 1866, at my store, 91 Barclay street, New York.

204. What did he say in reply to your demand?

He said he wouldn't correct it.

205. Who was present at the time of this demand on Fithian?

Henry B. Dyer, A. L. Clement, Joseph H. Stout.

206. Did you then ask him, Fithian, if he had any of the notes that you have said that Stout, Dyer & Wicks gave in reference to the bonds?

(Objected to as leading.)

I did not.

207. Did you cause a written notice to be served on Mr. Fithian?

I did.

208. A paper being shown witness, he is asked, Is that the paper, or a copy of the notice?

It is a copy.

Copy of notice offered in evidence, and marked Exhibit D 6, on part of defendant.

(The introduction of this notice as an Exhibit objected to by counsel of complainant.)

Four promissory notes made by Stout, Dyer & Wicks, to the order of Charles S. Fithian; one dated February 1, 1856, at 2 months, for $2,126.66, marked Exhibit D 7, on part of defendant.

One dated April 21, 1866, at 90 days, for $645.46, marked Exhibit D 8, on part of defendant.

One dated April 21, 1866, at 6 months, for $4,142.31, marked Exhibit D 9, on part of defendant.

One dated March 1, 1866, at 3 months, for $2,826.04, marked Exhibit D 10, on part of defendant.

Three checks drawn by Stout, Dyer & Wicks on the Importers' & Traders' National Bank, New York city.

One dated March 13, 1865, for $5,000, to the order of the drawers, marked Exhibit D 11, on part of defendant.

One dated January 18. 1866, for $4,587.63, to the order of the Bank, marked Exhibit D 12, on part of defendant.

One dated April 7, 1865, for $5,000, to order of Lorin J. Wicks, marked Exhibit D 13, on part of defendant.

209. Exhibit D 7 has the name of the makers torn off. Explain if you know respecting the name being torn off?

I think I tore it off to destroy the note from being collected again.

210. Whose signature is endorsed on the back of D 7?

Charles S. Fithian.

211. Any others?
There are other endorsements on it, but I don't know the signatures.
212. To whom was Exhibit D 7 paid, and by whom?
To Charles S. Fithian, by Stout, Dyer & Wicks.
213. Exhibit D 8; whose signatures to the endorsement on the back of it?
Charles S. Fithian. There are others, but I don't know them.
214. To whom and by whom was Exhibit D 8 paid?
To Charles S. Fithian, by Stout, Dyer & Wicks.
215. Exhibit D 9; whose signatures to the endorsement on the back is it?
Charles S. Fithian, and others that I don't know.
216. To whom and by whom was Exhibit D 9 paid?
To Charles S. Fithian, by Stout, Dyer & Wicks.
217. Exhibit D 10; whose signatures to the endorsement on the back is it?
Charles S. Fithian, and others that I don't know.
218. To whom and by whom was Exhibit D 10 paid?
To Charles S. Fithian, by Stout, Dyer & Wicks.
219. Exhibit D 11; whose endorsement on the back of that exhibit?
Stout, Dyer & Co., C. S. Fithian & Co., and others that I don't know.
220. Who paid that check?
Stout, Dyer & Co.
221. Exhibit D 12; what connection has that Exhibit with the bonds in question?
The check was given to pay a note of Stout, Dyer & Wicks. The note was given to C. S. Fithian to pay a bond, Exhibit D 2, due Dec. 1, 1865.
222. Exhibit D 13. What connection has that check with the sale in question?
This check was given by Stout, Dyer & Co., to pay a note given to C. S. Fithian of the 14th of March, 1865, in part payment of the real and personal property bought by them of him.
223. Who gave the note last referred to?
Stout, Dyer & Co.
224. You say the notes were paid to Mr. Fithian. How do you know that the moneys were paid to him?
I know by Lorin J. Wicks and his endorsement. I know by our books and checks, personal knowledge, bank account, and our books of account.
225. Did you pay any of those notes to him in person?
I don't recollect that I did.
226. Do you know whether he himself had possession of those notes when they were paid?
I don't think he had possession of any of them.

227. How then could the money be paid by Stout, Dyer & Wicks to Charles S. Fithian in person? and what do you mean by saying that the moneys were paid to Charles S. Fithian?

I mean that the notes were made payable to Charles S. Fithian or order by Stout, Dyer & Co., and Stout, Dyer & Wicks. Being made payable to our Bank, I mean at our Bank.

228. When the notes were paid, where were the notes?

At the Importers' & Traders' National Bank, New York.

229. Where did the makers of the notes get the notes from after they were paid?

From the Importers' & Traders' National Bank, New York.

230. Whom do you mean by C. S. Fithian in your evidence?

I mean Charles S. Fithian, the complainant.

231. Who was Chas. S. Fithian & Co. endorsed on Exhibits D 11 and D 13?

I know who Charles S. Fithian was; I don't know who the Company was.

232. In whose hand-writing is the endorsement "Chas. S. Fithian & Co"?

Charles S. Fithian's, the complainant.

233. Where any of these notes marked as exhibits, four of them I believe was paid, did you know of the errors you complain of in respect to the price or cost of the property in question? If so, state which note was paid before or after your knowledge of such errors.

They were all paid, except two, before I knew of the errors. Those marked D 8 and D 9 were paid after such knowledge.

234. If at the time of the payment of the last two notes, Exhibits D 8 and D 9 you speak of, you had knowledge of the errors you complain of, as to the price of the property in question, why did you pay those notes, or allow them to be paid?

The notes were negotiable, and I suppose from what Mr. Fithian had said to me, that he hadn't possession of them, but had used them.

235 How did you expect or intend to have the errors you complain of corrected, if the notes did get paid?

By stopping payment of this $10,000 mortgage in a suit for the overplus.

236. What means had you of knowing as to the quality of the articles named in the negotiation and sale?

No other means but Mr. Fithian's representations, and looking at what stock could be seen, tin cans and real estate.

237. State how the identical articles sold were situated as

to the means of knowing the quality thereof, inside of the vessels in which they were contained?

The jelly juices, we would have had to unsoldered the cans, which would have spoiled them; catsup we would have to unpack out of saw-dust and boxes to have looked at it; to have taken the corks out would have spoilt the catsups; the jellies in glass would have to be unpacked and uncapped or uncorked; they were hermetrically sealed goods in tin, which if opened would have ruined the whole of them; walnut juice was in casks, headed up; if I had examined that, I would not have known anything about it, because I did not know what it had ought to be; there was considerable of the goods in Philadelphia in the hands of Archer & Reeves; we had no opportunity of examining them; some even in Chicago; so situated were most of the goods that I couldn't have examined them even if I had been a competent judge even as to quality and condition that it was in; one item of glass sash and muslin sash that wasn't on the premises, most of it on the farm of Mr. Fithian or at the house; we took his representation that it was in good order and worth the money.

238. You speak of hermetrically sealed goods. Were there any such comprised in the articles of the inventory and account you speak of?

There was.

239. What kind of goods did Mr. Fithian tell you they were?

I don't know that he mentioned the class at the time. I didn't pay attention whether they were strawberries or raspberries, or fruits of that kind.

240. Have you discovered since the time of the negotiation and sale, what those hermetrically sealed goods consist of?

Tea maize, some was; also, apple jam. Those were the two particular ones. Some goods at the factory, I think; those I don't know anything about.

241. What is the difficulty with regard to the hermetrically sealed goods?

The difficulty with the tea maize is that we can't sell it at any price. The apple jam, I opened one can of it, it was very sour. That's all the hermetrically sealed goods I recollect of at present.

242. What effect does it have upon the goods, contents of the cans, bottles (vessels in the business referred to), if the same are opened before the contents are used?

To spoil them.

243. When, as a general thing, are the cans or vessels opened after being filled with the goods?

Just before their immediate use.

244. Use by whom?

By the consumers.

245. You have spoken of being interested with Mr. Broadmeadow, prior to the sale by Fithian. Who attended to the business that you were engaged in, in connection with Broadmeadow?

My brother William W. Stout, attended to my part of the business. I never spent but two days in the store, and that was taking account of stock.

246. Did you pay any attention to the canning or manufacturing of that kind of goods in the business in which Mr. Fithian was engaged? If so, how much attention?

I did not.

247. In the store where you say the business was transacted in connection with Mr. Broadmeadow, was there any manufacturing of such goods carried on?

There was in a small way.

248. In what part of the store?

Up stairs, on the second floor, I suppose.

249. Did your brother, William W. Stout, examine any of the goods in question sold by Mr. Fithian, before the sale?

He did not.

250. Was your brother, William W. Stout, present with you and Mr. Fithian, at any time during the negotiation for the sale of the goods?

He was not.

251. How do you come to the knowledge of the errors you have come to in respect of the quality or quantity of the goods in question?

Partly through our sale of them, partly through information of Mr. Wicks and Mr. Seeley, and our conversation connected with the business of the firm.

(Counsel of complainant objects to testimony of witness founded upon information of other parties, as hearsay testimony.)

252. You say that the Book D 1 was in the safe at the factory, December, 1866. Did you know before December, 1866, that that book was in the safe?

I did not.

253. Do you know how long that book had been in the safe, of your own knowledge?

I do not.

254. How long did it remain in the safe after December, 1866, you say you saw it there?

Until March or April, 1867; I think April.

255. Who took possession of it in March or April, 1867?

I did.

256. For what purpose?

Purpose of examining into the deception and fraud practiced by Mr. Fithian on us, the purchasers.

257. Have you had possession and control of that book since the time you say you took possession of it?

I have.

258. Has there been, since you have had posoession of that book, Exhibit D 1, any alterations in any of the original figures or names of articles connected with the inventory or account referred to therein?

There has not.

259. You have mentioned in your answer in this suit in respect to taxes. What taxes are referred to?

Revenue taxes.

260. Where is the agreement in writing that refers to those taxes, if there is a written agreement?

This is the agreement.

(The agreement, dated March 14, 1865, is offered in evidence and marked Exhibit D 14, on part of complainant.)

261. Revenue taxes on what?

On all the manufactured goods Mr. Fithian sold us.

(Objected to.)

262. Who paid those revenue taxes that you speak of?

Stout, Dyer & Wicks.

263. To whom?

The United States Government.

264. To what officer, if you know?

I don't know.

265. Which of the agents or clerks of Stout, Dyer & Wicks paid those taxes?

Robert M. Seeley, one of the firm.

266. When, and do you know to what amount?

I don't know the amount or the particular time.

267. Do you know whether those taxes were assessed against Charles S. Fithian or against Stout, Dyer & Wicks?

I don't know that they were assessed against Charles S. Fithian or not. I don't know that they were assessed against Stout, Dyer & Wicks in law. I know we had to pay them.

268. What did Mr. Fithian say in regard to the revenue taxes you speak of, at the time of the sale and negotiation for sale of the property?

He said he had not added the taxes on the cost of the goods, and as he had sold the goods to us for cost, we must pay the taxes.

269. When did Mr. Fithian say so?

On the 14th of March, 1865, the day on which D 14 was given.

270. Was his saying, as you have mentioned in reference to the taxes, the reason of Exhibit D 14 being executed?

It was.

271. Do you know whether any of those revenue taxes are included in what is represented as the prices of the property in either of the Exhibits D 1 or D 5?

I do not.

272. What is the item in D 5, described as "labels, $945?"

They were a lot of labels in the name of Fithian & Pogue?

273. Who has possession of those labels?

Stout, Dyer & Wicks.

274. Where are those labels?

At Bridgeton, New Jersey, most of them.

275. What do you mean by saying "labels in the name of Fithian & Pogue"?

I mean a paper label used on canned goods to denote the different kind of goods and the manufacturers' name.

276. Was any of that lot of labels, on any of the cans or articles, at the time of the negotiation and sale?

There was not.

277. Of what use was that lot of labels, or any of them, to Stout, Dyer, and Wicks, or any members of that firm, or to the corporation?

Wasn't of any use, unless for waste paper.

278. Why, then, did you or your associates allow them to be included in the articles sold you by Fithian?

Mr. Fithian said they cost him $945. That we had bought the entire property at cost, and that we must take them.

279. What kind of experience had you had in the canning or manufacturing of these kind of goods before this purchase in question from Fithian?

None.

280. Do you remember an agreement offered in evidence by the complainant in this cause, as Exhibit No. 4, on part of complainant? (Exhibit is shown to witness.)

I do.

281. At the date of that agreement, was you aware of any of the errors, that you complain of, in regard to the quality or quantity, or price of the property in question?

I was not.

282. Was that stamp on that agreement canceled, by the present initials thereon, at the time that exhibit was offered in evidence?

It was not.

283. Did you particularly examine the stamp for that purpose?

I did.

284. Have those initials on that stamp been put there by your authority or your consent?

They have not.

285. Do you remember when the paper, marked, Exhibit 4, on part of complainant, was signed by any of the parties?

I do not.

286. Do you remember of seeing that paper before it was offered in evidence; if so, when?

I remember signing a paper, but when, and where, I have no recollection.

287. About what time do you remember of signing a paper you speak of?

I think it was a short time after Mr. Wicks conveyed the property, bought of Mr. Fithian, to John W. Stout, Henry B. Dyer, Lorin J. Wicks, William W. Stout, and Robert M. Seeley.

288. Where were you, when you signed that paper?

I just said, I didn't know when, and where.

289. When you say, shortly after Mr. Wicks conveyed the property, what conveyance do you refer to?

This deed now shown me—dated, April 28, 1865.

(Deed offered in evidence, and marked, Exhibit D 15, on part of defendant.)

290. Do you know the handwriting in the body of Exhibit No. 4?

I think it is Mr. Reeves'.

291. What was his business, and what relationship, if any to Mr. Fithian?

He is a lawyer. A brother-in-law to Mr. Fithian.

292. In whose office were the Exhibits D 2, D 3, and D 4, executed?

In Mr. Reeves'.

And being cross-examined, he says:

293. At what time of the day or evening, were these papers executed?

I think it was from 8 to 10 o'clock in the evening.

294. At whose request were they executed at night?

I think it was the mortgages and bonds, at the request of Charles S. Fithian.

295. Did you not insist, that the papers should be executed that evening, as you wished to leave the next morning?

I don't recollect that I did.

296. At your first meeting in Philadelphia with Fithian and Wicks, who made the proposition to buy out Mr. Fithian's interest in the property?

Mr. Wicks.

297. To whom did Mr. Wicks make the proposition?

To me.

298. Who made the proposition to Mr. Fithian?

I think that I said to Mr. Fithian, Mr. Wicks says you would sell out your business to us.

299. What was his reply?

He said he would.

300. Had he any memorandum, inventory or paper embracing the property in Philadelphia?

I don't recollect that he had.

301. Did he state to you in Philadelphia what was his price for the real estate?

I don't recollect that he did.

302. Did he write you to visit Bridgeton to examine it, the real estate?

I don't know but he did. I rather think that he did.

303. Did you go down the next day?

We did.

304. After you had examined the real estate did he state to you the next day what the price was?

He did.

305. What price did he state?

$12,000; said it cost him that money as near as he could tell; he had built it at different times and hadn't all the items.

(Question and answer objected to.)

306. Was it before or after he had fixed the price of the real estate that he showed to you inventory marked Exhibit D 1?

(Objected to.)

I couldn't say. It was on the 8th of March that he showed it to us.

307. Did you observe the difference in the price of the real estate as stated in Exhibit D 1, and the price as asked by Fithian?

I did not.

308. What arrangement was made on the 8th day of March as to an inventory of the personal property?

Mr. Fithian and Mr. Wicks was to go over the entire inventory to see that all the goods on that inventory was there. If there was any short, these was to be deducted from the gross amount, I understood.

309. When were you to return in reference to carrying out the contract?

(Objected to.)

I think it was the next Wednesday week. I forget the date. I think it was Wednesday—to pay the first purchase money, and take possession of the property.

310. Did you return the next Wednesday, a week?

I returned on the day agreed upon.

311. Was that the day the papers were executed?

I think it was; we might have gone down the night before.

(Counsel for complainant at this stage of the examination objects to all testimony in chief of this witness, given to matters before the execution of the papers, as being irrelevant and illegal.)

(Counsel for defendants objects to the above objection being made or allowed, as being made out of season, and not in proper place.)

312. Was not the time between your first and second visits to Bridgeton, while these negotiations were going on, given to enable Fithian, Wicks, and Seeley, to make an inventory and valuation of the personal property?

(Objected to.)

No, sir.

313. Who were present when Mr. Fithian agreed, as you allege, to sell the personal property at cost?

Mr. Lorin J. Wicks, at one time, Mr. Wicks and Mr. Dyer, shortly after, at another time.

314. Where were you, and when was it, the first time you speak of, when Mr. Wicks was present?

It was at Philadelphia, on the 7th of March, 1865, at the American Hotel.

315. When, and where, the second time you speak of?

On the 8th of March, 1865, and at Bridgeton.

316. Are these the only times you remember?

Well, it was during our entire negotiation off and on, that we were talking about the property. These are not the only times I remember.

317. Mention the other times.

On the 14th of March, 1865, in reference to the labels. Mr. Wicks was present, and must have heard the conversation. Them's the only times we ever met; the bargain was closed up on the 7th, 8th, and 14th. I meant to say the bargain was closed up on the 14th.

318. Did Mr. Fithian make any charge to you for the act of incorporation of the West Jersey Canning and Pickling Company?

I don't recollect whether he did or not. We paid something for corporation papers; we paid some money. I don't know.

319. What reason did Mr. Fithian assign why he thought it best for the new firm to carry on business under the act of incorporation?

(Objected to.)

I wouldn't be bound for any thing more than the capital stock I paid in.

That's the reason he gave me.

320. When, and why did you afterwards abandon the act of incorporation?

We never used it only in one instance after that day.

We abandoned it from the 14th of March, 1865, with the exception of that one instance of the conveyance of the property.

We abandoned it because we considered it a humbug.

321. Did you not assign to Mr. Fithian as a reason for abandoning it, that you wanted your name to appear in the concern?

(Objected to).

Might have done so; but it was understood from the first that we should do business in the name of Stout, Dyer & Wicks.

322. Did you not state. that you had made a mistake in allowing Mr. Wicks to be President, as his name only would appear?

(Objected to).

I did not, but Mr. Fithian made that statement, that I had made a mistake in allowing Mr. Wicks to be President, as he wasn't fit for it; it was just the words.

323. When the West Jersey Canning and Pickling Company conveyed the property to the members or stockholders of the corporation, was the indebtedness of the corporation to Mr. Fithian assumed by the individual members?

(Objected to).

Not to my knowledge.

324. Exhibit No. 4, on part of complainant, being shown witness, he is asked: Is the first signature to that paper in your hand-writing?

(Objected to).

Yes sir.

325. Are the other names signed to that paper in the handwriting of the respective parties?

(Objected to).

They are.

326. When you met in Bridgeton on the 14th of March, 1865, was the inventory marked Exhibit D 5, shown to you; and if so, by whom?

It was, and by Henry Ballard Dyer.

327. Were the prices of the different articles carried out at that time?

(Objected to).

I suppose they were; I didn't look them all over. I depended on Mr. Dyer.

328. Did you except to any of the articles or the prices of them, at that time?

I did.

329. State what articles.

The labels $945. Mr. Dyer took the book, and he run them over; he objected to the walnut juice being so large a quantity. Mr. Fithian stated that it wasn't any more than we needed in the business; that it was a good deal better to be made up a long time ahead.

I don't recollect that I objected. Mr. Dyer done the checking off the account of the property; when he came to an item that he thought was large he would mention it; would like to see it. Mr. Fithian became huffy; didn't seem to like to show the property. I noticed that in several instances.

330. Any other articles objected to by you or Mr. Dyer?

I don't recollect any at this present time.

331. Mr. Stout, did not Mr. Fithian state distinctly that there was the inventory and the prices attached, taken by himself, the seller, and Mr. Wicks and Seeley, buyers in part; and that you could examine whether the property was there or not?

He stated distinctly that that was a correct inventory of the property; that he and Mr. Wicks had gone over the whole of it and it was correct. He stated that the inventory was the correct cost of the property then and there: that he had charged us no bonus on the business whatever. And I and Mr. Dyer were very much surprised that it amounted to $50,900, from his statement of the 8th of March, and the figures he showed us. I and Mr. Fithian both took pencil and paper and took out the peaches and tomatoes from the amount of the account of stock we were buying by. I made it somewhere in the neighborhood of $30,000 or $31,000. He said I was not correct, as the item of peaches and tomatoes, amounting to some $19,000, there was 35 per cent. to be taken off to get at the true cost.

I asked him how he made up the difference between his figures on the 8th and the 14th. He said he had bought considerable tin since the account of stock was taken, and that had made up most of the difference.

(All of the above answer not responsive to the question, objected to.)

JOHN W. STOUT.

And thereupon the examination was further adjourned to Tuesday, June 18, 1867, at 10 o'clock A. M., at the same place, at which time and place the examination was resumed in the presence of the counsel of the respective parties.

332. You have stated upon your examination in chief, that you objected to the item of labels, $945; after objection, did you agree to take them?

We did.

333. State any other articles, whose price you objected to.

I don't know as we objected to the price of any other articles.

334. Did you not object to the price of empty barrels?

I did, but he said they cost him 20 shillings; I told him that we could buy them for a dollar. He said that we had bought the goods at cost, and that we must take them at that price.

335. When Mr. Fithian used the word "cost," what did you understand his meaning to be?

I understood it to be the original value.

336. Did you agree to take the barrels at the price stated?

As he said they cost that, we had to do it to fulfill our contract of March 8th.

337. What was walnut juice used for?

To make Cumberland Sauce, I understood.

338. Has the new firm manufactured, to any large extent, Cumberland Sauce?

They have made up several thousand dollars worth of it.

339. Was the walnut juice purchased of Fithian used in this manufacture?

It was not.

340. Why not?

We had walnut catsup plenty, without using it.

341. In your examination in chief, you have put down a list of articles sold by Fithian, at a certain price, and as worth a less price. State how you obtained a knowledge of their worth.

The walnut juice I tried to sell to parties in New York, using it, for 75 cents a gallon. They told me they could manufacture it for 15. Mr. Wicks said we could make a new lot for 10 cents a gallon.

The 5 catsup tanks were put down as costing $500, worth $200; Mr. Wicks said, cost $200.

The tin cans were all rusted through. I saw them myself. We lost the juice contained in them. They were put down at 50 cents; they were worth less than 25 cents on an average.

A lot of label plates were of no use; we couldn't turn them to any account. A lot of sash I saw was in bad order. I got a knowledge of their worth partly from my own knowledge and partly from information from Mr. Wicks and Mr. Seeley.

And being examined again in chief, he says:

342. What do you mean by your expression, speaking of the articles, "all they were worth"?

Take walnut juice; it wasn't worth any more than the price I stated. It could be produced for that money. It wasn't worth any more than that to us to use in the business. The catsup tanks wern't worth $500, didn't cost but $200, couldn't cost any more. I mean all they were worth to us, or anybody else, or what they cost Mr. Fithian.

343. Is there any difference between the cost of articles and the worth of them?

Yes, sir.

344. When you speak of the worth of the articles referred to, or the cost of the same articles, do you mean a difference in the expressions, or not?

Well, in speaking of some of the articles, I meant the cost; in others, again, what they were worth, as some were worthless.

345. In speaking of the cost of the articles referred to in

your evidence in this suit, or in speaking of the worth of them, what cost do you refer to and what time do you refer to, in reference to the same?

I refer to the cost in the first book marked Exhibit D 1. I mean March 8, 1865.

346. The Cumberland sauce, you say, the new firm manufactured. In the manufacturing the same, did the new firm use any of the materials that Mr. Fithian sold to the firm or to the corporation?

The firm did.

347. Mention those materials that you know of.

There was some catsup, mushroom catsup, several barrels of Cumberland sauce, partly manufactured. I don't know how much, or I don't know what was in the barrels. That is all that I know of.

348. Who do you mean by the new firm?

Stout, Dyer & Wicks.

349. At the evening you mentioned when the bonds and mortgages were executed, were they written and ready to be executed when you arrived at Bridgeton, or not?

I don't recollect whether they was; the deed was to be ready, I think.

350. Why did you not observe the difference in the price of the real estate, stated in Exhibit D 1, and the price asked by Fithian, on either the 8th or 14th of March, 1865?

On the 14th of March, we didn't see D 1; we supposed that D 5 was D 1; never knew the difference till December, 1866, I think. If we had been shown D 1 on the 14th of March, we should never have taken the property. There is where we were deceived; we thought that D 5 was D 1. On the 7th of March D 5 wasn't in existence, nor shown us. As we bought the whole of the property by the inventory D 1, we didn't look it through particularly, as we hadn't time, as we were at Bridgeton a few hours on the 8th of March, we went down in the morning, and came back in the afternoon. I think we left in the afternoon.

351. Where was D 1 left at that time on the 8th of March?

In Mr. Fithian's possession.

352. When you say an arrangement was made on the 8th of March as to an inventory of the personal property, that Mr. Fithian and Mr. Wicks was to go over the entire inventory, what inventory do you refer to?

Inventory D 1.

353. When Mr. Fithian had informed you he had procured a lot of tin, since the 8th of March, did he show you the amount or quantity of that tin?

He didn't inform me that he had got a lot of tin, since March 8th, but since the inventory D 1 was taken.

354. Did he state to you the amount or quantity of tin he referred to?

He didn't particularly, as I recollect.

355. When was it that he mentioned that he had bought considerable tin?

On the 14th of March.

The witness desires here to say: "That in my answers to interrogatories 212, 214, 216, 218, I meant to be understood that all of said notes were made by Stout, Dyer & Wicks, payable to the order of Charles S. Fithian, at the Importers' & Traders' National Bank of New York, and were paid by the Bank, charging the same to the account of Stout, Dyer & Wicks."

The witness also desires to say: "In my response to question 350, I said D 5 was not in existence on March 7th; I meant to say March 8th and not 7th."

JOHN W. STOUT.

Subscribed before me June 18, A. D. 1867, at Jersey City, N. J.

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

ANNING S. CHITTENDEN, a witness produced on the part of the defendant, being duly sworn, deposes and says:

356. Where do you reside, and what is your age and occupation?

I reside in Bergen County, Slatterdam, Saddle River Township; I am 61 years of age; I am a farmer.

357. Are you acquainted with the complainant in this suit? If so, how long have you known him?

I am; I think since 1864, or the beginning, perhaps, of that year; I really don't remember.

358. Where did you first become acquainted with him?

At Bridgeton, New Jersey, I think.

359. What was your occupation at that time?

I was engaged in farming.

360. Have you ever been engaged in the business of canning or pickling fruits? If so, when and where?

No.

361. Have you ever been in the employ of any parties engaged in that business of canning or pickling fruits. If so, when and where?

I was engaged in advertising Cumberland sauce at Dudley's; I was not acting in any other capacity than that, viz.: advertising Cumberland sauce; I did this by an arrangement between Mr. Fithian, Mr. Dudley and myself.

This was in 1864, at Dudley's store in Front street, New York; subsequently I was engaged with Stout, Dyer & Wicks; that was in 1865.

362. In what capacity were you engaged with Stout, Dyer & Wicks?

First, in assisting in getting up labels, and then in selling goods, merchandise.

363. Have you seen the factory which Mr. Fithian sold at Bridgeton? If so, when did you first see it?

I have seen it; the first time was on an invitation from Mr. Wicks, and I really don't know when it was; it might have been in 1864; it was as early as that.

364. Was the time you refer to when Mr. Fithian owned the factory?

Yes sir, or when he was interested in it. I think Mr. Pogue and he were together in this business at that time; Mr. Pogue was then living.

I went there to see Mr. Wicks; I had nothing to do with this business.

365. Were you then at the factory more than once?

Yes.

366. Please mention the times you were there.

I was introduced first by Mr. Wicks to Messrs. Fithian & Pogue at the factory; I was subsequently there; I do not remember the date; sometime in 1864.

367. When did Mr. Pogue die, if you know?

I do not know

368. Did Mr. Fithian at any time, when you were at the factory, offer to sell you any of the property, if so, what property?

(Objected to).

Yes, he did; he offered to sell out the whole establishment, real estates, manufactured and unmanufactured articles, tools, machinery, everything belonging to the establishment complete.

369. What articles do you refer to as manufactured and unmanufactured?

Peaches and some other fruits which were manufactured and canned; also Cumberland sauce manufactured and in process of manufacture, and other articles; I don't recollect definitely.

370. In this offer you mention to sell to you, did Mr. Fithian reserve anything?

(Objected to as irrelevant).

I think not.

371. When was the time when Mr. Fithian, as you say, offered to sell to you?

I think it was in the latter part of 1864; I think it might have been early in 1865; but I don't think I was down there then; it was a few months before Stout, Dyer & Wicks purchased the factory.

372. Who else was present then and there, besides yourself and Mr. Fithian?

I think Mr. Wicks and Mr. Seeley.

373. For what purpose was the factory you speak of used, at the time you say you were there?

Well, I recollect of being there when they were engaged in putting up jellies and things of that kind; but I think the season was generally over. They would make jellies from juices and put them up after the season was over for the general canning of fruits.

374. When, Mr. Chittenden, in each year, is the general season of canning of fruits, in the business in which Mr. Fithian was engaged?

At the commencement of the ripening of strawberries to the close of the peach and tomato season.

375. Do you know how long Mr. Fithian had been engaged in that business?

Not of my own knowledge; I was informed of about the length of the time he had been engaged in the business; I think it was about three years.

376. Did Mr. Fithian ever tell you how long he had been engaged in that business?

I do not recollect that he did.

377. Did Mr. Fithian show you a list or inventory of property? If so, what was the nature of it, and when?

(Objected to).

He gave me a written list of what constituted the property of the concern; I think this was in 1864.

378. What part of the year 1864?

My impression is it was after the season was over; when I was at Bridgeton; that was late in the fall or winter of 1864; it must have been.

379. Did the complainant ever give or show you a list or inventory of the property referred to but once—the time you refer to?

He never gave me but one that I know of; and I never saw any but once, when I was in his office. I saw a book there, and he gave me a written list which I brought away with me, with the prices annexed of the articles, at which he offered to sell.

380. What was the nature of the book you refer to?

What I saw was an inventory of the goods similar to what was given to me.

381. What did Mr. Fithian say that the prices you speak of meant?

(Objected to).

He told me that was the cost of the stock.

382. Did you notice if there were any prices set down to the articles in the book you refer to?

There were.

383. Did Mr. Fithian tell you then when the book you refer to was made up, as to the inventory?

I do not remember. I understood it was a late proceeding. I don't know whether Mr. Wicks or Mr. Fithian so informed me. I heard it in the office.

384. Who exhibited that book to you at that time?

I think they were all present, Mr. Seeley, Mr. Wicks and Mr. Fithian. I don't recollect who took most particular charge of the book.

385. Do you know in whose hand-writing the inventory and prices were entered in the book?

I do not.

386. In whose hand-writing was the list you speak of—which was given to you?

I do not remember.

387. Who handed you the list you speak of?

Mr. Fithian.

388. For what purpose?

To consider the matter which I had been speaking of—to make a purchase.

389. Where was the book when Mr. Fithian handed you that list?

In the office attached to the factory at Bridgeton.

390. How do you know that the list had any connection with the book?

I noticed. I compared some of the items and found them alike.

391. Did Mr. Fithian say anything relating to any connection of the list with the book? If so, what was it?

He did. He said that contained the inventory of the cost of the goods.

392. Do you know whether the list you speak of is a copy of the inventory in the book or not?

As far as I compared the items they were alike. I did not go over the whole, and therefore cannot say whether it is a copy or not.

393. What did Mr. Fithian say to you about the list being a copy of the book, if he said anything of that kind?

(Objected to as repetition)

He said the prices on the list were the same as in the book; the same as far as the stocks of goods went.

394. What has become of that list?

It has been destroyed with old letters.

395. Did you foot up the list to see what the total amount was?

I think I did.

396. Do you remember the amount? If so, what was it?

I do not recollect the amount definitely; I recollect of making an estimate of what it would take to purchase the

concern, and found it would take between $30,000 and $40,000; well, towards $40,000.

These facts I wrote to my brother in California, for the purpose of getting his assistance if I bought at all.

397. When you speak of the whole concern, what property do you mean?

I mean the stock of manufactured articles on hand, and those in process of manufacture, unfinished Cumberland sauce in barrels, and all else which constituted the stock of the establishment, including real estate and tools.

398. The estimates you speak of as to the amount which it would take to purchase the concern; how and from what information was it made up?

It was made up from the amount stated in the list of goods, and an estimate of what probably the tools would come to; there was no list of them, and the price asked for the real estate.

399. At this interview you speak of with Mr. Fithian, at the time he gave you the list, was there any reserve made in his offer to sell you any peaches or tomatoes from the stock?

I do not recollect whether he offered to retain anything if I wished it; but the amount which I have stated included everything, to the best of my recollection.

400. Did Mr. Fithian tell you the total amount of prices the inventory amounted to in that book?

I do not recollect that he did; the book was open for my inspection.

401. Did you notice whether the book showed on the face of it, the total amount of the inventory was added up in it?

I don't recollect of any total amount, though I may have seen it.

402. Did you examine into the cost of the real estate, tools and fixtures at that time?

I was told what a portion of the fixtures cost, how much had been expended in putting up certain buildings; but I do not remember the amount; I didn't examine any tools; I saw the steam engine and machinery there; I did not notice them particularly.

403. On what basis as to price, did Mr. Fithian offer to sell the concern to you, as you speak of?

(Objected to).

He offered to sell the real estate at a definite sum, which he named; he offered to sell the stock at cost, at first cost; he offered to sell the tools at a valuation, saying, some of them were worth more than cost.

404. What do you mean by cost, or first cost?

Cost of the raw material to manufacture, and the labor in manufacture.

405. Do you recollect the price, as you say, of the real estate?

(Objected to).

I do not.

406. What did the real estate you speak of, in your interview with Mr. Fithian, consist of? I mean the machinery, engine fixtures and land and buildings.

The machinery with all the buildings and lands, except the loose tools.

407. You say that you have forgotten the price spoken of, with regard to the real estate. At what price did you place it at in the estimate you made?

(Objected to).

I have no amount separate; I wrote to my brother at the time, that about so much would purchase it; if I had that letter with me, it would fix the time.

408. Did Mr. Fithian make or offer to make any abatement from the price which you say he made you at this time?

(Objected to).

He made no abatement, but wished me to make him an offer if I heard from my brother favorably.

409. Was Mr. Fithian anxious to sell you the property on the basis of the prices he had shown you?

(Objected to).

He appeared to be.

410. Did he name any sum to you, as a bonus, to induce you to buy the property of him?

(Objected to).

No.

411. Would you recognize the book you have spoken of, if you should see it again?

No sir, not with any certainty.

412. Have you any idea of the size of the book?

So far as my recollection serves, it was a small book.

413. Exhibit D 1 shown to witness, he is asked: Does Exhibit D 1 resemble the book you have spoken of as having contained the inventory shown you by Mr. Fithian?

(Objected to).

It was a small, thin book, bound something in that manner; that is all I can say.

414. What is your impression as to the appearance of D 1, as to its length and width and general appearance, as to whether it is the same book Mr. Fithian showed you as having contained the inventory you speak of?

(Objected to).

Well, the book is similar in the width of the pages, and as to the manner in which it is bound; I can't recollect more exactly in regard to it.

415. In examining the inside of D 1, is there anything that would lead you to recollect whether it was the same book which you say Mr. Fithian showed you?

I could not determine from examining the inside.

416. Do you know how long any of the stock of goods you have spoken of had been manufactured before the time Mr. Fithian showed you the inventory?

I do not.

417. Why did you not purchase the property Mr. Fithian offered you at the time you speak of?

I couldn't make arrangements for the necessary funds, as I hoped to, with my brother in California.

418. Was Mr. Fithian anxious at the time he showed you the inventory you speak of, to sell you the property at the prices he represented to you?

(Question objected to.)

He appeared to be.

419. Do you know whether he was anxious to sell the property before the time you had this interview with him?

(Question objected to.)

I understood previous to that time that he wished to sell out.

420. You have spoken of the sums $30,000 and $40,000. Did the total amount of the property for which he offered to sell it to you at, on the inventory or list shown you, amount to $40,000; more than $40,000, or less than $40,000?

(Question objected to.)

Less than $40,000, I think.

421. What had you determined to give Mr. Fithian for the property after examining the list you speak of?

(Question objected to.)

I didn't determine on any definite sum; I wrote to my brother that I thought the whole thing could be controlled for $40,000, at the outside.

422. At the time you say of your interview with Mr. Fithian, he showed you an inventory or list of the property; was Mr. Fithian engaged particularly with any other business?

Not that I am aware of.

423. What time of the day, about, was it?

In the evening, after dark.

424. Did he appear to have leisure then to converse deliberately with you in respect to the property?

So far as I could see, he did.

425. Was the interview then with him hastily, or did you consume as much time as you thought necessary respecting the property?

Yes, sir; we had time sufficient to say and do all that was necessary.

426. Would you have given him more than $35,000, for the whole property, according to the inventory and statement he then gave you?

(Objected to.)

I can't say what I would have given him, as there was a

portion of it I had no estimate on, namely, the tools; the tinman's tools.

427. What did you estimate you would give for the property, excepting the tools you speak of?

(Objected to.)

I made no such estimate; my estimate was for the whole.

And being cross-examined he says:

428. Was the list spoken of as being given to you by Mr. Fithian, given at the first interview with Mr. Fithian in reference to the purchase?

I don't recollect that it was given at the first interview.

429. Did the letter which you wrote to your brother contain your estimate as made from that list?

I wrote a letter to my brother containing an estimate made from that list; but I also wrote him other letters containing that purchase.

430. Do you recollect stating to Mr. Fithian that your brother had replied to your letter by stating that he was coming East in the Spring?

I do.

431. Was that reply of his in response to your request that he would furnish money to buy the property?

It was in reply to one of my letters that I sent him.

432. Was it the Spring of 1864 or 1865 that your brother spoke about coming on?

He has spoken in both of those years; he has spoken for five years about coming on.

433. Did you afterwards state to Mr. Fithian that your brother could not come on, and if so, when?

I do not remember of making such a statement.

334. Was it before or after your engagement with Messrs. Dudley and Fithian for the sale of Cumberland sauce, that you had this negotiation with Fithian in regard to the purchase?

I think it was the same year.

435. Was it while you were acting as their agent?

I can't say definitely whether it was or was not.

436. When did you cease acting as their agent?

I think the advertising was stopped the 1st of January, 1865.

437. Was it your understanding that you was to buy the whole of Fithian's interest, or only a part and become his partner?

There was an offer by Mr. Fithian to sell out entire; also an arrangement to become interested in the concern, the particulars of which I do not now remember.

438. Was it not your principal motive in buying to obtain the control of the manufacture of this Cumberland sauce?

No.

439. Did you not state that there was a large fortune in that one article if properly advertised?

I did.

Direct examination resumed:

440. Where was Mr. Pogue at the time Mr. Fithian exhibited to you the list you speak of?

He was dead, I believe; at least he was dissolved from Mr. Fithian. Mr. Pogue had no interest in the concern at the time this offer was made.

441. You say there was both an offer by Mr. Fithian to you to sell out entire, also an offer to you from him to become interested in the property; in reference to which offer did Mr. Fithian exhibit the list or inventory to you?

In regard to selling.

442. You have spoken of having compared at the time of your interview with Mr. Fithian, items in the list with items in the book. Where was Mr. Fithian when you so compared the items?

In the office at Bridgeton.

443. Was Mr. Fithian aware that you so compared the items?

I presume so. We were all there together.

444. Exhibit D 1 being shown to the witness, he is asked, See if any of the articles contained in D 1 are similar to the articles contained in the list you say Mr. Fithian showed you?

I see Cumberland sauce here. There may be others, but I can't remember.

445. What way do you mean there was a fortune in the Cumberland sauce as you have spoken?

I mean that by spending sufficient money in advertising judiciously, and having shrewd business men to manage the distribution and manufacture, &c. By doing that there is a fortune in it.

446. What do you mean by a sufficient amount of money? What amount?

I mean an indefinite amount dependent upon the amount of brains, ability, brought to bear upon it. Less money is required if ability is used; more money is required without ability.

447. How much do you consider would be a large quantity of this sauce to be sold in one year?

With its present popularity, $100,000 worth would be a large quantity. I doubt if half that could be sold; that, like the amount to be expended for advertising, depends upon the exertions of the parties.

448. Do you mean that amount of sales to be effected by one party?

Yes, if they choose to spend money enough; but there would be no profit in its present popularity.

449. Did Mr. Dudley have means enough to properly advertise that article to bring it before the public?

No sir.

450. Do you know how much money he had invested in his business?

I do not. The arrangement in regard to advertising was by Mr. Fithian and limited to Mr. Dudley. He advertised to the amount of his discount. He advertised to the extent allowed by that arrangement. He found his money was not coming back to him, so he stopped advertising.

A. S. CHITTENDEN.

Subscribed and sworn to, this 18th day of June, A. D., 1867, at Jersey City, before me,

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

HENRY B. DYER, a witness produced on the part of the defendants, being duly sworn, deposes and says:—

451. Mr. Dyer, where do you reside, what is your age and business?

I reside 138 East 27th street, New York city; am 42 years of age; not engaged in any business at present.

452. Do you know the parties in this suit; if so, how long have you known them?

I do. I have known them for several years.

453. Were you a member of the firm of Stout, Dyer & Co.

I was.

454. Who composed that firm—Stout, Dyer & Co.

John W. Stout, Henry B. Dyer and William W. Stout.

455. When and where did Stout, Dyer & Co. commence business as a firm?

February 1st, 1865, at 91 Barclay street, New York city.

456. What was the nature of their business?

Manufacturers and dealers in all kinds of hermetically-sealed goods, jellies, sauces and pickles, &c.

457. What do you mean by hermetically-sealed goods?

I mean all kinds of fruits and vegetables, and fruits, meats and fish put into tin cans and sealed up perfectly air-tight.

458. Were you engaged in that business in any way before February 1st, 1865? If so, where?

I was, both in Barclay street and Chambers street; 83 Barclay street.

459. Where did Stout, Dyer & Co. manufacture any of the goods you speak of?

91 Barclay street.

460. To much amount?

No sir.

461. How long did the firm exist as Stout, Dyer & Co., in that business?

About two months.

462. Had you, before February 1st, 1865, been engaged in manufacturing such goods yourself?

Not directly.

463. Had you, after the 1st of February, 1865, any experience in the manufacture of such goods yourself?

No, sir.

464. Who superintended the manufacture of such kind of goods for Stout, Dyer & Co.?

William W. Stout, and Mr. Daniel King.

465. What part of the store did they manufacture the goods you speak of?

The 2nd and 3d stories.

466. Do you know of your own knowledge, what goods they manufactured in the month of February?

Yes, sir.

467. What were they?

Pickles, tin cans, catsup; that's all I remember.

468. Was you with John W. Stout at Philadelphia and Bridgeton, and if so, when?

Yes, sir; about the 6th, 7th and 8th of March, 1865.

469. What led you and Mr. Stout to Philadelphia, first at that time?

To contract with Mr. Fithian, the complainant, to put up for us such goods as he manufactured.

470. Did you make any arrangement with him to put up such goods for you at that time?

No, sir.

471. Did you see him there, then at Philadelphia?

I did.

472. Why didn't you make the arrangement with him then, you speak of?

While making negotiations with him, by an offer to buy out his whole concern at Bridgeton.

473. Who made that offer?

I learned it was Mr. Fithian.

474. Who else was present there, beside you and Mr. Fithian, at Philadelphia?

Mr. John W. Stout, and Mr. Lorin J. Wicks.

475. In whose behalf were you and John W. Stout there acting; who for?

For Stout, Dyer & Co.

476. Did you hear Mr. Fithian make the offer you refer to, at Philadelphia?

Not the first propositions.

477. What then?

They were repeated to me in the presence of John W. Stout, Lorin J. Wicks and the complainant.

478. What were those offers you speak of, in the presence of Mr. Fithian?

He offered to sell us his real estate, merchandise and entire property used in the manufacture of hermetically sealed goods at Bridgeton, at just what it cost him, without any bonus.

479. Was the amount stated then?

He stated it would cost to purchase the entire property at Bridgeton, from $33,000 to $35,000.

480. What else took place at Philadelphia in reference to the offers you speak of?

He represented to us that as we had no suitable manufactory, that his works at Bridgeton were just what we wanted. There was nothing there but what we would have to buy if we put up factories. It was all in good order, and nothing there but what we could use at a profit in the business. He seemed to manifest considerable anxiety to sell out, and proposed we take the morning train and go down and look at the property, and talk the matter over further.

481. Did you go down; and if so, who went with you and where did you go?

We did. All of the above-named parties went down to Bridgeton the next morning.

482. Did Mr. Fithian show you the property that morning at Bridgeton?

He did.

483. What did he then represent as to the property to you?

He made about the same representations that he did in Philadelphia.

484. Did he show you any list or inventory of the property that morning at Bridgeton; if so, when and where did he exhibit it to you?

He did; about 11 o'clock in the morning, at the office on the premises.

485. In what was the inventory?

It was in a small square book.

486. For what purpose did he show you that inventory?

That we might see what tools, fixtures, merchandise and appurtenances there was on the premises.

487. For what purpose?

For the purpose of selling it to Stout, Dyer & Co.

488. What were the terms he told you he would sell you that property on?

He stated the terms should be as easy as we could wish, repeating the conversation we had in the depot in Philadelphia, stating that he did not want much money down, and that he would take a bond and mortgage for $10,000 to run the length of our co-partnership, and distribute the balance along in easy payments.

489. What amount did he state as the price he offered to sell you on, if any ?

By the book shown us, after making some deductions and addition, it would amount to $33,000, about.

490. What do you mean by some deductions and some additions ?

We proposed to deduct the cost of a lot of peaches and tomatoes, and there might be an addition to the tin and tin cans of a small amount.

491. What was the amount of the peaches and tomatoes you refer to ?

The peaches amounted to a little over $17,000, and the tomatoes to a little over $2,000.

492. Were the peaches and tomatoes mentioned in the book you have referred to ?

They were.

493. Would you know that book you speak of if you should see it again ?

I think I should.

494. Exhibit D 1 being shown to the witness he is asked, Do you recognize that book ?

I think this is the same book.

495. Does it have the inventory of the property in which you have spoken ?

It has.

496. In whose hand-writing is the inventory written, whether as to the writing the figures or the writing in lead pencil ?

I think it is all in the hand-writing of Robert M. Seeley.

497. Are you acquainted with Mr. Seeley ; if so, how long have you known him ?

I am. I have known him since the 8th of March, 1865.

498. Are you acquainted with Mr. Seeley's hand-writing ?

I am.

499. Who was present at Bridgeton when Mr. Fithian, as you say, showed you that book ?

John W. Stout, Lorin J. Wicks, Robert M. Seeley.

500. Where was William W. Stout at that time ?

91 Barclay street, New York city.

501. What did Mr. Fithian say, at that time, the figures opposite the articles mentioned in that inventory, represented?

He said they represented just what the goods cost him.

502. On what day of the month, did Mr. Fithian so show you that inventory at Bridgeton ?

I think it was the 8th of March, 1865.

503. Did Mr. Fithian sell any of the property referred to in that inventory; if so, when and to whom, and at what price?

He did; he sold it to Stout, Dyer & Co., on the 8th of March, 1865, for about $33,000.

504. What property did Mr. Fithian so sell?

All the real estate, tools, fixtures and merchandise manufactured and unmanufactured.

505. At the time you say Mr. Fithian so sold the property, what did he exhibit as referring to the property, and the means of arriving at the price of the property so sold?

He exhibited this book, D 1, and as a further means we had to take his word for the cost of all the articles; and as an additional motive, to show us that we were getting it cheap, he said Mr. Chittenden had seen this book, and examined all the figures.

506. What part of the book do you refer to, as containing the inventory of the property, you say Mr. Fithian so sold?

I refer to the latter part of the book, paged in pencil, from 1 to 25.

507. Mention the first line of the first page of that inventory.

Account of stock taken December 21st, 1864.

508. Mention the last item in ink, on the last page of that inventory.

Pens, ditto $20. $10.

509. How much at the time of the sale of the articles in that inventory, if any, did Mr. Fithian reserve from the sale you speak of?

Peaches and tomatoes in tin cans.

510. Are those two articles enumerated in that inventory?

They are.

511. What did Mr. Fithian at the time of the sale you refer to, exhibit as a means of arriving at the price of the property you say he so sold?

He exhibited this inventory.

512. Did you examine, at the time, that inventory yourself?

Not as carefully as I ought to have done.

513. Did you examine it at all?

Yes, sir; as much as our limited time would allow; we had such great confidence in Mr. Fithian's word, that at that time, I would have taken almost anything for granted, that he said.

514. What did he say at that time he sold you the property for, that you say he so sold you, as to amount?

About $33,000.

515. Did he mention any other figures besides $33,000.

He thought it might vary from that.

516. To what extent did he say it might vary from that?

To the extent of the difference between the tin and the tin cans.

517. Did you then buy the property of Mr. Fithian on his representations?

(Question objected to as leading.)

We did.

518. What were the terms of the sale as to cash, or how much cash did he require on the amount, if any?

$5,000 to be paid down, and $5,000 more a few days thereafter.

519. How long did Mr. Fithian then say, that that inventory of the property, had been made up in that book?

He said, it had been made up only a short time before.

520. Is the real estate referred to, in that inventory?

Yes, sir; in two places.

521. State the item you refer to, as mentioned in the book?

Buildings, boilers, piping, &c., as marked on last stock account, $6,000; and on page 21, real estate, $6,000.

And thereupon the examination was further adjourned to Wednesday, June 19, 1867, at 8½ o'clock, A. M. at the same place. At which time and place, the examination was resumed in the presence of the counsel of the respective parties.

522. What inducements besides representations as to price, did Mr. Fithian hold out to you in the negotiation you have spoken of respecting the property?

He stated that the factories were located in a large fruit growing country, and just the very place adapted to the business. That there was nothing on the premises but what we wanted, if we went into the business; it was all in good order and everything there manufactured and unmanufactured, we could dispose of at a handsome profit; that he had commenced the business in a small way and that it had grown to be a large business with him; he had made a good deal of money there; then was just the time to take the property, as there were opportunities for our making a very large amount of money.

523. What as to the quality or condition of the goods in question?

They were all in good order, and A, No. 1, goods.

523½. What in that line of business, among business men, is meant by the expression "A, No. 1," in reference to goods?

A, No. 1, meant as good as the particular article mentioned has ever been manufactured of that quality or kind.

524. How long a time were you negotiating with respect to this property at Bridgeton, on the 8th of March, which you refer to?

As near as I can recollect about four hours.

525. You have referred, in your evidence, to some transactions with Mr. Fithian at the Philadelphia depot. Ex-

plain what connection that had with the property in question.

It had considerable to do with my placing reliance on Mr. Fithian's statements. Previous to that time, I had a good opinion of Mr. Fithian; and to strengthen that I had an opportunity of talking to Mr. Wicks, whom I knew was well acquainted with Mr. Fithian's habits and character. I took Mr. Wicks one side, and had a conversation with him, in reference to Mr. Fithian's character, habits and standing. He spoke very highly of Mr. Fithian, and stated he was very rigid and particular to exacting some time; but I could rely on anything he said he would do, for his word, he considered, as good as his bond. Mr. Fithian was very respectably connected at Bridgeton, and stood high in public and private opinion there.

526. Who considered his word as good as his bond?

Mr. Wicks.

527. At Bridgeton, on the 8th of March, you refer to, what did Mr. Fithian say to you in reference to the property being bought by you and your associates in business? How did he signify to you, if so, that you had bought the property?

We told him we would take the property; he said that we could have it by fulfilling our part of the contract, and he would immediately have the proper papers made out.

528. What was your part of the contract?

That we were to pay him $5,000 down, $5,000 in a few days thereafter, give him a mortgage for $10,000 on the property to run during our copartnership; and the balance, after deducting Mr. Seeley's and Mr. Wicks' amounts from the gross inventory, was to be divided up into notes, and the time of payment to be made easy; I was anxious to have Mr. Fithian then make a written agreement with us, and pay him some of the money down on the spot; but Mr. Fithian said we need have no apprehensions, for he would do just as he agreed to.

526. What did he say about his word, if anything?

He said his word having been given, it was just as good as his bond, or any written agreement he might make.

527. What interest do you refer to of Wicks and Seeley?

I referred to the amount that Mr. Wicks and Mr. Seeley were to contribute towards the capital of the new concern, though in the closing of our bargain with Mr. Fithian, I made a mistake in saying Mr. Seeley's interest was to be deducted at that time mentioned, as we had not then determined that Mr. Seeley should have an interest.

528. Closing the bargain when; what time do you mean by then?

When Mr. Fithian said we could have the property, and we agreed to take it on the 8th of March, 1865.

529. What did Mr. Fithian tell you at that time was Mr. Wicks' interest in the property?

About $10,000; not over that sum.

530. Why did not you or Stout, Dyer & Co. pay the $5,000 you have spoken of, to Mr. Fithian?

We had not that sum with us then, and Mr. Fithian said that he would have the papers made out in a few days, and we could then pay him the money.

531. Was there any day fixed by the parties for the delivery of the papers and the payment of the money; if so, what day?

I think the day named was a week from the day we saw him, Mr. Fithian, in Philadelphia.

532. Where were the papers to be delivered and the money paid?

In Bridgeton, at Mr. Fithian's office.

533. Did you attend at the time appointed? If so, who were with you?

I did. Mr. John W. Stout was with me.

534. Who did you meet there, then, at Bridgeton?

Mr. Charles S. Fithian, Lorin J. Wicks and Robert M. Seeley.

535. Was William W. Stout there with you?

No sir.

(A deed from Charles S. Fithian and wife to the West Jersey Canning & Pickling Co., dated March 14, 1865, and recorded in Book C. H. of Deeds for Cumberland, page 132, offered in evidence and marked Exhibit D 16, on part of the defendant.)

536. Exhibit D 16 being shown to witness, he is asked: Have you seen that paper before?

Yes sir.

537. What papers did Mr. Fithian at the time you last named, have there, when you met him at Bridgeton, if any?

He didn't have any when we first met him on the 14th of March, that he showed us in his office at Bridgeton.

538. When did you first see D 16, and who had it then?

On March 14th, in Mr. Reeves' office. I think Mr. Fithian had it.

539. Were you with the other parties at Bridgeton on the 13th of March?

My impression is that we got there on the evening of March 13th.

540. Do you know whether Exhibit D 16 was written before you arrived at Bridgeton, or afterwards?

I think it was written before our arrival, as it was all ready to have the stamps put on when I first saw it, and the

stamps were then put on; but being wrong were taken off and new ones put on in my presence.

541. By whom were the new stamps put on?

By Charles S. Fithian.

542. When you say it was already, were the signatures then affixed to it?

All the signatures but Mr. Reeves'.

543. Exhibit D 5 being shown to witness, he is asked: When did you first see that Exhibit?

I thought I first saw it on the 8th of March, 1865, but afterwards saw it on the 14th of March, 1865, supposing it to be the same book I had seen before.

544. Question 543 repeated.

March 14th, 1865.

545. Where, and who had it?

At Bridgeton, in Mr. Fithian's office, and shown me by Mr. Fithian.

546. For what purpose did he show it to you, and what did he represent it to be then?

He represented it to be an inventory of the stock, tools, fixtures, real estate and appurtenances that we had bought of him on the 8th of March, 1865, representing it to be the same that we had seen on the 8th of March.

547. The same what?

The same inventory.

548. What part of the Book D 5 did he represent as containing the inventory? Give the pages or leaves.

The first part of the book paged in pencil from 1 to 21 inclusive.

549 Give the first line in writing of the first page, and the last line of the last page of the inventory in Exhibit D 5.

The first line is:

"Acct. Stock C. S. F. & Co., March 10, 1865."

The last line is:

"$50,979.13."

550. Do you know what is meant by C. S. F. & Co., in D 5?

Yes sir. Charles S. Fithian & Lorin J. Wicks.

551. Whose hand-writing is in that inventory D 5?

In the hand-writing of Mr. R. M. Seeley, who was C. S. Fithian & Co.'s bookkeeper.

552. Do you know in whose hand-writing the figures are in that inventory?

Yes sir—Mr. R. M. Seeley's.

553. What do the figures you mentioned, $50,979.13, at the end of the inventory, represent?

The total footings of all the property mentioned in this inventory.

554. At the time you say you and your associates met the

complainant at Bridgeton, on the 14th of March, 1865, what did Mr. Fithian say that the figures opposite the items in D 5 represented?

They represented just what each article mentioned had cost him, Mr. Fithian.

555. Did he show you at any time during the period since March 8th, 1865, the inventory on Book Exhibit D 1?

No sir, not since March 8th.

556. Did you see anything in the inventory in Exhibit D 1, on the 14th of March, when Mr. Fithian showed you D 5?

No sir.

557. You said that on the 14th of March, when you saw Exhibit D 5, you supposed it was Exhibit D 1. Why did you suppose so?

Because it was about the same sized and appearing book, footed up about the same amount, and in reading over the articles, the same articles were mentioned that we talked about and looked into March 8, 1865.

558. What do you mean by saying "it footed up about the same amount?"

I mean the book shown us on the 8th of March footed up $50,819.73, and the one shown us on the 14th of March, 1865, $50,979.13.

559. Did Mr. Fithian, then, on the 14th of March, tell you that the inventory in D 5 was not the same he had shown you on March the 8th in D 1?

He did not tell me that it was any different inventory.

560. Did he on March 14th tell any of your associates who went with you to Bridgeton, that the inventory in D 5 was not the same he showed in D 1 on March 8?

(Objected to.)

Not that I am aware of.

561. Why was Deed, Exhibit D 16, made by Fithian to the Corporation therein named?

Because Mr. Fithian suggested that we had better organize under that act of incorporation.

562. Who, did he say, had procured the passage of that act of incorporation, and when?

Mr. Fithian said that he had procured it through Senator Providence Ludlam, I understood, at the present Legislature then in session.

563. What was the name originally of the corporation?

I think it was "The West Jersey Canning Company."

564. Do you know if any change was made in the name, if so, what was it, and why made?

I think there was a change made. I think the change was made because we, being in the pickling business, thought it best that should we organize under the act of incorporation, to have the word "Pickling" in the corporate name of the concern.

565. Wherein does the inventory in D 5 differ from the inventory in D 1, as far as you now can discern?

(Objected to.)

It differs in alteration of prices, in increase of articles, and an addition of articles not mentioned in D 1.

566. Did you on the 14th of March, the time you refer to, see inventory D, 5, before you saw deed, Exhibit D 16, then?

Yes, sir.

567. Who then had the inventory D 5?

Charles S. Fithian.

568. Did you call his attention then to any difference which D 5, showed from the figures or inventory, respecting the property, which you say he had shown you on March 8th?

Yes, sir.

569. What was the difference, you say, you called his attention to?

I called his attention to the large difference in the quantity of tin cans, and tin and solder, and other things that I don't now recollect distinctly.

570 What difference, if any, did you call Mr. Fithian's attention then to, on March 14th, as to the gross amount you say, inventory in D 5, represented, and the price of the property, you say, he represented to you on March 8th?

I called his attention to the difference in real estate, tin cans; I called his attention to a difference of over $15,000.

571. What did Mr. Fithian say then, when you called his attention to the difference in the gross amounts that you speak of?

He said they had been making tin cans, and he had bought more tin, lead and spelter, and stock for making cans since the inventory was taken, as shown us March 8th, 1865.

572. What amount, Mr. Dyer, did he say of tin cans, tin, lead and spelter, and stock for making cans, he had purchased or made, since the inventory was taken, which you refer to, if any?

I don't recollect that he mentioned any amount, only that he satisfied me at that time, that that was the cause of the increase in the figures.

573. How did he so satisfy you then?

I simply took Mr. Fithian's word for that, and foolishly relied upon it.

574. Who else was present then, besides you and Mr. Fithian?

Mr. John W. Stout and Lorin J. Wicks.

575. What did Mr. John W. Stout say then in the presence of Mr. Fithian, as to the amount represented by the inventory in D 5?

I don't recollect what he said, but he, with myself, was greatly surprised at the increase of the figures.

576. If you do not recollect what he said, how did he express his surprise?

I meant I did not recollect his words, but he expressed his surprise at the large difference in the figures, by asking Mr. Fithian for an explanation.

577. How did Mr. Fithian give the explanation you speak of, to John W. Stout, then?

In the same manner he did to me, by the explanation of Mr. Fithian, above referred to.

578. Was there any money paid to Charles S. Fithian, in March 14, 1865? If so, how, by whom, and how much?

There was $5,000 paid him by a certified check, Exhibit D 11.

579. Exhibit D 11 being shown to witness, he is asked: Whose endorsements are on the back of it?

Stout, Dyer & Co., Charles S. Fithian & Co., and others I am unacquainted with.

580. To whom was Exhibit D 11 delivered by Stout, Dyer & Co.?

To Charles S. Fithian.

581. In whose hand-writing is the endorsement "Charles S. Fithian & Co." thereon?

In the hand-writing of Charles S. Fithian.

582. Has that check, D 11, been paid by Stout, Dyer & Co.?

It has been paid, and is so marked.

583. What other paper was given to Charles S. Fithian at the same time with D 11, if any; and if so, what was it?

We gave him a note for $5,000, dated March 14, 1865, at 21 days from date, which we paid by check marked Exhibit D 13.

584. Why was the check D 13 made payable to Lorin J. Wicks?

Because, I think the note was made payable at the Cumberland County Bank at Bridgeton, and we sent this check to Mr. Wicks to take the note with.

585. Whose endorsements on D 13, and in whose hand-writing are the endorsements, stating the names?

The first endorsement, "Lorin J. Wicks," is in his own hand-writing; the second endorsement, "Chas. S. Fithian & Co.," is in the hand-writing of Charles S. Fithian. The other endorsements I am unacquainted with.

586. How came D 11 to be dated March 13th, 1865?

That was the date that our book-keeper dated the check in our office in New York, and took the check to the bank for certification.

587. What other papers were given to Charles S. Fithian

if any, at the time you speak of, on March 14th, and by whom?

We gave him three bonds, Exhibits D 2, D 3, and D 4. We executed a mortgage for $10,000, also a chattel mortgage covering the bonds, and the ten thousand dollar mortgage.

(Exhibit No. 1 on part of complainant being shown witness, he continues.)

This is the mortgage. The bond secured by the mortgage is marked No. 2 on part of complainant. The chattel mortgage is for $23,900, and is marked Exhibit No. 3 on part of complainant.

588. How came Exhibit No. 3 to be executed, and at whose request?

Mr. Fithian said that he would like us to give it to him, and we executed it at his request.

589. How were the principal sums named in Exhibits No. 1 and No 2, Exhibits D 2, D 3 and D 4 made up?

I don't understand by how they were made up.

590. What do the principal sums in No. 1, No. 2, D 2, D 3 and D 4 amount to?

$23,900.07.

591. What was that amount—$23,900.07 the result of?

The result of cost of part of the property.

592. What is the other part of what you say was the cost of the property?

The $5,000 in cash paid him—the note at 21 days for $5,000 paid him, Mr. Seeley's capital of $5,000, Mr. Wicks' capital of $12,000; making in all $50,900.07, being the amount of the cost of the entire property bought of Mr. Fithian.

593. How does the amount $50,900.07 you speak of compare with the gross amount of the inventory or statement of the property in D 5?

(Objected to.)

It is a few dollars less than the amount named in the inventory.

594. Where did you get the seven cents you speak of in your answer?

I made a mistake of seven cents in my footings. The correct amount should be $50,900.

595. What do you mean by saying "being the amount of the cost of the entire property bought by Mr. Fithian?"

I mean the gross footing of the inventory marked D 5.

596. You say in your answer that "it is a few dollars less than the amount named in the inventory." Name the amount and why it was less?

The difference is $79.13. Mr. Fithian liberally deducted the $79.13 to make it even dollars.

597. How did he deduct the $79 13—was it paid to him or not?

He subtracted it from the gross amount of the inventory; it was not paid to him.

598. Why were Exhibits No. 1, No. 2, and No. 3 executed by Lorin J. Wicks?

Because he was President of the West Jersey Canning and Pickling Company.

599. Who were the stockholders of the Company at the time Lorin J. Wicks signed the Exhibits you refer to?

Lorin J. Wicks, John W. Stout, William W. Stout, Robert M. Seeley, Henry B. Dyer; these were all the stockholders at that time.

600. How long had Lorin J. Wicks been then elected President of the corporation?

About two hours.

601. What other corporate act has the corporation done since Lorin J. Wicks signed the Exhibits you have last referred to?

Since that date he executed a deed of the property, Exhibit D 15, to John W. Stout and others.

602. What other act, except the deed last referred to, has the corporation done?

I think that is the last corporate act of the Company.

603. Who transacted the business connected with the property in question, after you say Mr. Fithian sold it on March 14th, and under what name?

Stout, Dyer & Wicks, that being the name of the firm?

604. How were the Exhibits D 2, D 3, and D 4, paid off? and by whom? and when?

Exhibit D 2 by Stout, Dyer & Wicks, check marked Exhibit D 12.

Exhibit D 3, by Stout, Dyer & Wicks, notes marked D 7, and D 10.

Exhibit D 4, by Stout, Dyer & Wicks, notes marked D 8, and D 9.

605. The Exhibits D 7 and D 10—whose endorsements are on those Exhibits, and in whose hand-writing are those endorsements?

D 7 is endorsed by Charles S. Fithian, in his hand-writing; there are other endorsements on it that I don't know. D 10 is endorsed by Charles S. Fithian in his own hand-writing; there are other endorsements on it unknown to me.

606. Were you present when Exhibits D 7 and D 10 were given to Charles S. Fithian?

No sir.

607. Is there any endorsement on Exhibits D 7, and D 10, in the hand-writing of Stout, Dyer & Wicks, or of any of the members of that firm?

There is no other endorsement by the members of that firm on them.

608. In whose handwriting are the endorsements on Exhibits D 8, and D 9.

In the hand-writing of Charles S. Fithian; the endorsement "Chas. S. Fithian" is in the hand-writing of Charles S. Fithian; the other endorsements I don't know.

609. Exhibit D 4 being shown witness, he is asked, Do you know in whose hand-writing the receipt is, which is endorsed in Exhibit D 4, and whose signature is it? 10

Yes sir, it is the signature of Charles S. Fithian, and in his hand-writing.

610. Were you present when Exhibit D 4 was paid off by the money and notes stated in that receipt?

No sir.

611. Were you present when either of Exhibits D 2, D 3 and D 4 were paid off?

No sir.

612. Exhibit D 12 being shown to witness, he is asked—What does that refer to? 20

Refers to a note given in settlement of D 2 bond.

613. Exhibit No. 4, in part of complainant, being shown to witness, he is asked, Have you seen that agreement before? If so, when and where?

I have seen it before, in this office, about ten days ago, during the examination of Mr. Stout, on the 6th and 7th of June, 1867.

614. When before then did you first see that Exhibit No. 4?

I have no recollection of ever seeing it before June 6th, 1867. 30

615. When after March 8th, 1865, did you hear or understand that Exhibit D 5 did not contain the same inventory with respect to the property in question, as stated in Exhibit D 1?

During the summer of 1865, at Bridgeton, and in New York city, at our office in Barclay street.

616. At the time Exhibits D 2, D 3 and D 4 were given, what interest did Lorin J. Wicks and Robert M. Seeley represent in the property in question?

Mr. Wicks represented an interest of $12,000.00. Mr. 40 Seeley represented an interest of $5,000.00.

617. How came Mr. Seeley to represent that amount of interest you speak of?

Mr. Fithian transferred $5,000.00 to Mr. Seeley, and subtracted it from the cost of the inventory.

618. From what inventory?

From the inventory of the property shown us, and which we purchased March the 8th, 1865, as per D 5.

619. How was this interest of Mr. Seeley of $5,000.00 paid to Mr. Fithian? 50

I do not know what articles of agreement were made between Mr. Fithian and Mr. Seeley, or how Mr. Seeley paid Mr. Fithian.

620. Is that $5,000.00 included in either the $5,000.00 you say was paid to Fithian by Stout, Dyer & Co., on March 14th, or in the note of $5,000 you say was given to Fithian, or in Exhibits D 2, D 3 and D 4, or in the chattel mortgage, Exhibit No 3, in part of complainant, or in Exhibits No. 1 and No. 2, on part of complainant?

No sir.

621. How was the $12,000.00 interest you say Mr. Wicks had, satisfied to Mr. Fithian?

Mr. Fithian subtracted it from the amount of inventory, Exhibit D 5, of the property we bought of him on March 8th.

622. What items in Exhibit D 5, either as to quantity or quality, or price, as set down in D 5, are different from the inventory D 1? State them as far as you know.

The alterations in the costs of articles mentioned in D 1, are in part as follows:

Twelve cooking tanks, page 1, D 1, put down at $144.00. In D 5, altered to $180.00—difference $36.00. 6 copper kettles, put down page 9, D 1, at $150.00, are charged on page 1, D 5, at $300.00—difference $150.00. 732 five gallon cans, page 5, D 1, put down at $183.00 are put down on page 3, D 5, at $366.00—difference, $183.00. 1016 half-gallon glass bottles, put down page 5, D 1, at $80.00, charged page 3, D 5, at $211.66—difference, $131.66. 20 stools, put down page 6, D. 1, at $10.00, charged page 4, D 5, at $20.00—difference, $10.00. Stove and pipe, put down page 6, D 1, at $13.25, charged page 4, D 5, at $18.25—difference, $5.00. 112 wooden trays, put down on page 8, D 1, at $22.40, charged on page 5, D 5, at $33.60—difference $11.20. 100 galvanized iron trays, put down page 9, D 1, at $175.00, charged on page 6, D 5, at $125.00—difference $50.00.

One case of drawers put down in D 1, at $25, charged on page 8, D 5, at $35—difference, $10. 3000 asparagus cans, page 1, D 1, put down at $480, charged on page 9, D 5, as being 4,000 in number at $640—difference, $160. On D 1, Mr. Fithian charges us 10 cents a piece for tin cans; on D 5, he has charged 11 cents a piece, for 55,717 cans—making a difference of $557 17. One press charged on D 1, page 2, $50, charged page 10, D 5, $70—difference, $20. Twelve sets of round dies charged page 2, D 1, $96, charged D 5, page 10, $240—difference $144. 25 gallons of peach brandy, page 11, D 1, charged $33, charged D 5, page 11, $62 50—difference, $29 50.

203 empty barrels, charged page 11, D 1, $305, charged page 11, D 5, $507 50—difference, $202 50. 200 pounds Cayenne, charged on page 17, D 1, $150, charged page 11, D 5, at $160—difference, $10. 50 pounds mace, charged, page

17, D 1, $50, charged page 11, D 5, $85—difference $35. 52 pounds of Lovage seeds, charged page 18, D 1, $38 54, charged page 12, D 5, $65—difference, $26 46.

Almost all the prices of the herbs and spices are altered from the prices as shown us, and will amount to a considerable in the aggregate; but the account is so long that I omit the items of each. 1,765 gallons of jelly juice at 30 cents per gallon, as charged on D 1, amounting to $529 50, has been altered to 50 cents per gallon on D 5, page 13, carried out $882 50—difference, $353.

50 gross of pint oval bottles, page 16, D 1, charged $250, charged page 13, D 5, $400—difference, $150. 145 gallons of juice in bottles, charged page 13, D 1, $85 50, charged page 13, D 5, $145—difference, $59 50. 5,392 boxes charged page 19, D 1, $1,078 40, charged page 16, D 5, $1,261 58—difference, $183 18.

There was $7,219 worth of Cumberland sauce that he should have taken fifty per cent. off as per agreement instead of forty per cent., making a difference of $721 90.

There were of articles entirely worthless to us, as follows:

One wooden bather, $10; a lot of muslin sash, $75; a lot of hot bed boards, $25; a lot of printing plates, $152 50; a lot of bottle moulds, $110; 1 barrel of bone dust, $10; 1 barrel of sage, $12 50; 65 pounds of ground nutmegs, $97 50; 2 barrels of hominy, $14; 763 gallons of tomato pulp, $152 60: 1 lot of labels, $945; Cumberland sauce show cards, $125; 11-12 of a dozen oyster catsup, $1 83; 35 dozen of apple jam, $87 50; 20 dozen of zea-mays, $40; 1 old door frame, $1; 1 wooden rack, $3; 8 tumbler cap dyes, $24.

There were of articles charged us in Exhibit D 5, that should have been included in the price of the real estate as it was fixed real estate as follows: tinman's cupboard, $6; engineer's cupboard, $2; flag staff and halyards, $6; awning and crane, $6; work benches in tin shop, $100; 12 fixed benches, $12; 7 fixed benches, $10.50; one label case, $40.

There were of articles partly worthless, or charged at more than their value or cost as follows:

A lot of glass sash charged $137 50, worth $25—difference, $112 50. 3,280 gallons of walnut juice, charged $2,460, worth $328—difference, $2,132. 680 gallons of walnut catsup, charged $938 40, worth $238—difference $700 40. 75 dozen of oval catsup, charged $150. 1,888 dozen pints tomato catsup, charged $2,360. 504 dozen quarts tomato catsup, charged $1,008.

This catsup was made of rotten pulp, and so salt that it was worthless. We sold a good deal of it at auction, for what we could get—to get rid of it—as what we had sold damaged our trade largely.

One iron bather put down at $10, worth 50 cents. One case of drawers put down at $35, worth $25.

A large quantity of the jelly juices was damaged by being put into rusty and leaky cans, say $300 worth.

There were of goods and real estate put down at more than their actual cost as follows:

Five tomato tanks, charged $500, worth $200. Two tomato tanks, charged $100, worth $50. 550 peach crates, charged $550, worth $137 50.

He charged us on D 5, 62 cents more per thousand for boards than in Exhibit D 1. He charged us on D 5, 50 cents per thousand more for planks than he did on D 1.

Though $12,000 were the figures named for buildings, sheds, office, lot of ground, engine house, gas pipes and fixtures, boilers, steam-pumps, and belting, and shafting, as being what they cost Mr. Fithian, as represented by him, yet by his books they did not cost $6,000, making a difference of more than $6,000 to us.

And thereupon the examination was further adjourned to Thursday, June 20, 1867, at 10 o'clock, A. M., at the same place.

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

There were of articles in D 5 and not charged in D 1, 550 peach crates, $550; flag-staff and halyards, $10; one awning, iron and frames, $6; two set of round eyes $45, making $611.

Mr. Fithian had agreed to take off as much discount on the Cumberland sauce to us as he ever had to any one, though he had taken off of discount on Cumberland sauce to Messrs. Archer & Reeves, of Philadelphia, and Messrs. Griffin & Proach of New Orleans, and Merrill & Shute of Chicago, a discount of fifty per cent., as shown by Exhibit D 1, though in D 5, he only took off to us a discount of forty per cent. on Cumberland sauce.

The peach crates above referred to, though charged to us by Mr. Fithian as costing him $1 each, only cost him 25 cents each; and in the book Exhibit D 1, in the latter part of it, they are put down at 50 cents each, though not in the inventory, as shown us March 7th and 8th.

The real estate is entered twice at $6,000 in D 1.

In regard to the walnut catsup spoken of above, it would only cost 25 cents per gallon to make walnut juice into walnut catsup. That is all what I want to answer on that question.

623. In whose writing is the charge you refer to of 50 cents each for peach crates in D 1? State the item.

It is in the hand-writing of Mr. R. M. Seeley, Mr. Fithian's book-keeper.

The item is:

"550 peach crates, - - - .50 - - - $275.00."

624. In whose writing is the item with reference to real estate entered twice you speak of? State the items.

Once in the hand-writing of R. M. Seeley, as follows:—"Buildings, boilers, piping, &c., as marked in last stock account, $6,000 on page 10 of D 1.

And again on page 21, in the hand-writing of C. S. Fithian, I think, as follows:—

"R. Estate, - - - - - - - - - - $6,000.00."

625. Show last stock account in D 1, above referred to. Give its date as expressed in D 1.

"Stock account, Feb. 1, 1864."

626. State if real estate and fixtures are set forth in that account?

They are, on the 2d page.

627. Give the first item and amount, and the last item and amount, referring to the real estate and fixtures on that 2d page.

"Main building, sheds and office, well and pump, - - - - - - - - - $1,200.00."

The last item—

"Steam and gas piping and fixtures, belting and shafting, - - - - - - - $1,000.00."

There are articles on this page of tools and fixtures.

628. What articles of tools and fixtures?

"Small boiler, engine and pump, - - - $125.00."
"One well and pump, - - - - - - - 75.00."
"Six copper kettles, - - - - - - - - 150.00."
"Two iron kettles, - - - - - - - - 40.00."
"Two plain do. do. - - - - - - - - 10.00."

Amounting in all to, - - - - - - - - $400.00."

629. In whose hand-writing are the items on that 2d page, if you know?

I think it in the hand-writing of C. S. Fithian.

630. What is expressed as the total amount of the items on that 2d page?

$7,225.00.

631. Is the real estate referred to in any other place in Exhibit D 1?

It is.

632. Give the expression referring to real estate, also in what part of the book it is?

The expression is as follows:

"Real estate, boiler, engine, belting, piping, benches, tables, kettles, pumps, shafting, &c., - - - - - - - - - $7,000.40."

It is found under stock account dated January 1, 1863, in the hand-writing of Charles S. Fithian.

633. On what page is that item from, the page having "January 1, 1863," on it?

19th page.

634. How do you know that the item is in the hand-writing of Charles S. Fithian?

Having seen Charles S. Fithian's hand-writing frequently, this writing resembles the hand-writing of Charles S. Fithian, that I have seen.

635. Why did you take the word or representation of Mr. Fithian as to the quality of the property in the negotiation or sale respecting the same?

Because, relying on his word, we thought best not to unpack the goods, and examine their contents, as by doing so, every bottle, can or jar so opened and examined would become worthless thereby.

636. In the articles you have mentioned as partly worthless, or charged at more than their value or cost, what do you mean by saying "charged at the prices you have spoken of, and worth the amounts you have spoken of?" What do you mean by the expression "worth?"

I mean by "charged" as the price Mr. Fithian represented to us that they cost him, and by "worth," what they would cost us to produce the same articles; and by "worthless," that they were of no value to us or any one else for the same business purposes.

637. How do you know what the peach crates cost Mr. Fithian, when you say they cost 25 cents each?

By personal examination of the parties directly employed in their manufacture, and Mr. Fithian's books.

638. What books?

The books he kept his accounts in at Bridgeton.

639. Can you give the name of those books?

No sir; not the particular names of those books. Mr. Seeley made the examinations at my request, also Mr. Wicks.

640. Where are those books now, if you know?

At Bridgeton. I don't know any particular place they are at Bridgeton. From what I have learned lately, I presume they are in the possession of Mr. Fithian now.

641. What do you mean by saying "walnut juice was worth $328," in your answer to question 622?

In my endeavors to see if we could get anything for the walnut juice if we made it into walnut catsup, and what additional expense it would be to make the juice into catsup, I found it to be 25 cents per gallon, making it cost us, allowing the juice to be worth 10 cents a gallon, 35 cents per gallon for the walnut catsup.

642. Do you of your own knowledge know what the walnut juice cost Mr. Fithian?

Only by information received from Mr. Wicks, the maker

of it, and Mr. Seeley, who kept the cost of each article manufactured.

643. Did Mr. Fithian ever tell you what it cost him?

He told me what it was worth in a conversation had with him in relation to it, in our office, 91 Barclay street, New York.

644. What did he tell you it was worth?

Not more than 15 cents per gallon.

645. Did he, or not, at that time, tell you what it cost him?

He did.

646. What?

15 cents a gallon.

647. When was it he said so, as near as you can tell?

I think it was about the middle of June, 1866.

648. Who else was present besides you and Mr. Fithian, then?

Mr. John W. Stout, A. L. Clements and Joseph H. Stout.

649. What do you mean by saying in your answer to question 622, "That there were articles charged that should have been included in the price of the real estate?" How do you know they should have been included in the price of the real estate?

I examined personally, myself, and found the articles named fastened to the buildings.

650. What do you make the total amount of the differences you have spoken of in your evidence, respecting the amounts of the items of the real and personal property in question?

I make the total amount $17,636.56, though there are quite a number of other articles that I have not enumerated, that in the aggregate will amount to several hundred dollars more.

651. What other articles do you refer to in your last answer?

I mean spices and herbs, and some other articles I don't remember at this moment.

652. Mention some of them as expressed in the inventory in D 1, and if any, in inventory D 5.

In D 1, cinnamon is put down as costing 95 cents a pound, and in D 5 put down as costing 50 cents a pound. Ginger, put down in D 1 at 70 cents a pound, and in D 5 at 60 cents a pound. White pepper, put down in D 1 at 50 cents a pound, that is put down in D 5 at the same. Cayenne pepper, put down at 75 cents a pound in D 1, entered at 80 cents a pound in D 5. Mace, entered in D 1 at a dollar a pound, is put down in D 5 at $1.70 a pound. Allspice, entered in D 1 at 45 cents a pound, charged in D 5 at 50 cents a pound.

Summer savory, entered in D 1 at 40 cents a pound,

charged in D 5 at 45 cents a pound. Ginger root, charged in D 1 at 50 cents a pound, charged in D 5 at 70 cents a pound. Thyme, charged in D 1 at 40 cents a pound, charged in D 5 at 45 cents a pound.

653. Where do you find in D 1 that cinnamon is charged at 95 cents a pound? See if you were looking or calling off from the correct book, when you called that item off.

I called it out right in D 1, and wrong in D 5.

654. What do you find it in D 5?

I don't find cinnamon entered in D 5. I mistook the word "cummin" for cinnamon in D 5.

655. Where do you find ginger put down in D 5 at 60 cents a pound?

On the 6th line, page 12.

656. What is the full expression?

"14 lbs. Afr. ginger, 60, $8.40." I mistook that for ground ginger.

657. Do you find in D 1 the same identical item?

I do not.

658. What do you mean by saying in the first part of your answer to question 652, "That ginger is put down in D 1 at 70 cents a pound?"

I mean that there is 80 pounds of ginger put down in D 1, page 17, at 70 cents a pound, carried out, $56.00

659. Do you find in D 5 the same identical item you have last referred to in D 1?

No sir.

660. Are these items you have referred to, in answer to the question 652, comprised in either of the inventories in D 1 and D 5?

Yes sir.

661. What do you make the difference existing, after deducting from the total amount of the inventory in D 5, the total amount of differences you have before spoken of?

$33,263.44.

662. How do you figure the result stated, $33,263.44? Give the items.

I subtract from the gross footing of the inventory in D 5 of $50,900.00, the totals of some of the differences I have mentioned, amounting to $17,636.56.

663. Give us the result of the difference left of the inventory in D 1, after deducting the amount of what Mr. Fithian said he reserved from the sale.

The difference, $31,523.75.

664. Whose figuring and statement is contained on page 20 of D 5, and where was it done, and what does it represent?

It is my statement and figuring, and I made it up for the purpose of making proper entries in the firm's books in New York, and I do not recollect the exact day that I made the

entry; and it represents the manner in which we settled with Mr. Fithian for the property bought of him, amounting to $50,900.00.

665. Upon whose representations was that statement made up, as to its amounts, and from what source did you get the figures?

From statement, made by Mr. Fithian, he having represented to me, that $50,979.13, was the correct amount of all the property we had purchased from him.

666, You have mentioned in reference to Cumberland sauce, something respecting a deduction or discount of 50 per cent., what item or items do you refer in D 1, respecting it? Identify the item or items.

I refer to the items on page 14, lines 16, 17, 23 and 24.

667. Explain what "A & R" mean in the items you refer to?

A & R mean Archer & Reeves.

668. Are there any other persons referred to in any of the items referred to?

Yes, sir.

669. Name them.

Griffin & Proach, Merrill & Shute.

670. In these items, what was the discount according to that inventory, allowed by Mr. Fithian, to these several persons on Cumberland sauce, therein mentioned?

50 per cent. discount.

671. What does the item on page 15, line 23, of inventory in D 1, mean?

It means that Griffin & Proach had a bill of Cumberland sauce, amounting to, in the gross amount, $900, from which he took a discount of 50 per cent.

672. How do you know that he took the discount of 50 per cent., and who took it; and whom do you mean by he?

It being done here, in the hand-writing of the book-keeper of Mr. C. S. Fithian, I believe it must be correct; and I believe Mr. Fithian authorized him to take off that amount, or it would not have been entered here.

I mean by "he," Charles S. Fithian.

673. What did Mr. Fithian say to you, respecting that item, if anything?

He told us he would transfer that account to us, if we wished it, but we declined.

674. Is that item, last referred to, included anywhere in the inventory in D 5?

It is not.

675. Have you enumerated that item last referred to, amongst the differences you have before specified?

I have not; it is among those that I mentioned that I had not named, which would amount to several hundred dollars.

676. The figuring or statement, on page 20 of D 5. What

connection does it have, if any, with the bonds and mortgages, or payments you have heretofore refered to concerning the property ?

It is a statement of the correct amounts of the bonds, mortgage, note and cash given Mr. Fithian, the complainant.

677. By whom? What bonds and mortgages do you refer to ?

I refer to the bonds and mortgages given by the West Jersey Canning & Pickling Co. to Charles S. Fithian.

678. State what part of that figuring refers to the bonds and mortgages, if you can.

On page 20, commencing with line 5 :

"Chattel mortgage, - - - -	$10,000.00"
"Cash, March 14, - - - -	5,000.00"
"Note at 21 days from March 14, 1865,	5.000.00"
"Bond due Dec. 1, 1865, - -	4.633.33"
"Bond due Feb. 1, 1866, - . -	4,633.33"
"Bond due April 1, 1866, - -	4,633.34"
Total, - - - - - -	$33,900.00"

679. What does the expression "Chattel and mortgage" in that item mean? Explain what does it refer to?

It refers to the mortgage given to Mr. Fithian for $10,000 on the real estate bought of him.

680. What do you mean by your answer to question 615?

I mean at that time I became aware that some of the barrels of Cumberland sauce that we bought of Mr. C. S. Fithian were entirely empty.

681. At the time you refer to in that answer did you know of Exhibit D 1 being different from Exhibit D 5?

(Objected to as leading.)

I did not.

682. What led to the conversation or reference to the Cumberland sauce referred to in your answer to question 680 ?

Mr. Seeley reported that the barrels said to contain Cumberland sauce were empty, and that led to the conversation.

683. Said by whom ?

Said by the inventory and by Mr. Fithian.

684. Did you have Exhibit D 1 and D 5 in June, 1865, to compare at the time of that conversation you refer to ?

No sir, we only had D 5.

685. When was the first time you was informed that there was a different book referring to the property in question than D 5, after March 8, 1865 ?

The latter part of December, 1866, I learned there was another book containing the inventory of the property we bought March 7th and 8th, 1865.

686. How many times was you to Bridgeton after March 8th, 1865?

Three or four times, I think.

687. At either of those three or four times did you see D 1 at Bridgeton, that you know of, after March 8th, 1865?

No sir; I never saw D 1 after March 8th, 1865, until about the latter part of March, 1867.

688. How did you in the transactions of the firm's business, arrive at the costs of the articles manufactured at Bridgeton, or sent from Bridgeton to your store in New York?

Mr. Seeley, who kept the books at Bridgeton, sent us a statement of the cost on each article manufactured at the factories and shipped to New York or elsewhere.

689. What led the firm to believe that the prices set down in Exhibit D 5 were unsatisfactory to them?

The difference in the cost of the articles manufactured.

690. How came the firm to make inquiry respecting the prices set down in the inventory D 5 being correct or incorrect, as to the cost of the property?

By comparing the prices; for instance, when we make jelly juices, and their cost was reported to us, we referred to D 5, and we found the price was considerably less than there charged.

691. Reported from where, and by whom?

From Bridgeton, reported by Mr. Seeley and Mr. Wicks.

692. What price, less than what?

Less than the charges in the inventory, D 5.

693. What price do you refer to? Do or do you not mean by price the original cost of the article referred to?

(Question objected to as leading.)

I mean by prices the figures set down opposite each articles in inventory D 5, the original cost having been kept back from us by Mr. Fithian.

694. Did you inquire on behalf of the firm, when you discovered that the cost of some of the articles you speak of was less than the price of some of the articles you speak of, the reason of such difference?

Yes sir.

695. Of whom?

Of Mr. Seeley and Mr. Wicks.

696. Any one else?

Yes sir, I tried in all kinds of ways to find out the cost of the different articles we manufactured and had bought of Mr. Fithian.

697. Do you know when John W. Stout first discovered this difference which you refer to in your last answer; if so, when and in reference to what article?

(Question objected to.)

We both discovered the differences about the same time,

but Mr. Stout discovered D 1, some time in December, 1865, in the office at Bridgeton, N. J.

698. What did Mr Fithian say respecting the Cumberland sauce, in regard to the fault you found respecting that article?

He said it could not be made for less. We told him we were sure it could be made for less, and that he had charged us more by a great deal for some of the materials it was made of than what it really cost him, and we would like him to think it over and make us a reasonable deduction.

699. What did Mr. Fithian say respecting the walnut juice, in New York, after March 14th, 1865, the time referred to in some of your former evidence?

(Objected to as repetition.)

We told him that he had charged us 75 cents per gallon for walnut juice, when it could be manufactured at a cost of from ten to fifteen cents per gallon. He replied that it was the walnut catsup that he had charged us 75 cents a gallon for, and that walnut juice would not cost more than from ten to fifteen cents a gallon to manufacture it, and that he did not want any time for reflection, but could decide the matter that moment in regard to a deduction.

700. Do you remember the time of this last conversation that you refer to?

It was about the middle of June, 1866.

701. How do you say then that Mr. Stout discovered D 1 some time in December, 1865?

I don't wish to be understood as saying that he discovered it some time in December, 1865, but I mean to say that he discovered D 1 in the office in Bridgeton, in December, 1866.

702. What walnut juice was referred to in this last conversation?

The walnut juice bought of Charles S. Fithian, on the 7th and 8th of March, 1865.

703. Was there any property transferred on the 14th of March, 1865, by Mr. Fithian, that was not included in his papers that he executed on that day?

Not to us.

704. Do you remember of any other paper being executed by Fithian on that day, except the deed Exhibit D, 16?

Yes sir, he executed an article of agreement, meaning a bill of sale, which is offered in evidence and marked Exhibit D 17.

(Execution admitted by complainant's solicitor.)

705. Was there any other property transferred by Charles S. Fithian on March 14th, except what is referred to in D 16 and D 17?

I think not.

706. Would you know if there was any other property transferred then except what is in those two papers?

I know of all the property that was so transferred. Those two papers, Exhibits D 16 and D 17, cover it all.

707. Do you know if the tomatoes which you say Mr. Fithian reserved, were on the premises or in the factory.

I do not know certainly.

708. Was there any property transferred by Mr. Fithian at the same time, by any writing to the firm of Stout, Dyer & Co.?

No sir.

709. Who were the officers of the corporation you refer to, at the time of the execution and delivery of D 16 and D 17?

Lorin J. Wicks was President, John W. Stout was Treasurer, H. B. Dyer was Secretary.

710. How long had they then been such officers?

About two hours.

711. For what purpose were the papers D 16 and D 17, executed to the corporation?

For the purpose of conveying the property bought by Stout, Dyer & Co., of Charles S. Fithian, to the corporation.

712. Do you know what was the object of conveying the property to the corporation, and who suggested such conveyance?

Because Mr. Fithian had suggested it would be so much better for us to organize under this act of corporation, that we had so organized, and thus the property was conveyed by Charles S. Fithian to the West Jersey Canning and Pickling Company.

713. From what source did the corporation derive its capital stock at the time of the execution and delivery of D 16 and D 17, if any?

From the members of the corporation who had subscribed for this stock.

714. In what name did the corporation transact its business in respect to manufacturing or selling any of the property in question, after March 14th, 1865?

(Question objected to as irrelevant.)

All their business after that date, was done in the firm name of Stout, Dyer & Wicks.

715. Was there any property that was transferred or conveyed by Mr. Fithian to the corporation that was not under the control or at the disposal of Stout, Dyer & Wicks, at all times?

No sir.

716. What were the papers D 16 and D 17, considered by the corporation or by Stout, Dyer & Wicks, as to the form of the same?

They were considered legal documents.

717. Did the corporation at any time, as a corporation, actively operate with any of the property except in the transfer D 15?

(Objected to.)

No sir.

(Paper purporting to be a deed from Dyer, Wicks & Seeley and their wives, to John W. Stout, dated December 18th, 1866, is offered in evidence, and marked Exhibit D 18.)

718. Witness is asked: Is the description of property in that deed, the same as in D 16?

Yes sir.

(Paper purporting to be a deed from Wm. W. Stout and wife to John W. Stout, dated November 1st, 1865, is offered in evidence and marked D 19.)

719. Is the description in D 19, the same?

Yes sir.

720. How often did you act as an officer of that corporation?

I think only twice.

721. When?

Both times on the 14th of March; once in the office of the factory at Bridgeton, and once in the office of Mr. Reeves in Bridgton.

722. Were there any directors of that corporation regularly elected at or after the delivery of the deed by Charles S. Fithian and wife?

I don't think the directors were ever regularly elected.

723. Do you know how often the Board of Directors of that corporation met or did any corporate act, as a Board of Directors, after you became associated with Mr. Wicks?

What is called the directors and officers of that corporation never met but twice to my knowledge, though I was what was called the Secretary.

724. Did any Board of Directors of that corporation at or after the time you became associated with Mr. Wicks pass any resolution effecting its business, or in any wise relating to the property in question?

No resolutions in relation to any property were passed at any time.

725. Do you know if that corporation had any regular corporate seal or not?

They had no regular corporate seal or seal of any kind.

726. Do you know whether Stout, Dyer and Wicks paid any taxes respecting the manufacturing of any of the property in question; if so, when?

They did. They paid their Internal Revenue taxes both at

Bridgeton and New York at all the proper times required to do so by law.

727. Do you know if there was any arrangement with Mr. Fithian and Stout, Dyer & Wicks, or the corporation, respecting the taxes for the manufacturing of the articles in question?

I do. There was such an agreement among the innumerable papers we signed.

728. Exhibit D 14 being shown to witness, he is asked: What taxes are referred to in that paper?

Taxes upon real estate.

729. Do the taxes referred to therein refer to anything else beside real estate?

Yes sir; they refer to all taxes that may be assessed in any way upon the property.

730. What does the expression in that article of agreement mean which says "that all taxes which may be in any way assessed upon said business or property?"

I suppose it means that all United States revenue taxes that may be assessed upon the goods that we manufactured there, on the business or property, and also all State and county taxes.

731. Do you notice the date of that agreement?

Yes sir; it is dated March 14th, 1865; both agreements.

732. What was the nature of the taxes referred to in this agreement that affected the business referred to in this agreement, Exhibit D 14, if you know?

We had to pay a license to the United States Government as manufacturers, also a per centage on all goods sold and delivered from our factory at Bridgeton.

733. Were there any taxes paid after March 14th, 1865, on any goods sold and delivered from the factory you speak of? if so, when, if you know the times, and by whom?

Yes, sir; there was taxes paid on all goods sold, made up the first of each month, and paid by Mr. Seeley at Bridgeton to the Collector of Internal Revenue, as per receipts on file, in the office at Bridgeton.

734. You say by Seeley; who did he pay those taxes for?

For Stout, Dyer & Wicks.

735. Do you know when those goods you speak of were manufactured, whether before or after March 14th, 1865, or after or before March 8th, 1865?

I know our returns were made and taxes paid promptly and regularly; but upon what particular kind of goods, and when manufactured, I can't specify from my memory, unless reference is made to our books.

736. Whose books do you mean by our books?

I mean the books of Stout, Dyer & Wicks.

737. Where are those books now?

In New York city, and Bridgeton, New Jersey.

738. Do you know if any of those taxes you say were paid in respect to goods sold and delivered by Stout, Dyer and Wicks, were paid on any of the goods Mr. Fithian sold and contained in the inventory D 1?

Yes, sir; a large amount.

739. By whom were such taxes you last speak of paid?

By Robert M. Seeley, for Stout, Dyer & Wicks.

740. Can you give the amount of such taxes so paid?

No sir; not without reference to our books.

741. Do you know who, independent of the agreement Exhibit D 14, was bound to pay the taxes you last speak of?

Yes sir; I think that Mr. Fithian was legally bound to pay the taxes on all the goods he sold, and think under the law the amount could be received of him, he being the manufacturer and seller.

742. Did the complainant give any reason at the time of the execution of D 14, or at any other time, or say why he desired that paper to be executed, respecting the taxes you speak of?

I do not remember the precise conversation at the time. We wanted him to make us an agreement that he wouldn't go into the business again, so he made this agreement by his agent, Mr. Reeves, and put in that clause about taxes.

743. Did Mr. Fithian say anything respecting his liabilities for those taxes at that time?

I do not remember that he did.

744. Was that paper, Exhibit D 14, executed at the time of the date of it, March 14th, 1865?

Yes sir.

And being cross-examined, he says:

745. You state that you learned in Philadelphia that Mr. Fithian made the offer to sell to Stout, Dyer & Co. From whom did you learn it?

First from Mr. Stout, and in about five minutes afterwards from Mr. Fithian.

746. Had the firm of Stout, Dyer & Co. at that time agreed upon the terms of the contract with Mr. Fithian?

Not fully.

747. State in what respect the contract was not completed?

I was engaged in drafting a contract to submit to Mr. Fithian, and was interrupted in the completing of the draft by Mr. Stout coming in the room and saying he had bought Mr. Fithian out, if I agreed to it.

748. Had not the terms of the contract which you were drafting been agreed upon?

No sir, not fully.

749. For what purpose did you visit Bridgeton the next day?

To see the property, by invitation of Mr. Fithian.

750. Was the price to be paid for the real estate agreed upon the next day?

The price of the whole property was agreed upon in Philadelphia and Bridgeton.

751. Did you and Mr. Stout agree upon the 8th of March to pay Mr. Fithian $12,000 for the real estate in connection with his factory?

(Objected to.)

The agreement on the 7th and 8th of March was for the whole property.

752. If the bargain for the whole property was completed on the 8th of March, state what price you was to pay for it?

(Question objected to.)

$33,000, and not to exceed $35,000.

753. Did you agree to pay $50,900 on the 14th of March for the property?

(Question objected to.)

Yes sir.

754. When you adjourned from the 8th to the 14th of March, was there any inventory of the personal property to be made, and if so by whom?

There was one already made.

755. Was there another one to be made?

Not by my knowledge or request.

756. On the 14th of March, when you returned to Bridgeton, who did you understand had made the inventory then exhibited to you?

We understood that to be the one we saw on the 8th of March, and supposed it to have been made by Mr. Fithian's book-keeper.

757. When was it determined upon to have the property conveyed to the West Jersey Canning & Pickling Co.?

Though we bought the property on the 8th of March, the so-called West Jersey Canning & Pickling Company was not organized until the 14th of March, and was then conveyed to them.

758. When was the question settled as to whether Robert M. Seeley should be a partner or not?

On the afternoon of March 8th.

759. When were the times for the payment of the consideration money settled?

March 8th, 1865.

760. State what amount should be paid in cash and the respective times and amounts of payment of the residue of consideration money agreed upon at that time?

$5,000 in cash, $5,000 a few days thereafter, a mortgage for $10,000 on the property, and the balance to be made in easy payments as it might suit our convenience; but after

the bargain was closed and we had made up our minds to give Mr. Seeley an interest, we supposed the balance would be small, if any, to be paid.

761. Did you know on the 8th of March what the balance would be?

Yes sir, from $3,000 to $5,000.

762. What was to be done to ascertain the precise balance?

Mr. Fithian was to see what the difference in tin cans and the materials used in their manufacture would be, different from what was contained in the inventory shown us.

763. In purchasing Mr. Fithian's property, did you buy what was contained in the inventory, or what he had in and around the factory at that time?

We bought what was contained in the inventory shown us March 8th. Mr. Fithian stating that that inventory contained all that was in and around the factories.

764. Were these goods sold to you at their cost price, or at the price marked in the inventory?

Mr. Fithian represented that the price marked in the inventory was their cost.

765. Were any of these goods purchased by you at what they were worth to you?

Some few of them.

(Question objected to.)

766. Were these goods purchased by you at their cost price, or at what you thought them worth to you?

(Objected to.)

They were purchased at what Mr. Fithian represented as their cost, and we thought some of them were worth what he had represented them to be worth.

767. Did you agree to pay the price annexed to the articles in the inventory Exhibit D 1?

Of some of them we did, but we bought the property as a whole, taking the whole concern for $33,000, and not to exceed $35,000.

768. Line first, page 20, of Exhibit D 5, being shown, the witness is asked: In whose hand-writing is this line, and what does it refer to as being brought forward?

It is my hand-writing; it refers to the figures of the same amount from page 19, being brought forward.

769. Is that the amount of the preceding inventory?

I do not know, I never footed it up.

770. Is it footed up to that amount on the preceding page?

No sir.

771. In what respect does the sum total on the preceding page differ from this amount?

From the figures here set down, $79.13.

772. State when the writing and figures on page 20, Exhibit D 5, were set down by you.

I cannot state when.

773 Where was it done?

I do not remember where.

774. For what purpose?

Merely as a memorandum.

775. After the transfer of the property, was Exhibit D 5 kept at Bridgeton or New York?

Kept at Bridgeton.

776. Was not that memorandum made by you in Bridgeton, where the book was?

I do not remember.

777. How soon was it after the firm of Stout, Dyer & Wicks was formed before their books were opened?

(Question objected to).

Immediately, I presume, sir.

Whereupon the examination was adjourned to Friday June 21st, A. D. 1867, at 9 o'clock, A. M., at the same place.

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

778. State as nearly as you can when you next visited Bridgeton after March 14th, 1865?

Some time during the latter part of the Summer, or early Fall of that year, I think.

779. Had you before the time of that visit begun to compare the cost of manufacturing goods with the price as paid Mr. Fithian?

Yes, sir.

780. Did you see Mr. Fithian on that visit?

I do not recollect,

781. When was Mr. Fithian first informed of this difference, and by whom?

I can't say positively, but suppose it must have been about the 9th of March, when he commenced to make the fraudulent inventory, by Mr. Seeley and by Mr. Wicks.

782. When did you begin to compare the difference between the cost of manufacture, and Mr. Fithian's prices?

(Question objected to.)

During the fall of 1865.

783. Did you ever notify Mr. Fithian of this difference, and if so, when?

I had made up my mind together with my partner, to speak to Mr. Fithian at a proper time, and we did so speak to him, about some of the articles, in the middle of June, 1866, and I aftewards spoke to him personally, in a conversation I had with Mr. Fithian in our office, in New York, February 27th, 1867.

784. Concerning which of the articles, did you speak to him, in June, 1866?

The walnut juice in particular, and all the property on February 27th, 1867.

785. What did you say to him in that interview on February 27th, 1867?

We had a general conversation in regard to the differences on all the property, when he, doubtless, to impair my confidence in my partners, and Mr. Stout, made use of the following language: Mr. Fithian said there was a double game being played, a party was telling me one thing, and telling them another at Bridgeton, representing one thing to me and a different thing to them at Bridgeton, and for me to keep my eyes open, and I could see, before six months rolled around, that a double game was being played; he could not tell me more without betraying confidence; he said this as a friend, without regard to his claim, but for me to look out for my interest, he had not much regard for Mr. Stout, but always thought well of me; repeated several times for me to look out, and after that conversation I commenced to look out; and soon saw where the double game was being played,

786. Has the partnership of Stout, Dyer & Wicks been since dissolved, and if so, when, and who remained in the firm?

Yes, sir; it was dissolved by mutual consent, on the 1st of April, 1867, and no new firm has since been formed to my knowledge.

787. Who now carries on the business?

John W. Stout, in liquidation of Stout, Dyer & Wicks.

788. Paper marked Exhibit No. 4, on part of complainant, being again shown to the witness, he is asked: Is the signature H. Ballard Dyer, in your hand-writing?

It looks like my writing, though I have no knowledge when or where it was signed, or whether for any binding purpose?

789. Who is W. H. Cramer, who witnesses the paper?

A young man by that name, about 23 years of age, who was in the employ of Stout, Dyer & Wicks a short time.

790. Is that his signature?

I cannot say that it is.

791. How long had you been engaged in selling hermetrically sealed goods previous to March 14th, 1865?

About three years.

792. Look at inventory D 5 and state the amount of hermetically sealed fruits and vegetables in the property purchased of Fithian?

I would state first that this Exhibit D 5 is not the inventory we bought from March 7th and 8th, 1865.

20 dozen fruits in case, $3 per doz. -		$6 00
21 " 12 oz. jellies, - - -		115 50
43 " 8 " " - - - -		101 05
65 " 10 " " - - -		188 50
67½ " 8 " " - - - -		202 50
70½ " 6 " " - - -		171 31
27 " salad cream - - - -		81 00
11-12" oyster catsup - - -		1 83
35 " apple jam - - - -		87 50
12 1-12 doz. brandied blackberry -		48 33
Lot of jelly in the hands of Archer & Reeves - - - -		48 53
75 dozen oval catsup - - - -		150 00
1,088 " pint tomato catsup - -		2,360 00
504 " quart " " - -		1,008 00
396 " pint Cumberland sauce -		1,782 00
1,534 " ½ pint " " }		
516 " " " " } -		5,125 00
Chicago shipment, - - -		312 00
Less 40 per cent. - -	$2.887 60	
1 dozen salad cream - - -		3 00
20 " zea mays - - -		40 00
4 " 6 oz jelly - - - -		9 24
		$11,841 29

That's all I notice as set down in D 5, though there are several articles manufactured and partly manufactured that we bought of Mr. Fithian that are used in the manufacture of hermetrically sealed fruits and vegetables, jellies and sauce.

(Question and answer objected to.)

793. What do you understand by hermetrically sealed goods?

I understand it to mean all articles that are put up air-tight.

794. State what amount of hermetrically sealed juices are mentioned in the inventory, Exhibit D 5?

There are mentioned in the fraudulent inventory as follows:

1,765 gallons jelly juices, their cost represented to be - - - -	$882 50

I don't see any more jelly juices.

795. Did you ever give Mr. Fithian notice of any complaint by purchasers of the quality of these goods, and if so, when?

I don't remember that I gave him notice of complaint of purchasers, as many of these articles are still on hand.

796. Was any notice of such complaints given to Mr. Fithian, and if so, by whom and when?

New Jersey State Library

We gave him notice of our complaint in writing, in the fall of 1866.

797. State what the writing contained and how sent?

I cannot speak from memory, the document will speak for itself.

798. To what document do you refer?

A written notice that was served on Mr. C. S. Fithian.

799. By whom served, and when?

I do not remember the date, the document will show it all.

(Witness declines to answer the first part of the question, except by saying the document will show it all.)

(Witness says he does not decline to answer the question, except as he has answered it above.)

800. After deducting from inventory D 5 all hermetrically sealed goods, could not the residue of property included therein have been examined as to quality and quantity if you had wished?

(Question objected to.)

No sir.

801. Why not?

Not without a great deal of time, trouble and expense so much so as at the time we preferred to take Mr. Fithian's representations as to quality and quantity.

802. State what articles, if any, are included in D 5, that you did not receive from Mr. Fithian.

Eight dies in the hands of J. Hilgert, $24; printing plates, $152.50.

I do not think there were as many as 550 peach crates, neither do I think there was 55,717 2lb N. Y cans.

There was not 1,765 gallons of jelly juice.

There was not as much Cumberland sauce as is mentioned in D 5 inventory. We never received a lot of show cards, $125. In fact I have no confidence in D 5 at all, for it is a fraudulent representation made by Mr. Fithian to us.

803. Any other response to the preceding interogatory?

(Witness requests the Master to read the preceding question.)

The Master having read the question, witness says: I believe that answers the question.

804. Was any inquiry ever made about the dies in the hands of Hilgert?

I presume Mr. Seeley and Mr. Wicks made the proper inquiries, as those things came under their part of the business to attend to.

805. Any inquiry about the plates, and if so, by whom?

By some one of the firm, and after a while we found they were in the hands of the printer and worthless.

806. Who do you mean by we?

Stout, Dyer & Wicks.

807. Who numbered the cans, and how many did they fall short?

I don't know who took the account of them, but suppose Mr. Fithian did, or authorized some one to do so for him; but I have no confidence in his representations of the numbers of them, and I afterwards found, in making up the quantity that he had put into the lot a lot of old cans that had been used before.

808. Who numbered the crates, and how many did they fall short?

Mr. Fithian numbered them or his agent did for him; some of them had dropped to pieces, and only fit for firewood; I do not know the exact number they fell short, as we took Mr. Fithian's representations and never counted them.

809. Who measured the jelly juice after you purchased it of Mr. Fithian, and how much did that fall short?

We did not measure it as it was contained in tin cans, each can said to contain so many gallons each; though a considerable part of the juices had leaked out, because the cans were rusty and damaged; and on opening some of the juices, it had soured.

810. When and how did you learn these facts?

At different times, on investigation by the firm.

811. Did you make any personal examination? and if so, when?

Yes sir, several different times.

812. State, as near as you can, the first time.

In the early part of 1866, I don't recollect the month or the day.

813. In what respect did the Cumberland sauce fall short?

Of quantity contained in the barrels.

814. Did not Mr. Fithian make a deduction from the amount as soon as reported to him?

He did, on one lot of Cumberland sauce, but never afterward, though requested to do so on the other articles.

815. Do you mean other articles of Cumberland sauce? and if so, when was he requested, and by whom?

I mean on articles used in the manufacture of Cumberland sauce, and other articles; but Mr. Stout and myself requested him about the middle of June, 1866, to make us a further allowance, particularly on walnut juice.

816. Was the deduction on Cumberland sauce claimed for the quantity fell short, or on account of the quality of the article?

The only deduction allowed us by Mr. Fithian was made on Cumberland sauce, that was short in quantity, and no allowance made on account of cost or quality.

817. What was the market price of walnut catsup in March, 1865.

(Objected to).

That quality of walnut catsup made from that kind of walnut juice, was worth about thirty cents a gallon.

818. What was the quality of the walnut juice purchased of Fithian?

A poor quality of domestic manufacture.

819. In the manufacture, of what articles was walnut juice used?

In the manufacture of walnut catsup, Cumberland sauce and other sauces.

820. When you met in Bridgeton, March 14th, did Mr. Fithian exhibit to you any inventory of tin cans, tin and materials used in manufacturing goods, showing the amount and value of such goods on hand?

(Objected to).

No sir, only as represented in fraudulent book, D 5.

821. Did you examine, in that book, the inventory of tin cans, tin and materials and their amount and value?

We did not, as we took Mr. Fithian's representations for their correctness.

822. Did you examine any other articles in that inventory?

I did.

823. State what articles.

The tomato catsup, oyster catsup, jellies, apple jam; that, is all I remember this moment.

824. Did you examine the item of labels, and object to it?

We did not examine the item of labels; Mr. Fithian stated that was the correct amount they had cost him, and that we must take them, as we had agreed to buy the property at what it had cost him, though we did object to taking them at first.

825. How did you know that that item was in the inventory?

By Mr. Fithian's saying that they were the only articles that he put in, but what we could use at a profit, and we must take them; that called our attention to the item.

826. Had you made any objection to taking them before Mr. Fithian told you this?

This conversation all occurred in regard to the labels on the 7th and 8th of March, when we bought the property; and I think we said nothing more about the labels to him at that time.

827. When did you afterwards?

I do not recollect the precise day or date.

828. What did you afterwards say, and to whom, about them?

The members of the firm often talked about them, one saying they were worthless, never could be used in our business, and another saying the best thing we could do with them was to kindle the fire with them.

829. Was it not agreed by Mr. Fithian, on the 14th of

March, 1865, that the names of Fithian & Pogue and Charles S. Fithan & Co., might be used in the prosecution of the business?

(Objected to.)

Yes sir, but we found it to be a damage to us to use those names, even if we wished to.

830. If the new firm had decided to use these names, would not these labels have been of value?

(Objected to.)

No sir.

831. Were not objections made on the 14th of March to the price of a lot of barrels, included in the inventory in D 5, and if so, by whom?

No sir, but on the 8th of March, when we bought the property, objections were made both by Mr. John W. Stout and myself.

832. Did you then agree to take the barrels and the labels at the prices fixed?

We agreed to take the labels and the barrels at the prices fixed March 8th, 1865.

And being examined again in chief, he says:

833. In answer to question 747, you say you were engaged in drafting a contract to submit to Mr. Fithian, and was interrupted. What contract do you refer to?

I refer to a contract to be made by Stout, Dyer & Co. with C. S. Fithian & Co., for the manufacture of hermetically sealed goods.

834. In answer to question 762, what do you mean when you say Mr. Fithian was to see what the difference in tin cans and the materials used in their manufacture would be, &c. What do you mean?

(Objected to.)

I mean that Mr. Fithian represented that since the inventory D 1 had been taken, he had been making tin cans and buying the materials for the making of tin cans, and that made the difference.

835. What do you mean in your answer to question 762, by the difference you therein referred to?

(Question 762 and answer thereto read to witness.)

(Objected to.)

I mean that Mr. Fithian represented that there would be more cans, and more materials for the making of tin cans than was entered in D 1.

836. From what time to what time?

(Witness here asks to see Exhibit D 1 and D 5, and the books are shown to him.)

From Dec. 21, 1864, to March 10, 1865.

837. How do you arrive at those dates?

By examining now the dates as put down by Mr. Fithian's book-keeper in D 1 and D 5, now shown me.

838. In answer to question 783, (the answer is here read to witness,) at the time of the conversation, Feb. 27, 1867, did you make known to Mr. Fithian that you had discovered since March 14, 1865, that books D 1 and D 5 were distinct and separate books or inventories?

No sir.

839. Why not?

Because I had not then become aware of full information and belief that there were two books in existence.

840. What do you mean by your last answer, as to "full information?"

I mean that I had not seen D 1 since March 8th, 1865, until the latter part of March, 1866, and did not know positively that there was two books in existence at the time of the conversation with Mr. Fithian in February, 1867.

(The answer being read to witness,) he says: I mean March, 1867.

841. In answer to question 802, what makes you think there were not 550 peach crates, 55.717 2 lb. N. Y. cans, 1,765 gallons of jelly juice, and not as much Cumberland sauce as is mentioned in D 5 inventory? And how do you know that you never received the show cards?

I cannot state, as a general remark, as one reason in regard to quantity, that I did not count or measure any of the articles, and have no confidence in the inventory D 1. Mr. Seeley and Mr. Wicks, both told me the peach crates some of them were broken to pieces or good for nothing, and I saw myself, among the piles of tin cans, a large lot of old cans that had been used before. I saw the rusty and leaking jelly juice cans. Mr. Seeley opened the barrels of Cumberland sauce, and reported the deficiency. I never saw the show cards at Bridgeton or anywhere else.

842. What regulation, if any, did Mr. Fithian ever make with you, or your associates, with respect to the other articles referred to in question and answer 814; and what other articles do you there refer to?

(Witness here reads said question and answer 814,) and says: I don't understand what you mean by the word "regulation."

843. What do you mean by the expression in answer to the question 814, though "requested to do so on the other articles?"

I mean that about the middle of June, 1866, we requested Mr. Fithian to make a deduction on walnut juice, and asked him to take time for reflection, when he stated that he could decide the question that moment, without any reflection; and

I also mean when we made a more formal demand in writing, in the fall of 1866.

844. You say in question and answer 814, "he did on one lot of Cumberland sauce." Did he make any deduction to you, or your associates, respecting any other lot?

No sir.

845. What effect does walnut juice of an inferior quality, have on other articles it may be manufactured with?

It adds to its flavor, though I am not so familiar with those things, not being what is called "processor."

846. Do you know whether the effect is for better or for worse?

I do not, but suppose some other article of the same nature will do as well in making sauces.

847. How did you examine tomato catsup, oyster catsup, and other articles mentioned in question and answer 823?

I examined the oyster catsup by opening the bottles and seeing it was spoilt, threw it all away. I opened the catsup bottles in several different cases and saw that its quality was bad, and what we sold of the catsup to our customers was a great damage to our trade, as we had to make large deductions for damaged catsup; lost several customers by having sold what they called "stuff" to them, and we have tried to work off what we could of it, at auction, for any price we could get for it.

Of the apple jam, I opened some of the cans and found it sour; tried to sell some of that at auction too, for any price we could get for it. For jellies, we have had to take back from our customers some of it, that we have sold them, and threw the jelly away, and there is now some of the jelly in the store, that we cannot sell at any price, it being candied and spoiled.

848. When was it that you examined the articles, as you say, and where?

In the fall and winter of 1866, and early part of 1867, at our store in Barclay street, New York city.

849. What time do you refer to in questions and answers 821 and 822?

(The same are read to witness and he says:)

I refer to the times mentioned in answer to question 848.

850. How do you know that the articles referred to in question and answer 848, did not get in the condition you speak of as to quality, after March 14, 1865?

Because if properly manufactured and put up, they would not have spoiled.

851. You have spoken in your evidence of goods sold at auction, do you know what you realized from those sales?

I do not remember, I have not the figures with me.

852. Why did you so sell them at auction?

To get rid of them and realize on them something if we

could, as we did not like to sell them to our customers at private sale.

853. Why did you not wish to sell them to your customers at private sale?

Because the goods were spoiled and it was damaging our trade.

854. In question and answer 824, what do you mean by saying, we did not examine the item of labels?

I mean to say that we did not look at them or know that they were in existence, excepting as represented by Mr. Fithian.

855. In question and answer 840, (the same is read to witness,) what do you mean by your answer to question 840?

I mean that I saw D 1, on the 8th of March, 1865, and did not again see it until the latter part of March, 1867.

And being cross-examined, a second time, he says:

856. When you saw Exhibit D 1, on the 8th of March, 1865, name all the persons present.

John W. Stout, Lorin J. Wicks, Robert M. Seeley, Henry B. Dyer and Charles S. Fithian,

856½. When you saw Exhibit D 5, on the 14th of March, 1865, name all the persons present.

John W. Stout, Lorin J. Wicks, Robert M. Seeley and Charles S. Fithian.

857. Please state the price paid by you, for oyster catsup, bought of Mr. Fithian.

(Objected to.)

The witness looks at Exhibit D 1, and D 5, and says:

One dollar and eighty-three cents, and I have only mentioned so small an amount, to show that that was among other spoiled articles.

And being examined in chief, a third time, he says:

858. In what book do you find the $1.83, mentioned in your last answer?

In book Exhibit D 5.

859. Read the whole item as expressed in the book.

"11-12 dozen oyster catsup, $2.83."

860. Did you know at the time of the purchase from Mr. Fithian, that the articles referred to, in question and answer 857, were spoiled articles as you say?

(The question and answer is read to witness, and he says:)

No, sir; we did not know that we bought anything but A, No. 1, goods.

H. BALLARD DYER.

Sworn and subscribed before me, June 21, 1867, at Jersey City.

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

LORIN J. WICKS, a witness produced on the part of the complainant, being duly sworn, deposes and says:

861. What is your age, residence and occupation?
I am 47 years old, residence at Bridgeton, N. J. I am a manufacturer of hermetically sealed goods.
862. How long have you been engaged in that business?
Part of the time for 18 years, and all of the time for 9 years.
863. How long have you resided at Bridgeton?
Five years this month.
864. How long have you known Charles S. Fithian and John W. Stout?
I have known C. S. Fithian since the spring of 1862, John W. Stout since the spring of 1865.
865. During the past 9 years where have you been engaged in the business you speak of?
New York city, Bridgeton, N. J.
866. Were you present at any time with Charles S. Fithian and John W. Stout in Philadelphia; if so, when?
Yes sir; in March 1865.
867. More than once?
No sir.
868. Who else was there at the same time, and where in Philadelphia?
Henry B. Dyer, Charles S. Fithian, John W. Stout. I think it was at the American Hotel in Philadelphia.
869. What was it that called Mr. Fithian there?
To negotiate with Mr. Stout and Mr. Dyer about canning some goods for them.
870 Were these goods you refer to canned for them?
No sir.
871. Where did you and Mr. Fithian come from at that time to Philadelphia?
From Bridgeton, N. J.
872. Why were not those goods canned or the arrangement for canning them carried out, if any was spoken of?
Mr. Fithian sold out his property to Mr. John W. Stout and his partners.
873. Do you remember the day of the month you say you and Mr. Fithian were in Philadelphia with Stout and Dyer?
I do not, only as referred to by the witnesses examined.
874. Were you acquainted with the property of Mr. Fithian you speak of at Bridgeton?
I was.
875. What did it consist of?
Land, factories, store-houses, engines and boilers, tools, and appurtenances for carrying on the canning business, with a stock of juices for jellies, catsups, sauces, &c.

876. What month was it and year you speak of you were in Philadelphia with Fithian?

In March, 1865.

877. Have you heard John W. Stout's evidence in this suit?

Yes sir.

878. Was it the same day of the month of March, that you and Fithian were in Philadelphia, that Mr. Stout related in his evidence?

Yes sir.

879. Did Mr. Fithian at that time make any sale of the property you have spoken of?

He agreed to sell it.

880. To whom?

John W. Stout & Co.

881. What property did he agree to sell, and at what price, and on what terms?

He agreed to sell the property that he had in a certain account of stock, which he referred to. Mr. Stout asked him (Fithian) how he would sell. Mr. Fithian said he would sell right. Mr. Stout said—What do you mean by right? at cost? Mr. Fithian said, Yes, about cost, and then referred to a certain book or inventory, which, he said, he had taken for the purpose of selling out to Mr. Chittenden, or taking him as a partner.

Mr. Stout said, What does it amount to? Mr. Fithian replied, about $33.000. It may be some more; but I think not to exceed $35,000.

The items were to be right—that's the expression that Mr. Fitian used. I suppose he meant by that he would make the payments easy.

882. Did you then hear any time or times mentioned for the payments to come due? if so, what was it?

Mr. Stout and Mr. Fithian had some conversation on the subject; but I do not remember it sufficient to relate it.

883. What part of the day did this conversation or negotiation for sale take place?

Late in the evening; I think it must have been as late as 11 o'clock.

884. Did you go to Bridgeton after that? If so, who went with you?

I went to Bridgeton the next morning, in company with Mr. Fithian, Stout & Dyer.

885. For what purpose?

Mr. Fithian and I went for the purpose of getting home. Mr. Stout and Mr. Dyer went for the purpose of looking at the property in question.

886. Was anything said the night you speak of about Stout and Dyer going to Bridgeton the next morning?

Yes sir.

887. What was it?

Mr. Fithian invited Mr. Stout and Mr. Dyer to go with him (Fithian) and myself to Bridgeton the next morning to look at the property in question.

888. At what time in reference to the conversation that night did Mr. Fithian invite them, as you speak of?

It was right after Mr. Fithian stated the price that he would sell for, and Mr. Stout had replied that he would take the property.

889. In what way did Mr. Stout reply to Mr. Fithian, that he, Mr. Stout, would take the property? Please give the connection of his reply, with Mr. Fithian's remarks.

He said he would take the property if Mr. Dyer was agreed.

890. What transpired, if anything that you know of, in reference to Mr. Dyer's agreeing?

I don't remember anything particular that Mr. Dyer said that night, further than that he was agreed with Mr. Stout and Mr. Fithian's negotiation.

891. How long did Stout and Dyer stay at Bridgeton, the next day or morning that you speak of?

Till about the middle of the afternoon.

892. Did they go on the premises in question with Mr. Fithian, where the stock and goods were you speak of, that morning?

They did.

893. What, if anything, did Mr. Fithian reserve from this sale that night in Philadelphia, or the next morning at Bridgeton?

A lot of canned peaches and tomatoes; that's all I recollect now.

894. When were the tomatoes and peaches you speak of first reserved by Mr. Fithian?

I don't recollect of his saying anything about them at our evening conversation in Philadelphia; but I remember of his reserving them in the morning at Bridgeton.

895. Who was he then talking with, when he reserved them that morning?

Mr. Stout and Mr. Dyer.

896. At Bridgeton, that morning on the premises, did you see the parties you have named examine any book or inventory of the property?

I did.

897. Who and what book or inventory?

Mr. Stout and Mr. Dyer. The book or inventory was the one Mr. Fithian referred to the night before in Philadelphia.

898. Who had that book or inventory that morning, and who first produced it that morning?

Mr. Fithian.

899. Where, at his house or factory?

At his factory office.

900. Are you acquainted with Mr. Chittenden, you have spoken of, if so, how long have you known him?

I am. I have known him since 1854.

901. Did you ever see him at Bridgeton, at the factory?

I have, in the winter of 1864 and 1865.

902. What was his call at that time in Bridgeton?

I had got him interested in either buying out Mr. Fithian or taking an interest in Fithian's factory with Fithian, and he came down to Bridgeton for the purpose of examining the prospects.

903. Did he see Mr. Fithian at that time, and were you present?

He did, and I was present.

904. How did Mr. Chittenden examine the prospect, as you call it?

He looked around the first loft of the factory, as well as he could, by gas-light, and then he and Mr. Fithian looked over the account of stock or inventory referred to in Philadelphia by Mr. Fithian to Mr. Stout.

905. Do you know whether Mr. Chittenden took a list of the property from that inventory?

I think he did.

906. When?

The evening he was there.

907. Were there any price marked opposite the articles of property in that list or inventory at the time you say Mr. Chittenden was there that evening?

I think there was.

908. Did Mr. Chittenden refer to any prices on that list or inventory at that time? if so, in what way?

He did talk with Mr. Fithian in relation to the price or prices which he had named, as the basis of taking in a partner or selling out, but I do not remember what it was sufficient to relate it.

909. What did Mr. Fithian then say that the prices set down on that list or inventory represented?

(Objected to).

Well I don't think I could tell as a witness.

910. How long before the evening you say Mr. Chittenden was there, was the inventory you speak of made up?

About the time or a little before he was there.

911. Did you ever see Mr. Chittenden and Mr. Fithian examine the inventory of the property at any other time except the time you speak of?

No sir.

912. Was that inventory contained in a book or on loose paper, at the time Chittenden was examining it, with Mr. Fithian?

In a book.

913. What size book as near as you can mention?

It resembled the book or books here in Court, containing an inventory of the property in question.

914. Would you recognize the book if you should see it again?

I think I could.

915. Exhibit D 1 is shown to witness, he is asked: Look at that book and satisfy yourself whether that book is the one which Mr. Fithian and Mr. Chittenden had at the time you speak of?

It resembles the book.

916. Is there anything about it that leads you to say that it resembles the book? If so, describe the resemblance you speak of.

It is the general appearance of the book that leads me to suppose that it is the book in question, though I may be mistaken as I never had it or any other book, containing account of stock or inventory in question, in my hands to examine or criticise.

917. In your hands—when?

Since I was first connected with the factory at Bridgeton, in any way, to the present time.

918. Are you acquainted with Robert M. Seeley? If so, how long have you known him?

Yes sir, but not intimately; for only the three past years.

919. Are you acquainted with his hand-writing?

Yes sir.

920. Please look in D 1, and state whose hand-writing is contained therein.

Robert M. Seeley, which hand-writing is "Account stock taken Dec. 21, 1864."

921. In whose hand-writing is that line?

Robert M. Seeley.

922. In whose hand-writing is the balance of that same page in which the words, "Account stock taken Dec. 21, 1864" are written?

Robert M. Seeley's.

923. Do you remember the month and the year, when Mr. Chittenden was down there as you speak of?

I think it was in December, 1864.

924. At the time you say, Stout and Dyer were the morning you speak of at Bridgeton, do you know if there was any written agreement made by Mr. Fithian with the parties you have spoken of, in reference to the sale you have spoken of?

There was not.

925. Do you know why not? if so, state why?

Mr. Stout and Mr. Dyer took my word for Mr. Fithian's integrity. Dyer proposed to me in private, to have an article of writing for all parties concerned, to sign before he and

Mr. Stout returned to New York, lest Mr. Fithian should fly from his bargain. I replied it would be useless, as Mr. Fithian would do what he said.

926. Mr. Wicks, please state any other relations or expressions of Mr. Stout or Dyer or Fithian on the evening at Philadelphia, you have spoken of. respecting the sale you have spoken of, if any bargain was included, respecting the same?

I don't know of anything of particular importance concerning the sale that transpired at that time, when Mr. Fithian said he would sell out. It was on conditions that I were willing, which I then agreed to or accepted, and Mr. Stout said in reply to Mr. Fithian, that he would sell the property. Mr. Stout said he would take the property, and smiled some, said Mr. Fithian might think he was hasty, but that was just his way of doing business; that he never had made much of a bargain or trade only on the impulse of the moment.

927. What was Mr. Stout's expression in reply to Mr. Fithian, when Mr. Fithian said that evening at Philadelphia, as you mention, that "he would sell right, yes, about cost," and referred to the amount of the inventory you have spoken of, amounting to $33,000.00, not to exceed $35,000.00?

Mr. Stout inquired if that contained the whole amount of the property, the whole thing. Mr. Fithian said that we had been manufacturing cans since he had taken account of stock, which was not included in the account of stock he had referred to, and couldn't tell how much it was, until he had investigated it.

I don't remember anything particular further he said.

928. What reply did Mr. Stout make to the remarks of Mr. Fithian. How did he express himself?

I do not remember in particular.

929. At the time you say Mr. Fithian spoke of having manufactured tin cans not included in the account of stock, was there anything said by Mr. Fithian respecting the reserving the peaches and tomatoes you have spoken of?

Not to my remembrance.

930. At the next morning you refer to at Bridgeton, was there anything said between the parties as to the amount of cash to be paid on the sale you have referred to?

There was.

931. How much?

$5,000.00.

932. What else was said between the parties concerning the terms of the sale, as to the time or times of payment of the balance of the amount?

I do not recollect, because I have never held any of the papers, or called it to mind.

933. Who first proposed the $5,000.00 cash you have spoken of?

I think Mr. Fithian did.

934. Was there money paid the morning you speak of, by Stout or Dyer to Mr. Fithian?

There was not, to my knowledge.

935. When was, by the agreement of the parties, the money to be paid, and the balance of the amount of the price of the property to be arranged?

The next week, if I remember right.

936. Why was it to be the next week?

The purchasers had bought the property unexpectedly and had no money with them, and they proposed to return to New York, and return the next week to make the first payment and execute the papers, and in the meantime Mr. Fithian was to expedite the arrangement of said papers, or maturing of them, what he could, so that on the return of Stout and Dyer they would not be detained longer than was really necessary.

937. Was there any account to be arranged in respect to the tin cans you have spoken of in the meantime? If so, what was it?

The cans were to be counted that were made and being made, and an account of unmanufactured materials for making cans were to be taken.

938. The cans Mr. Wicks made from what time to what time, that you speak of in your last answer?

I mean the tin cans that had been made in the factory that spring, after the account of stock had been taken, referred to. It was this increase of stock of cans that I suppose Mr. Fithian referred to in Philadelphia, when he recalled his statement, $33,000.00, and thought it would not exceed $35,000.00. But in this I might have been mistaken. It is my supposition. I don't know what his thoughts might have been.

939. Mr. Wicks, what materials do you refer to in making tin cans?

I mean plate tin, solder and metal for making solder, rosin.

940. Why were those materials referred to, as you say, by Mr. Fithian?

I thought they were referred to because they were not in the account of stock in question.

941. Do you know when the materials you refer to, were purchased or acquired by Mr. Fithian?

I cannot give the dates, but it was from the commencement of the year 1865 to the date of the sale.

942. To what date do you refer to, in your last answer, when you say, to the date of the sale?

To the time we met Mr. Stout and Mr. Dyer in Philadelphia.

943. Mr. Wicks, who superintended the manufacturing the cans for Mr. Fithian?

I think it was Mr. Cannin at that time.

944. How many cans per day, if you know, did Mr. Fithian have manufactured, during the time you speak of?

I do not know.

945. Do you know how much in amount of the materials Mr. Fithian had acquired, that you speak of?

I do not.

946. Mr. Wicks, after the morning you say that Mr. Stout and Dyer were at Bridgeton, do you remember the day that they returned to Bridgeton, in accordance with the arrangement you speak of; if so, when was it?

I do not remember the day of the month or week, but believe it was the 14th of March, 1865, as the other witnesses have testified.

947. Who returned on the 14th of March, to Bridgeton, as you speak of, and who was with you then there at the factory?

John W. Stout and Henry B. Dyer, returned from New York to Bridgeton, and met with Mr. Charles S. Fithian, Robert M. Seeley and myself at the factory.

948. Between March 8th, and March 14th, do you know whether Mr. Fithian manufactured any tin cans for that factory at Bridgeton, or acquired any material for that purpose; if so, what and how much?

I think he manufactured cans, but have no recollection of his buying any stock for the purpose in that time.

949. Do you know how many tin cans he manufactured in that time; if so, how many?

I do not know,

950. If he had bought any of the materials in that time, would you have known it?

I should have known it undoubtedly, but might have forgotten it before now.

951. Mr. Wicks, during the interval between March 8th, and March 14th, you have spoken of, did Mr. Fithian overhaul the stock, or property in question, and make any inventory of it?

He did.

952. Which property or stock, Mr. Wicks, that you know of?

I think he went over the whole inventory of stock, taken and untaken, in the inventory mentioned.

953. Please state, Mr. Wicks, who helped him, if you know, go over the inventory that you speak of?

No one, except in some cases when he wanted a pile of boxes, or a mess of barrels, and some such things counted, when he would apply to Mr. Seeley or me to do it; and in some cases when he consulted my opinion as to the price of certain tools and machines that I had made or had had made for the factory.

954. Who did the writing for him in going over the stock or property, as you have just spoken of?

He done it himself, gave it to Mr. Seeley to copy.

955. What did Mr. Seeley copy it into?

One of those books containing the account of stock present in court.

956. Would you recognize the book in which you say Mr. Seeley copied the writing, you have last referred to, if you should see it?

No sir.

957. Have you any idea of its size or general appearance? If so, give what idea you have of it.

Its size and appearance was like either of those books now in court, containing the account of stock, and I believe one of them to be it.

958. Did you yourself see Mr. Seeley write in it at the time you speak of?

I did.

959. Exhibit D 5 being shown to witness, he is asked, Does that book resemble the book you have spoken of in your last answer?

It does.

960. Is there any inventory of property contained in Exhibit D 5? Look and see, so as to satisfy yourself.

There is.

961. In whose hand-writing is some of the writing in that book?

Robert M. Seeley's.

962. In whose hand-writing is the line, "Acct. stock, C. S. F. & Co., March 10, 1865," in that book D 5?

Robert M. Seeley's.

963. Do you remember when Mr. Fithian began to go over the property, as you speak of, after March 8th, 1865?

I think it was the 9th or 10th of the same month.

964. Was Mr. Fithian, as you know of, with Mr. Seeley at the time when you say he copied the writing in the book, after March 8, 1865?

I think that he was in the office some of the time; and some of the time he was about other business pertaining to the factory and the sale he had made.

965. Mr. Wicks, did you see or read the writing which you say Mr. Fithian had copied, after March 8, 1865?

I saw it, but did not read it.

966. Who had it when you saw it?

Mr. Fithian and Mr. Seeley.

967 Do you remember the first time you saw it in the possession of Mr. Fithian?

I don't remember the exact time of day that I first saw it. I saw it frequently in his hands when he was taking the account of stock and going over it.

968. Do you know whether any of the articles mentioned in the inventory you say he showed to Mr. Chittenden, were set down, or caused to be set down, with the prices or amounts of the same, larger, in the writing you say Mr. Seeley copied after March 8, 1865, than they were in the inventory which he, Fithian, showed to Mr. Chittenden?

There were.

969. Do you remember any particular articles?

No sir, I could not identify them.

970. How do you know that the amounts or prices of the articles in the writing which you say Mr. Seeley copied after March 8th, 1865, were so set down larger than in the inventory, which you say was shown to Mr. Chittenden?

Mr. Fithian told me he should alter the prices of some articles, and Mr. Seeley and I conversed about it, when Mr. Seeley was copying them off, when Mr. Fithian was not present.

971. Do you remember to what extent, the alteration of the prices or amounts you have spoken of, increased the amount of the inventory, you say was shown to Mr. Chittenden, by Mr. Fithian?

I do not.

972. When did Mr. Fithian tell you he should so alter the prices or amounts, you have mentioned?

It was when he commenced to take the account of stock, soon after Mr. Stout and Mr. Dyer's return to New York, on the 8th of March, 1865.

973. Was it between the 8th and 14th of March, 1865?

Yes sir.

974. What did you say to Mr. Fithian, when he so said, he would alter the prices or amounts referred to, as you say, if anything?

I don't recollect as I made any reply, when he said he would alter the prices of some things—but when he said that he should put in some things, which had no value as I thought, I told him that I would not do it. He said that these things had all cost him money, and he should put them in at what they had cost him. I told him that I was afraid that Mr. Stout and Mr. Dyer, would back down from their trade or bargain. He said they would not; that they was bound to have the property at any price, and if they took it, they had got to pay him what it had cost him.

975. What did he mean, or how did he express himself, when he said, as you say, they were bound to have the property at any price?

(Objected to.)

976. What do you mean by the expression you have referred to, as spoken by Mr. Fithian, whether if they were bound to have the property at any price different from what

was contained in the negotiation and sale thereof, in Philadelphia, between the parties?

(Objected to.)

I mean that Mr. Fithian meant to represent, that Stout & Dyer were determined to have the property, let them have to pay what they would for it.

977. What articles do you refer to, which had no value as you speak of, that Mr. Fithian said he would put in, and you say, "I told him I would not do it?"

The particular articles that he mentioned, that caused me to make that expression, was a wooden rack or lattice work, that he had had made for some purpose, before I went to Bridgeton, which I never saw used. And another tool or instrument known as an iron bather, in the account of stock which was of no use.

978. Do you remember, what day it was that the reference, was made by you to him, respecting the last two named articles; whether it was at the first of the taking of the inventory which you say, Seeley copied, or not?

It was in the morning before he had commenced to make any memorandum of the account of stock.

979. Was there on the last day referred to, any other reference between you and him concerning the adding of articles, as you speak of, or the making up of amounts, as you speak of?

There was.

980. Please mention what reference was made thereto?

Mr. Fithian said in reply to my objections about adding in those articles, and about advancing the price of the stock, that it would increase my interest and capital as much in proportion as it would his own, and would give me more capital to represent in the new firm. I told him it could be of no interest to me to have the prices increased, for what I advanced in capital, by so doing, to put into the new firm, would be lost in the sale of the materials which we purchased. He replied that my interest pulled both ways, that it would not decrease my capital or interest in a financial way, but would make quite a difference to him. And I then made up my mind that since I was only in his employ, and no right to dictate in the financial department of his business, he might make such a disposition of his property as he thought best.

981. Did you see this inventory which Seeley copied after March 8th, after it was finished by Mr. Fithian?

I did not see it to examine it.

982. Do you know what the inventory of the property, which Mr. Fithian, you say, made up after March 8th, 1865, amounted to?

I do not.

983. Did Mr. Fithian tell you to what extent your interest would be increased, as you have mentioned?

I think he did.

984. To what amount did he say?

About $2,000.00 I believe.

985. Did he tell you how much his interest would be increased by putting in other articles and changing amounts, as you have mentioned? If so, how much?

If he told me I do not remember, not being particularly interested in the matter.

986. During the time you say you were in the employ of Mr. Fithian, what branch of his business in the factory did you attend to?

I had the supervision of the manufacturing department.

987. From December 21, 1864, to March 14, 1865, were there any buildings erected on the factory lot of Mr. Fithian, or any boiler or engine put therein for the use of the factory?

I think not.

988. Would you have known it if there had been?

I should, but might not remembered it under the dates mentioned.

989. Do you know of any improvements put on the factory property by Mr. Fithian since December 21, 1864, in the way of machinery? If so, please state it.

I do not.

990. Would you have known it if there had been?

I would.

991. Do you, Mr. Wicks, know how the prices or amounts contained in Exhibit D 1 inventory, opposite the items therein expressed, were made up?

Yes sir, I believe I do.

992. Please state how, as far as you know.

The tin cans referred to were estimated by taking into consideration the actual cost or cash price paid for the material to manufacture them with, then adding the expense of making them, and I do not know whether any per cent. was added or not.

893. What do you mean by saying, "and then adding the expense of making them?"

I mean that these cans and most of the cans made at the factory at Bridgeton, N. J., are made by the piece. To this price is added the wear and tear of files, soldering, irons, fire pots, &c., in their manufacture, and charcoal, that has to go with it.

994. Was any item of labor reckoned in that expense you referred to?

Yes sir.

995. In what way was that item arrived at?

By dividing the amount of labor paid to men hired by the day, to cut out the tops and bottoms of said cans, with the amount of cans, made per day.

996. Is that item of labor included, in the price set down to the cans in D 1?

I do not know, but presume it was.

997. In what way was the price of the Cumberland sauce, as set down on D 1, arrived at if you know?

I don't know how it was in D 1, but I generally know how we got at the price of manufactured articles?

998. How?

Mr. Fithian done all the buying, and kept all the prices of purchased material, and expense in manufacturing, and made up his prices in that way.

999. Please look at item 4, "Cumb. sauce, (complete) $2.25, $2.60." What does that item represent?

It represents, or meant to represent, manufactured Cumberland sauce, ready for use.

1000. What, if anything, represents the price of that article, in that book?

I don't know, sir; I am not posted with books.

LORIN J. WICKS.

And thereupon the examination was further adjourned to Tuesday, July 9, 1867, at 10 o'clock A. M., at the same place.

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

1001. Were you acquainted with William Pogue?

Yes sir.

1002. Is he dead? if so, when did he die?

He is dead; died in 1864, I believe; I think in the summer.

1003. Exhibit No. 4 on the part of the complainant being shown to the witness, he is asked: Do you remember that agreement?

No sir.

1004. Is that your signature to it?

Yes sir.

1005. When and where did you sign it?

I don't know.

1006. Can you recall anything to your mind connected with putting your signature to that agreement?

No sir.

1007. Are you acquainted with W. H. Cramer, the subscribing witness to that agreement?

Partially so.

1008. Have you any recollection of either Mr. Fithian or Mr. Cramer presenting you with that paper, Exhibit 4, for your signature or otherwise?

No sir; I have not.

1009. At the time you speak of the negotiation at Phila-

delphia between Fithian, Stout and his associates, respecting the property in question, had Mr. Fithian the power to sell all the property or only a part of it?

According to our article of agreement, Mr. Fithian had the right to sell the whole of it.

1010. What article of agreement do you refer to in your last answer?

An article of agreement drawn by John T. Nixon, Mr. Fithian's counsel, between Mr. Fithian, Mr. Pogue and myself, when I went to Bridgeton, in their employ, or shortly after.

1011. At the time you say Charles S. Fithian sold the real and personal property to John W. Stout, and his associates, were you present at any of the negotiations therefor? did Mr. Fithian include the whole of the real and personal property, or only an undivided interest of it?

Only an undivided interest as I understand it.

1012. What undivided interest did he sell, as you understood it?

All of the property included in Exhibit D 1, excepting my salary.

1013. What was that salary?

One third of the net-profits of the business carried on by Fithian and Pogue, afterwards by Charles S. Fithian.

1014. At the time of the negotiation you have referred to in Philadelphia, what was said by Mr. Fithian respecting this salary you speak of?

Mr. Fithian said that my interest in the concern or share of profits amounted to about $10,000, which would remain in the concern with me; and the balance, which belonged to him, would amount to about $33,000, not to exceed $35,000.

1015. How did you receive pay for about $10,000 which you speak of as being your share or interest?

I received it in real estate, machinery, boilers and engine tools and fixtures, empty fruit cans, tin cans of jelly, juices, tomato catsup, Cumberland sauce, materials for making Cumberland sauce, juices in cans and bottles for jellies, &c.

1016. Who did you receive that pay from that you last speak of?

Charles S. Fithian left a certain portion of those goods to my credit, amounting to that sum, and according to the new inventory it amounted to $12,000.

1017. That portion of the goods which you say Mr. Fithian left to your credit, were they left in certain specific goods, or were they undivided?

Undivided.

1018. Was the amount of your interest of about $10,000, which you speak of, embraced in the amount of the inventory which you say Mr. Chittenden examined, or was it in addition to the amount of that inventory?

I think it was included in the inventory. But it might have been deducted out at the footing up. I couldn't say as to that.

1019. Was there anything said by Mr. Fithian at the time Mr. Chittenden was at Bridgeton, that that amount was deducted out?

I do not recollect.

1020. Was there anything said at Philadelphia by Mr. Fithian during the negotiation you have spoken of, that the amount of your interest, amounting to about $10,000, was deducted from the last named inventory?

I do not recollect that there was.

1021. What do you mean in your evidence by saying, that in the negotiation respecting the sale of property by Mr. Fithian to Mr. Stout, Mr. Fithian referred to the inventory that Mr. Chittenden had examined?

When Mr. Stout asked Mr. Fithian if he would sell, Mr. Fithian said yes, if Mr. Wicks was willing. Mr. Stout said that he and I had been talking it over, and that I was willing. Mr. Fithian then said he would sell out. Mr. Stout said, how will you sell? Mr. Fithian said, I will sell out right. Mr. Stout said, what do you mean, sell out at cost? Mr. Fithian said yes, about cost, and then said he would sell out according to an account of stock he had taken for the purpose of selling out, or taking in a partner, and mentioned Mr. Chittenden's name at the time; then Mr. Stout says, what does this account of stock amount to? Mr. Fithian said about $33,000, and then said that there had been some things manufactured in the shape of tin cans, and there had been materials bought for making tin cans, which might bring the account up to $35,000. Mr. Stout hung down his head and looked very thoughtful. He raised up very sudden, and says, well, I will take the property. He rose upon his feet, seemed to be quite excited, and then said he would take the property if Mr. Dyer was willing; that he didn't know but we might think he was excited in giving an answer so quick, but that was his way of doing business; that he had never made a purchase or sale of any amount without doing it on the impulse of the moment. He then called Mr. Dyer, and we all talked over the matter together, and it was my impression at the time that Mr. Fithian had sold out, and I believe it was the impression of all parties concerned that it was a bargain, or trade, or sale, if neither party backed down.

1022. Did this $33,000 or $35,000 that you have last spoken of as to amount, include your interest or salary, as you call it, in the concern?

I couldn't say as a witness; I am not familiar with the books. I do not know whether my interest was included in it or not.

1023. Was your salary or interest at the time you last

mentioned expressly reserved by either Mr. Fithian or yourself, from the operation of the negotiation in Philadelphia?

I don't recollect whether it was or not.

1024. Was it reserved by Mr. Fithian or yourself the next day after you were in Philadelphia?

That I do not recollect. The reason why I recollect in particular the things that I have mentioned, was because I proposed the sale of Mr. Fithian's, therefore took a deep interest in the conversation until after I concluded or saw it was a sale, and after that I didn't pay much attention to the conversation, leaving my interest in the concern in the hands of Mr. Fithian and Mr. Seeley, his book-keeper, believing that they would pay due attention to my interest in the concern, as they always had.

1025. At what period of time do you refer to in your last answer, when you say you concluded or saw it was a sale?

I refer to the evening's conversation in Philadelphia, and the next morning's conversation at Bridgeton.

1026. Did you and Mr. Stout, and Dyer and Fithian, have any other conversation in Philadelphia, respecting this property, than you have referred to in your evidence; I mean if the parties met in Philadelphia, respecting this property, at any other time than you refer to?

They did not to my recollection. There was no other conversation in Philadelphia to my remembrance.

1027. You have referred in answer to question 1021, to Mr. Chittenden's name. In what connection did Mr. Fithian use Mr. Chittenden's name?

In connection with the account of stock, Exhibit D 1.

1028. On March 14th, 1865, were you present when Mr. Stout, Fithian and Dyer were together at Bridgeton, respecting this property?

I was most of the time.

1029. Was your interest or salary, as you call it, referred to at that time, if so, in what way?

The most that I recollect about it, is that Mr. Fithian said that I had an interest of $10,000, which would remain in the concern.

1030. Did you at that time, examine any of the papers or figures to see what was the exact amount of your interest then?

I did not.

How did you know then what your interest amounted to?

I took the word of Mr. Fithian, and Mr. Seeley, his book-keeper, as satisfactory.

1031. What did you take to show, if anything, for your interest in the new concern you speak of?

I was given credit on the books for $12,000 worth of property, tools and fixtures, at the prices the inventory stated.

1032. What inventory do you refer to now?

Exhibit D 5.

1033. Did D 5 in its amount include your salary or interest in the concern?

I think it did.

1034. Did you examine any of the papers on March 14th, 1865, that Mr. Fithian took as security or pay for the price of the property?

No, sir; I did not.

1035. Did you give Mr. Fithian any papers yourself on that day, respecting this property or your interest in it?

I did about that time give him a receipt for $12,000, as being my share of the interest between him and me, and which receipt canceled our former article of agreement referred to before.

1036. Do you remember 5 catsup tanks of the personal property in question?

I do.

1037. How long had they been used by Mr. Fithian?

One season.

1038. What did they cost; if you know?

I do not remember; I made an estimate of them once for Mr. Stout.

1039. Do you remember the glass sash, if so, what did they cost?

I remember the glass sash, but do not know what they cost; they were made before I went to Bridgeton.

1040. Work benches in the tin shop; were they fast to the shop, or were they movable?

They were fast to the shop.

1041. Twelve cooking tanks; were they fast to the building or were they movable?

Fast to the building.

1042. One railroad tank; was it fast to the building or was it movable?

Fast to the building.

1043. Two double iron kettles; were they fast to the building, or were they movable?

Fast to the building.

1044. Six copper kettles; were they fast to the building or were they movable?

Fast to the building.

1045. Five tomato catsup tanks; were they fast to the building or lands, or were they moveable?

I think they would be considered fast to the building, as they were built in the building, and could not be removed without taking them to pieces or taking down a portion of the building, to take them out.

1046. Two water tanks; were they fast to the building, or were they movable?

Fast to the building.

1047. One asparagus blancher; was it fast to the building, or was it movable?

Movable.

1048. There is one article, one fall and tackle. where was that article?

In the factory at Bridgeton.

1049. Was it connected with anything? Describe its location.

It belonged to the factory, and was and has been often used for the purpose of repairing the wells, &c.

1050. The item, one flagstaff and halliards, where was that?

In the office at the factory.

1051. Was it fast to the lands, or was it movable?

Movable.

1052. One Truman's cupboard, was that fast to the land or movable?

Fast to the factory.

1053. The item, two tomato tanks, were they fast to the building or movable?

Fast to the building.

1054. One case and drawers, was that fast to building or movable?

Movable.

1055. One label case, was that fast to the building or movable?

Fast to the building.

1056. Items, "twelve benches and seven benches," were they fast to the building or movable?

The "seven benches" were movable; they were all movable, the benches.

1057. The article of walnut juice, who manufactured it?

I did.

1058. What did it cost per gallon?

About ten cents.

1059. What do you mean by "about ten cents?" Please give some definite sum.

Well, I would contract to make it to-day for ten cents a gallon, any amount; I could make money at it.

1060. Can you not give us the price per gallon the article did not exceed as to cost?

Yes, ten cents.

1061. The article walnut catsup, who manufactured that article?

I did.

1062. What did that article cost per gallon?

The cost of that article did not exceed thirty-five cents.

1063. The article of peach juice for jelly, who manufactured that article?

I did.

1063½. What did that article cost per gallon?

I think not to exceed five cents.

1064. What is meant by jelly juice, that is, what fruits is it made of?

The juice referred to in the inventory was made from apples, and from the skins of peaches.

1065. Was there any difference in the juice as to its cost, whether made from apples or peach skins?

There was a difference, I think, of twenty cents a gallon, the apple juice costing the most.

1066. Of the jelly juice, sold by Mr. Fithian to Stout and his associates, which was the most, that made of apples or peach skins?

I think about two-thirds of it was made of peach skins.

1067. In what condition, if you know, were the tin cans in which this jelly juice was?

They were most of them defective, being rusted, and from which cause, at the time of the purchase by Stout and his associates, I think there was twenty per cent. of the juice purchased good for nothing, having become sour from the leaking of the cans.

1068. Did Mr. Fithian inform Mr. Stout, at the time you speak of, of the condition of those cans?

He did not, and I do not think Mr. Fithian knew anything about them, as we had not made any jelly juice since the fall before.

1069. What were those cans at the time of the purchase, you speak of, worth?

Twenty per cent. of them was good for nothing; the balanck was good for nothing after the materials in them was emptied out, and were never used afterwards.

1070. At the time you say, after the 8th of March, when Mr. Fithian made up an inventory of the property, do you know how he arrived at the number of gallons of walnut juice, if so, please state it.

I do not, but I suppose he came at it by counting the number of casks, and calculating each one held so many gallons.

1071. Were those casks tight?

They were all tight when the juice was put in them; the juice was put in hot, which strained the casks some; burst some of the hoops.

1072. In what way, Mr. Wicks, could he arrive at the quantity in the casks?

By guaging each one separate.

1073. Have you, since the purchase you speak of, superintended the manufactory at that factory?

Yes sir.

1074. Has any of that walnut juice been used since that purchase?

No sir.

1075. The item of 3,360 gallons of walnut juice, was that amount needed by Stout and his associates in their business?

(Question objected to).

It was not needed immediately; not that amount.

1076. Do you know if there was that amount of walnut juice on hand at the time of that purchase?

I do not think there was; I think there would have been if the casks had all been full; but quite a number of the casks had leaked considerable; had leaked some of the juice out.

1077. Do you know what quantity of Cumberland sauce, Mr. Fithian had on hand, at the time of the sale you speak of?

I do not recollect, but the inventory will show.

1078. Do you know how Mr. Fithian arrived at the quantity of that article?

That that was bottled and packed, he arrived at by counting the cases; that that was manufactured and unbottled, I gave him the account of having manufactured it in open casks, and made just forty gallons in each cask.

1079. How long was it before the sale, that you manufactured that article?

I think it was about ten months.

1080. What did the Cumberland sauce cost Mr. Fithian, per gallon?

I do not recollect, he made up his own cost.

1081. Do you know what it could have been made for at the time of the sale?

I think it could have been made for about one dollar and twelve cents a gallon.

1082. Item 5392 boxes; do you know how Mr. Fithian arrived at the number of those boxes at the time of the sale?

By counting them.

1083. What condition were those boxes in at that time?

I believe they were in good condition, all but one lot of old boxes that had been used.

1084. How many in that lot that you speak of as being old boxes?

I could not tell; I went out in the box house and counted those old boxes at Mr. Fithian's request, but do not remember how many there were. If I remember rightly, those boxes were not in D 1, I counted them for the purpose of being put in D 5.

1085. Do you know what those boxes cost Mr. Fithian?

I do not.

1086. The item 550 peach crates; how long had they been in use prior to the sale?

I think only one season.

1087. Do you know what they were worth at the time of the sale, or what they cost Mr. Fithian ?

I do not.

1088. Do you know if they were made of new or old lumber?

The ends and middle partition were made of new lumber ; the slats were made of old glass crates.

1089. The item lot of muslin sash ; do you know what it was worth at the time of the sale?

It was not worth anything.

1090. Lot of glass sash ; what was that worth at the time of the sale ?

It might have been worth $25 or $30.

1091. Was it worth over $30, if so, give the fullest value you know of for that article ?

It was not worth over $30.

1092. How long had those sash been used before the sale ?

I do not know.

1093. The item one iron bather, and one wooden bather; what were these articles worth respectively, at the time of the sale ?

The wrought iron, in the iron bather, I think, we sold for twenty-five cents; the wooden bather was good for nothing.

1094. The items two candle moulds, and one old door frame ; what were those articles respectively worth, at the time of the sale ?

Not anything.

1095. Awning iron and crane ; was that article fast to the building or movable?

It was movable at the time of the sale, it had been torn down to build a new office.

1096. What was it then worth ?

Good for nothing, only to sell as old iron.

1097. Please state what it was worth, to sell as old iron ?

Well, I should think, not to exceed fifty cents.

1098. The article one wooden rack; what was that worth at the time of the sale ?

I don't remember the article.

1099. Eight tumbler cap dies, Fithian & Pogue ; what was that article worth at the time of the sale ?

About four cents a pound for old iron.

1100. How many pounds were there in the dies ?

Between forty and fifty, I should think.

1101. The article printing plates, what was that worth at the time of the sale ?

Not anything.

1102. What is the nature of this article, one label case ?

It is built similar to a book-case with closing doors, divided off in small apartments for labels.

1103. Was it fast to the building, or movable?

It was movable.

1104. What was it worth at the time of the sale?

Not to exceed fifteen dollars.

1105. What were the articles "twelve benches and seven benches" worth at the time of the sale?

Not to exceed seventy-five cents each.

1106. At what time do you refer, when you say that the articles you have mentioned were fast property or movable?

I mean to refer to the 7th, 8th and 14th of March, 1865.

1107. Since Mr. Fithian made the sale of the property you have spoken of, how were the goods which you manufactured for Stout and his associates disposed of?

They were disposed of by Stout and Dyer at our sales-room, No. 91 Barclay street, New York.

1108. How was any of the goods that Fithian sold disposed of by Stout and his associates?

I do not think I can answer the question.

1109. Were any of the goods which Fithian sold to Stout and his associates shipped from Bridgeton to New York?

There was.

1110. For what purpose?

For the purpose of selling.

1111. How did Mr. Stout know at what price to sell any of these goods after they were shipped to New York?

He knew by referring to the prices at which he bought them of Mr. Fithian, and by adding the freight on them from Bridgeton to New York.

1112. Was there any schedule of prices sent to Mr. Stout with the goods shipped to New York?

There was; Mr. Seeley, Mr. Stout's book-keeper, always sent with each shipment, a statement of the actual cost of the goods delivered in New York.

1113. Who made such statement up as to the cost?

Mr. Seeley and myself.

1114. Was any reference made in making up the statements so made, by either you or Mr. Seeley, to the inventory Exhibit D 1 or Exhibit D 5?

No further than pertained to the goods bought of Mr. Fithian, contained in those inventories.

1115. In what way did you or Mr. Seeley so refer to those inventories or either of them in making up such statements?

In making up the cost of jellies, Mr. Seeley would refer to the price that was paid Mr. Fithian for the juices, and then by adding the cost of sugar and the amount of labor, &c., he would get a correct statement of what the jelly cost us, and we got the cost of other materials in the same way, as far as we used any of the materials we purchased of Mr. Fithian.

1116. Who wrote out and forwarded these statements you speak of, you or Mr. Seeley?

Mr. Seeley.

1117. Do you know if Mr. Seeley referred to D 5 exclusively in making these statements, or sometimes to D 1?

I do not.

1118. Where were these statements made out at?

At our factory in Bridgeton.

1119. The item, 55,717 tin cans, do you know how that number was arrived at by Mr. Fithian?

Mr. Fithian had a foreman in the tin-shop that kept an account against each individual's name that made tin cans; this account of labor was handed into the office every Saturday afternoon, and Mr. Fithian paid the manufacturers of the tin cans so much a hundred for each hundred cans that were made, and kept a memorandum of the cans as they were manufactured, as handed in by the foreman, and by this means he knew, or ought to know, how many cans he had on hand every week.

1120. Do you know how long before the sale you speak of, that number of cans had been made, and if so, how many of the number were old cans, and how many new?

The cans were commenced to be made in the fore part of the year 1865, and were being manufactured up to the day of the sale. There might have been a thousand or two old cans in this lot; what I mean by old cans is, cans that had been used once, and were just as good to be used the second time, and were all used. I think there was in this account of cans a few square asparagus cans that never had been used, and never were used, and have since been melted up for the solder that was in them.

1121. Were there any five gallon cans included in the last lot of cans you have spoken of?

I don't remember, it seems to me there were some.

1122. Do you know what the new cans cost Mr. Fithian, and what the old cans cost him?

I do not.

1123. The item, 203 empty barrels, what condition were they in, on the 8th of March, 1865?

I don't remember no such lot of empty barrels.

1124. Do you remember 203 barrels?

I have no recollection of any barrels except those of walnut juice and those for making Cumberland sauce in.

1125. Do you know what those barrels that had the Cumberland sauce and walnut juice in, cost Mr. Fithian?

I think they cost him various prices, from $1.00 to $2.50.

1126. What were they worth on the 8th of March, 1865?

They were worth half price, I suppose.

1127. Were they worth any more than half price?

No sir, they had been strained by having hot juice put in them; the hoops were burst and heads strained.

1128. What were the items, bone dust, 1 barrel sage, 65

pounds ground nutmegs, worth, on the 8th of March, 1865?

The bone dust and sage was not worth anything; the ground nutmegs might have been worth half price, the strength had evaporated out of it very much.

1129. The item Cumberland sauce show-cards, what were they worth on the 8th of March, 1865?

They were not worth anything to Stout, Dyer & Wicks.

1130. The item labels, what was the nature of that article?

It consisted of quite a large amount of labels, marked Fithian & Pogue, and C. S. Fithian & Co., and were of no account to Stout, Dyer & Wicks.

1131. The item bottle moulds, what was the nature of that article?

They were all in good condition as far as my knowledge goes.

1132. Do you know what they were worth on the 8th of March, 1865, and do you know what they cost Mr. Fithian?

They were worth as much as ever they were, with the exception of taking out the name of Fithian & Pogue and putting in the name of the new firm, which we have had done as often as we have had occasion to use them, at the cost of $5 a mould; I do not know what they cost.

1133. The item one steam pump; do you know if that article on the 8th day of March, 1865, was fast property, or movable and what was the condition of it at that time?

It was in good condition and is yet, but I do not remember whether it was set or not.

1134. On the 8th of March, 1865, do you know if there was any canned peaches or tomatoes in Mr. Fithian's stock at Bridgeton, and if so, what the respective amounts were?

There was canned peaches and tomatoes, but I do not recollect what the amounts were.

1135. Did you have any interest in any of those canned tomatoes or peaches?

No, sir; they were Mr. Fithian's property.

1136. Were any of the tomatoes or peaches sold at that time, to Stout and his associates?

I think not, with the exception of a few that might have been in the show case.

1137. Did Mr. Fithian between the 21st of December, 1864, and 8th of March, 1865, purchase any stock for his business excepting material for the manufacture of tin cans?

I think not, although he might have bought some spices for catsup.

1138. Did Mr. Fithian manufacture any boxes between the 21st of December, 1864, and the 8th of March, 1865, if so, how many?

I think not.

1139. What interest did Mr. Seeley have in the business

of Mr. Fithian, on the 7th of March, 1865, and how long had he had such interest, if any?

He had no interest further than a hired book-keeper.

1140. Did you on the 14th of March, 1865, sign any papers besides the receipt you have spoken of in connection with the business or property in question?

I did; I signed several papers about that time, but I don't know what they were.

1141. What was the nature of those papers you speak of?

I think they were in the form of deeds, bonds, &c.

1142. Any amount of money expressed in the body of any of the papers?

(Question objected to.)

I don't remember any particular amount, except a bond for $10,000; I signed that, a bond and mortgage, I guess it was.

1143. Did you read all the bonds you say you signed that day?

No. sir; I didn't read any of the papers.

1144. Who were the bonds delivered to that you say you signed?

I believe they were delivered to Mr. Fithian.

1145. If Mr. Fithian did not sell your interest in his business at the time you speak of, why was there not some reservation specially made in regard to it, or how do you explain his reference to your consent in regard to the sale?

(Question objected to.)

I believe I can explain it the best by saying, that strictly speaking, I had no interest in the concern; that Mr. Fithian sold the entire property according to the inventories referred to, and then there was a deduction of his indebtedness to me $10,000 in one inventory, and the other inventory gave $12,000.

1146. On the 14th of March, 1865, do you remember of any inventory being shown by Mr. Fithian to Mr. Stout and his associates?

I do.

1147. In what was it contained; in a book or on loose paper?

I believe it to be the book now in Court, represented as Exhibit D. 5.

1148. What did that inventory refer to?

It referred to personal and real property.

And whereupon the examination was adjourned to Wednesday morning, July 10th, 1867, at 9:45 A. M., at the same place.

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

1149. Who composed the firm of C. S. Fithian & Co., and why was that name used or continued?

Mr. Charles S. Fithian composed the firm of C. S. Fithian & Co. He assumed that firm name after he bought out Mr. Pogue, so that in case he ever took in another partner he would not have to go to the expense of altering plates and dies for labels. This is as I understood Mr. Fithian's motive in assuming the firm name.

1150. Was there any person then associated with Mr. Fithian as a partner in the factory business or in the property after he bought out Mr. Pogue?

No sir, not to my knowledge.

1151. Why were the articles, walnut juice and walnut catsup and jelly juices, put down in D 1 at the prices therein stated by Mr. Fithian, or by Mr. Fithian's directions?

They were put down as therein stated to represent what Mr. Fithian called a fair price for those articles, in case of associating himself with any other partner.

1152. Was any particular person as a partner mentioned or referred to in connection with the prices you have last named?

Yes sir, Mr. A. S. Chittenden.

1153. What did Mr. Fithian say in connection with setting the price down, and associating Mr. Chittenden or any other person as a partner with him?

He said that in making out the inventory as represented in D 1, that he did not think it would be right to put down those goods at just what they cost him, but that there should be a fair price put to those goods, as compared with the price of such goods then in market.

1154. What did he say, if anything, as to running up the amount of stock by setting down those prices?

He said it would increase the capital and make it stand as an offset against capital that a partner might put in, and as a consideration for the good will and name of the business, which he had spent some money in advertising, and some considerable exertion to establish.

1155 If Mr. Chittenden had, at the time you have spoken of, or subsequently, became a partner of Mr. Fithian, what was Mr. Chittenden to put into the concern as his capital, money or property?

Money.

1156. Do you owe Mr. Fithian anything at present?

I do.

1157. How much and for how long have you owed him?

I don't remember the exact amount, $700 or $800, inside of $1,000; I don't know for how long. I gave Mr. Fithian my note in the form of a bond, for my indebtedness to him, last March. I believe this indebtedness has been accumulating on unsettled business between Mr. Fithian and myself, and

Mr. Fithian and his debtors under his firm; and since he sold out to Mr. Stout & Co. there is still uncollected money out, which if Mr. Fithian collects, will diminish the amount of my indebtedness to him in a one-third proportion, so that I cannot say how much I do rightly owe him.

1158. Has Mr. Fithian said anything to you in reference to the expenses of this suit, if so, when?

Yes sir, he has mentioned it to me; the first time I think was when he wished me to go to Mr. Nixon's office and examine the paper that Mr. Stout had sent down, which he said implicated him and me as defrauding Mr. Stout and his associates, and it was as much to my interest as his, as well as to my credit and his, to defend ourselves in this suit, and he wanted it understood by me that I would have to pay one-third of the expense and loss, in case the suit went against us. There have been similar conversations once or twice since.

1159. When was this first time which you refer to?

I do not remember the date, but I think it to be the first day that Mr. Nixon received the answer from Mr. Stout in relation to this suit.

(Witness means the answer filed in this cause to the bill.)

And being cross-examined, he says:

1160. Did you have any conversation with Mr. Nixon in the interview last referred to by you, in reference to the terms of sale made by Mr. Fithian to Stout, Dyer & Wicks? If so, state what you told him as to your knowledge of the contract.

(Question objected to.)

I do not remember of having any particular conversation with Mr. Nixon about the terms of the sale.

1161. Did you state to him that you knew nothing about the contract, and that Mr. Stout could prove nothing by you in reference to it?

(Question objected to.)

No sir.

1162. Have you had any conversation with Mr. Fithian in reference to the contract between him, Fithian, and Stout and Dyer, for the sale of the property in question, and have you stated to him that you could remember nothing about the terms of sale?

(Question objected to.)

No, sir; I will now add that I told Mr. Fithian that I remembered but very little of the conversation or anything pertaining to it, that transpired after the 7th and 8th of March, 1865, and the reason why I remembered what transpired then, was because I proposed the sale to Mr. Fithian,

and the purchase to Mr. Stout, and I felt interested to know whether it was going to be a bargain or not, and after I found out or discovered by the conversation that it was a bargain, I paid but very little attention to what went on, and didn't know as I could have anything to say as a witness in the case; but since the case has come up and I have heard other witnesses examined, there has many things come to my mind, that I had not thought of since they transpired, and probably never should have thought of again had they not been called up.

1163. Name the witnesses whose testimony has brought these things to your mind?

Mr. Stout and Mr. Dyer, and the books D 1, and D 5, referred to.

1164. What knowledge of the contents of the books D 1, and D 5, had you before the examination of witnesses in this case, and how did you acquire such knowledge?

I had no knowledge by personal examination. What knowledge I have, I have acquired in the court.

1165. What do you find in those books to bring back to your mind, any knowledge of the contract between Fithian and Stout and Dyer?

I find in D 1, an inventory of the property that Mr. Fithian sold to Stout & Dyer.

1166. Did he sell to them any property except what is embraced in D 1?

He did.

1167. For what purpose did Stout and Dyer go from Philadelphia to Bridgeton, on the morning of the 8th of March, 1865?

To look at the property in question.

1168. Did you conclude, or think then, that the property had been sold?

I did, but still thought that Mr. Stout had a chance to back down if he wished to, or Mr. Fithian had, as there had been no papers exchanged or money paid.

1169. Did you conclude that they had purchased the property according to the inventory D 1?

I concluded they had purchased the property; I don't know as I thought anything about D 1, until the next morning.

1170. Was it your understanding that the terms of the purchase were embraced in D 1?

(Question objected to.)

It was, from what Mr. Fithian said the night before in his conversation with Mr. Stout.

1171. After they reached Bridgeton, and looked at the property, was there any agreement made in reference to the price of the real estate, and if so, what did Mr. Stout and Dyer agree to pay for it.

There was; they agreed to pay $12,000 for it?

1172. Did the parties agree as to what should pass as real estate, and if so, state what?

I believe they did. I can't state the articles myself, it was included in the $12,000.

1173. Look at item on 1st page of D 5, and state whether what is therein stated in the first item was to go as real estate?

I think not.

1174. State the difference.

Certainly the ground goes as real estate; I can't mention what other items were to pass as real estate.

1175. Is the real estate in inventory D 1, set down at $12,000; and if not, at what sum?

(Question objected to.)

I don't know, I have never examined the books to find out.

1176. Was the inventory D 1, on the 8th of March, shown to Messrs. Stout and Dyer, before or after they had agreed to take the real estate at $12,000?

I do not remember.

1177. Do you remember that inventory D 1 was shown to them?

I do.

1178. When Stout and Dyer returned to Bridgeton, on the 14th of March, following, what inventory was then shown to them by Mr. Fithian?

Inventory D 5.

1179. Did you then know it was not inventory D 1?

I did.

1180. Did you so state to either Mr. Stout or Mr. Dyer, and if not, why not?

I did not; because I considered Mr. Fithian was selling his own property, and for the reasons that I have heretofore mentioned, that the account of stock in D 5, would make no difference with my interest, and quite a difference with his.

1181. Did you as one of the partners in the new firm, agree to purchase the property according to the inventory D 5?

(Question objected to.)

I didn't object to it, to Mr. Stout, or Mr. Dyer.

1182. Were you present when inventory D 5, was exhibited by Mr. Fithian to Mr. Stout and Dyer, and if so, state what Mr. Fithian said, as to how it had been made up, and by whom?

I was present, when Mr. Stout and Mr. Dyer manifested a surprise at the advance in the price of the real estate and personal property, and manifested a wish to investigate it, or look it over, and Mr. Fithian said that it was not necessary to do so, as the account had been taken by himself and Mr. Seeley, and Mr. Wicks; and as Mr. Wicks was interested

both ways, and Mr, Seeley one way, it must be correct or about correct; I don't remember how it was expressed.

1183. State whether either Mr. Stout or Mr. Dyer made any objections to any particular articles enumerated in D 5, and if so, what articles?

They might have made objections to several articles and I not have noticed it; but I recollect the article of barrels as calling up quite a debate at the time as to the price or cost, and some debate on tomato pulp; those are the two only articles that I remember in particular.

1184. You recollect the objections made by them as to the item "labels?"

I do.

1185. Did they afterwards agree to take the property according to the inventory D 5?

I understood it so.

1186. At whose suggestion was the property, real and personal, conveyed to the West Jersey Canning & Pickling Company, and what reason was assigned for such conveyance?

By Mr. Charles S. Fithian, I believe, for the sole reason of giving a clear title to the property.

1187. How long did the title to the real estate stand in the name of that corporation, and at whose suggestion was the deed made to the individuals interested in the corporation?

I think the deeds were made to the individuals of the corporation at the suggestion of Mr. Fithian, and the corporation existed only long enough to execute those papers.

1188. Do you mean by your last answer that the deed to the individuals was executed immediately after the deed had been made by Mr. Fithian to the corporation?

I think so.

1189. Exhibit D 5 being shown witness, he is asked: Does the date of that deed express the true time of the conveyance?

I suppose it does.

1190. What reason had Mr. Fithian on the 28th of April, 1865, to suggest to you to drop the name of the corporation?

I don't recollect that he ever did so.

1191. Is your reply to interrogatory 1187, correct, when you say that Mr. Fithian suggested that the corporation should make the deed to the individuals?

I think not.

1192. State why the change was made.

I don't recollect.

1193. At the time of the purchase of this property by Stout and his associates did the new firm or corporation reserve the right to use the name of Fithian & Pogue or Charles S. Fithian & Co. in carrying on their business, Exhibit D 14 being shown the witness?

They did.

1194. State why that was done, if you know.

I think it was for the purpose of taking Mr. Fithian's customers, and custom, and business that he had established.

1195. You stated in your examination in chief, that labels, Cumberland sauce, show cards, printing plates, tumbler cap dies, bottle moulds, were worthless to the new firm. If the new firm, in the prosecution of their business, had used the name of Fithian & Pogue or Charles S. Fithian and Company, were not these articles worth their cost?

I did not say in my testimony that those articles were worthless, but if Stout, Dyer & Wicks had been disposed to use the name of Fithian & Pogue, or C. S. Fithian & Co., the labels, show cards, and dies referred to, and printing plates, might have been used. I said in my statement that the bottle moulds were good, and could be used, and had been used by the new firm after erasing Mr. Fithian and Pogue's names, and putting in the name of the new firm at the expense of about five dollars a mould.

1196. Do you know whether inventory D 5, represents the cost of those articles?

I do not.

1197. Do you know the cost of any of the articles as follows—candle moulds, old door frame, awning iron and crane, wooden rack, benches, glass sash, muslin sash, peach crates? If so, state what each article cost.

I do not know what they cost.

1198. State, if you can, the cost of either of the following articles—cooking tanks, double iron kettles, copper kettles, metal catsup tanks, water tanks, asparagus blancher, fall and tackle, one case and drawers, label case.

I am not able to state just what they cost. Mr. Fithian had all those things manufactured either by the day or by contract, and it was none of my business what they cost him.

1199. What does it cost to make walnut catsup out of walnut juice?

About twenty-five cents per gallon at the present cost of spices. At the time of the sale by Fithian the cost was about the same.

1200. State for what purpose the walnut catsup was used.

For making Cumberland sauce.

1201. Before you began making it at Bridgeton, did you purchase walnut catsup in the market, and if so, at what price?

(Question objected to as irrelevant.)

We did purchase some walnut catsup previous to our manufacturing any at Bridgeton, but I do not remember the price, but think it was from one dollar and a half to two dollars a gallon.

1202. State if you can, the average price of walnut catsup in the market, on the 14th of March, 1865.

(Question objected to as irrelevant.)

I think it was worth two dollars a gallon.

1203. State the quality of the walnut juice sold by Fithian, and included in inventories D 1, and D 5?

It was of good quality.

1204. How did the walnut catsup made by you, and used in the manufacturing of Cumberland sauce, compare in quality with that purchased in the market?

(Question objected to as irrelevant.)

The walnut catsup manufactured by me, was of better quality for Cumberland sauce, and a much cheaper article than that in market, for the reason, that the walnut catsup made by me, was made expressly for Cumberland sauce, and the walnut catsup in market as referred to at two dollars a gallon, was the imported English catsup. I have no knowledge of any American walnut catsup ever being in market for sale.

1205. What was the quality of the jellies sold by Fithian to Stout, Dyer & Wicks?

I believe they were in good condition at the time of the sale, but there was some grape and gooseberry jelly that granulated the coming summer after the sale, as any jelly will, made from grapes or gooseberries, if kept many months, which was returned and worked over. Some few cases of jellies that were sent back to the factories as not saleable, on account of a white mould coming on the top of the jellies, which we always call an indication of good jelly; this mould was taken off, bottles re-corked and sold.

1206. Were the fruit juices, sold by Fithian, to Stout and his associates, used by you in the manufacture of jellies, and if so, when?

Some of them were used, and have been used up to the present time. There is a large lot of the same juices on hand yet, purchased by Mr. Fithian. I threw away about four hundred gallons at one time, last fall; the cans had rusted and the juices soured.

1207. What was the quality of these juices at the time of the sale by Mr. Fithian?

I think that twenty-five per cent. of those juices were good for nothing, from the cans rusting out and the juices souring.

1208. Did you assist in making the inventory of these juices, counting the quantity?

I might have held a light in the cellar for Mr. Fithian while he counted them, or he might have held a light for me.

1209. Do you recollect whether any allowance was made at that time for loss or wastage?

I do not positively; but believe there was an allowance

made by Mr. Fithian; but do not recollect of what amount, if any.

1210. How soon after the sale did you begin to use the juices for making jellies?

We commenced to use those juices the same Spring of the sale.

1211. What was the cost of making juices from currants, gooseberries, strawberries, blackberries?

I can't answer only to the item currants, as we have not made juices from any of those articles except currants since the sale; that item costs about one dollar per gallon, I believe.

1212. On page 13 of inventory D 5, is item "Juice in bottles." State what kind of juices these were, and the cost of manufacture per gallon? (inventory being shown witness).

I think those juices were mostly blackberry juice, made from a lot of blackberries three years before; I don't know as Mr. Fithian made out the cost of those things.

1213. How many gallons of apple juice can be made from a barrel of apples?

(Question objected to as irrelevant).

I can't tell till I refer to my books.

1214. State the quality of the tomato catsup, sold by Fithian to Stout and his associates, as stated in inventory D 5?

It was of good quality, to the best of my knowledge.

1215. From what is tomato catsup manufactured?

From tomato pulp.

1216. Was the tomato pulp sold by Fithian to Stout and his associates manufactured by you, if so, state its quality?

It was manufactured by me, and at the time of the sale was of good quality.

1217. Did the new firm, after the sale by Fithian, manufacture Cumberland sauce?

They did.

1218. Did you use the recipe which Fithian had previously used in the manufacture?

(Question objected to as irrelevant).

Yes sir.

1219. What was that recipe worth to a person carrying on the business that the new firm carried on?

The price of the recipe or the value of it would be in proportion to the specialty they made of the article manufactured.

(Question objected to as irrelevant).

1220. Have you recently fixed a price that the recipe for the manufacture of Cumberland sauce was worth to any person? and if so, state the price.

(Question objected to as irrelevant).

I have not recently fixed any price; but I have not seen a time since I first discovered the manufacturing of Cumber-

land sauce that I would sell the entire right of the recipe for less than $5,000.

1221. In the inventory of tin cans spoken of by you in your examination in chief, state as near as you can, what number of them were old cans.

I think about two thousand.

1222. Look at item "500 old tin cans," on page 3 of inventory D 1, and state whether that does not embrace the number then on hand?

It embraces one lot of them.

1223. Where was the other lot at the time the inventory was made?

A part of them were piled near this lot, and 1000 old asparagus cans that we have since melted up for their solder, were piled on the floor above.

1224. Were those 1000 old asparagus cans counted in inventory D 5?

I think they were counted in with 3,000 new ones.

1225. Who made the count?

I do not recollect.

1226. Did you not assist in counting all of these cans?

No sir, the 3000 new asparagus cans didn't need to be counted, for they stood on the books, I believe.

1227. Were there no cans counted that stood on the books?

I think not. I don't mean in saying the books, the books D 1 and D 5. I mean the books of the firm.

1228. State what articles are included in inventory D 5, were so sealed up that they could not be examined without damage.

Not any, to a man that understood canning goods.

1229. How soon after the purchase by Stout and his associates of Mr. Fithian did you commence manufacturing goods from the articles purchased of him?

I do not remember exactly.

1230. Was there any delay in carrying on the business?

(Question objected to as irrelevant.)

Not to my remembrance.

1231. What was the size of those tin cans that contained the juices?

They were five gallon cans.

1232. How long can they be used for that purpose?

My experience is that they cannot be used with safety over three years.

1233. Do you know the cost of their manufacture?

They cost us seventy-five cents apiece, I believe, to manufacture them this winter.

1234. Who counted the barrels of Cumberland sauce, manufactured and in the course of manufacture, included in the inventory D 5?

I did.

1235. Was there a mistake made, and if so, was it reported to Mr. Fithian, and what did he do about it?

There was. It was so reported to Mr. Fithian and he corrected it.

1236. State as near as you can the time when this correction was made.

I think it was the summer of '65.

1237. Did Mr. Fithian allow the whole claim made?

I believe he did.

Direct examination resumed.

1238. Who was the inventor or author of the recipe for the manufacture of Cumberland sauce, and when?

I am; in 1857, 1858 and 1859. I experimented on the recipe during those three years, at the individual expense of about $400.

1239. When did you first experiment for the production of that sauce?

In 1857.

1240. From whom did Mr. Fithian first obtain information relative to its manufacture?

From me.

1241. Did Mr. Fithian ever manufacture it himself independent of you?

No sir; he assisted once or twice in making some when I was too busy to give my whole attention to it.

1242. Has he the recipe, or a copy of it, for the manufacture of the sauce?

I think he has.

1243. Did Mr. Fithian sell to Mr. Stout and his associates the recipe, or the right to use it?

No sir, but he agreed not to manufacture it himself, or signed a writing to that effect.

1244. Do you know the style of the recipe, or copy which Mr. Fithian has, whether in plain writing or not? If so, describe it.

The only recipe I know of as being in Mr. Fithian's possession, was written by himself in a small sheepskin covered pass-book, partly in hieroglyphics to me, as I read over the receipe to him.

1245. Did you request him to give up that recipe to you at any time, and if so, did he refuse?

Yes sir, I asked him for the recipe once or twice after the sale, and he refused to let me have it.

1246. Who first discovered the error as to the barrels of Cumberland sauce you have spoken of?

I think I did.

1247. On March 14th, 1865, when Exhibit D 5 was shown to Stout and his associates, did Stout and Dyer suggest to

Mr. Fithian that the property and the inventory D 5 be compared in any way ?

They did.

1248. Were they compared ?

They were not. Mr. Fithian objected, as its being useless time, affirming that the account taken was correct, and referring to Mr. Seeley and I as witnesses.

1249. What do you mean by saying that the deed was made to the corporation by Mr. Fithian for the sole reason of giving a clear title to the property ?

I think I was mistaken, and got the sale of the property to the West Jersey Canning & Pickling Company mixed up with the sale of the property from the corporation to the firm.

1250. What effect would it have upon jellies or canned fruits to open the cans to examine their contents as to quality or quantity ?

It would not hurt jellies any. It would destroy the contents of each can hermetically sealed to open it for examination.

1251. Would it be any expense, labor or injury to the property to open the boxes and vessels containing the packages of juices or jellies ?

It would be an expense to open the boxes equivalent to the amount of time that was spent on it, and would probably injure the boxes some, but it would in no wise injure the contents.

1252. What effect would it have upon the caps and corks ?

It would spoil the caps and corks if removed from the bottles.

1253. Do you know what the caps cost a dozen ?

I do not.

1253½. How long had this tomuto pulp been made that Fithian sold, and when ought it to have been made up in catsup ?

It had been made about five months, I suppose. I prefer making it into catsup in the fall, before New Year, although I have never known it to receive any injury from its laying until the commencement of warm weather in the spring.

1254. Do you know how much currant juice Mr. Fithian had on hand at the time of the sale ?

I think not any.

Cross-examination resumed.

1255. State whether any of the juices or jellies sold by Fithian were in boxes.

There were no juices in boxes, and I don't know that there were any jellies in boxes sold by him.

1256. Were not the jellies in glass, and could not the quality be determined without opening them?

They were in glass, and their quality could be seen without opening them.

1257. Was there not sufficient time after the 14th of March to make up the tomato pulp into catsup before the same was spoiled by the warm weather?

There was. I think it was so manufactured.

LORIN J. WICKS.

Sworn and subscribed before me July 10, 1867, at Jersey City.

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

ROBERT M. SEELEY, a witness produced on the part of the defendant, being duly sworn, on his oath deposes and says:

1258. What is your age and residence and occupation?

My age is 33; residence, Bridgeton, New Jersey; occupation, book-keeper and manager for John W. Stout at his factory in Bridgeton, New Jersey.

1259. Were you ever in the employ of the complainant, and if so, for how long, where, and in what business?

I was in his employ at Bridgeton for a little over a year, at his factory as book-keeper.

1260. Exhibit D 1 being shown the witness he is asked: "Account Stock taken Dec. 21, 1864," in whose hand-writing is that line?

My own.

1261. When was it written there?

In December, 1864.

1262. In whose hand-writing is the inventory and figures in that book immediately succeeding that line?

In my own.

1263. What do they represent?

They represent an inventory of the stock and prices of said stock taken at that time by Mr. Fithian.

1264. Give the first and last item and figures of that inventory.

First item, "3,000 new asparagus cans, 16c, $480."

Last item, "Peas do. 2,000, $10."

1265. Please give the gross amount of that inventory as stated.

$50,814.98.

1266. At whose direction were the figures set down opposite each item in that inventory?

Mr. Fithian's.

1267. What did he say the figures in the right hand column of each page of that inventory represented?

He did not say that they represented anything.

1268. Do you know what they represented?

I know that they represented the price that he affixed to those articles in taking that account of stock.

1269. Do you know for what purpose that inventory was made? if so, please state it.

It was made for the purpose of going over the business of the past year, ascertaining the profits, and also to see what amount of stock was on hand, with a view of making some change in the business.

1270. Did Mr. Fithian frequently see the inventory as you were making it up, or entering it into the book?

He might have done so, but I don't think he paid any attention to the copying of it in the book.

1271. What did you copy it from?

From slates.

1272. Who furnished the entries on the slates which you copied?

Mr. Fithian directed me what to place upon them.

1273. Prior to March 7th, 1865, did Mr. Fithian occasionally examine that inventory?

He did.

1274. On the 8th of March, 1865, when Mr. Fithian returned to Bridgeton from Philadelphia, what did you ask him, and what reply did he give you respecting the factory, or the property, or the canning of fruits?

I expressed surprise at Mr. Stout and Mr. Dyer returning with him from Philadelphia; asked him if he had made the expected arrangement with them; he said no, that he expected they had bought him out, if they did not fly from the bargain.

1275. Bought him out of what?

Bought him out of his canning business, property and business, and stock on hand.

1276. Who was present at that conversation with Mr. Fithian besides yourself?

No one.

1277. On March 8th, 1865, was the inventory you have above spoken of shown to Mr. Stout or Dyer by Mr. Fithian in your presence?

It was not.

1278. Did Mr. Fithian at that time say to you for what price they had bought him out?

There was nothing said about price, to my recollection.

1279. Do the figures in the above inventory represent more or less than what the property cost Mr. Fithian?

(Question objected to.)

I could not say; some of the articles I do not know what they cost.

1280. Do the prices set opposite any of the articles in that

inventory represent more than the original cost of the articles to which the figures are opposite?

They do.

1281. Please state those articles you have last referred to in your answer, and also the difference between the price there set down and the original cost of the articles, as far as you know.

The article of jelly juices, and walnut juice, and peach crates, are down above their cost. I don't think of any other leading article at present. The article of walnut juice is set down at fifty cents a gallon. It did not cost over ten. The article of peach crates are set down as costing one dollar each. I think they did not cost over twenty-five cents. The peach and quince juice is set down at thirty cents per gallon, did not cost over five cents. Apple juice, set down at thirty cents, would cost not to exceed twenty-five.

1282. Do you know what the item walnut catsup cost per gallon?

I do not.

1283. The item five catsup tanks, what were their original cost, if you know?

I know that Mr. Wicks made an estimate upon the cost of them; he made it forty dollars apiece.

1284. Do you know what the item two tomato tanks cost?

I do not; they were made before I went to the factory.

1285. The item 203 empty barrels, what barrels does it refer to?

Refers to all the barrels upon the premises used to contain liquids.

1286. How long had they been in use prior to taking the inventory?

Most of them were in use when I was first employed in the factory, about one year previous.

1287. Do you know if Mr. Fithian got those barrels new or second-handed first, and what kind of barrels were they?

None of them were purchased new; some of them were purchased at a liquor store, the balance were vinegar barrels, molasses barrels, and alcohol barrels.

1288. Please state if you know what they originally cost him.

I do not know.

1289. What was the market price at that time you say he acquired them?

I think from one dollar to fifty cents apiece.

1290. What condition were they in at the time of his conversation which you have spoken of, on March 8th, 1865?

Most of them were in good condition.

1291. How long had the peach crates been in use prior to March 8th?

During one season.

1292. The item 8017 2½ lb. cans in the above inventory, were they all new cans?

They were not.

1293. What proportion of them, if you know, were new and old?

I think less than 1,000 of them were old, the balance were new.

1294. How long had the old ones been in use?

They had been used during the present season, once filled and emptied of their contents, having swollen.

1295. The item building, boilers, piping, &c., expressed in the above inventory, on page 10, what does that item include?

It includes the real estate and buildings thereon, boilers, engines and piping, belting, shafting in use in those buildings and premises.

1296. The item "R. Est. 6,000," on page 21 shown to witness. What connection has that with the former item you have spoken of?

It is precisely the same.

1297. Why was the item on page 21 put separate from the above inventory?

Because I intended to commence a list of items there, and then concluded not to.

1298. Do you know whether all the property referred to in the inventory from page 1 to page 25 inclusive, embraces what you term all the stock of Mr. Fithian in his business?

I know it was intended to have been taken as a complete account of stock.

1299. Were the items on page 21 added or included in the gross amount in addition to the real estate in the other item you have spoken of?

They were not.

1300. The expression "as marked on last stock account" on page 10, what does that refer to?

First to an account of stock taken February 1, 1864, and contained in the same book, page 2, and was thus stated to avoid repetition.

1300½. In whose hand-writing is that inventory you have last referred to on page 2?

My own.

1301. Who superintended the entry of the items in the inventory on page 2, February 1st, 1864, you have last referred to?

Mr. Fithian gave them to me to place therein.

1302. Please explain the reason of the difference between the footing of the items of the page 2 of the inventory February 1, 1864, and the real estate item of $6,000 set down on page 10 of inventory Dec. 21. 1864, if you know?

It is my impression that Mr. Fithian placed that valuation on them, after deducting a few items upon that inventory of February 1, 1864, estimating that value upon them for what reason I do not know.

1303. Was there any machinery added to that property between Feb. 1, 1864 and Dec. 21, 1864?

I don't remember that there was; there was some tanks built during the year, whether you call that machinery I don't know.

1304. What tanks, and when built?

There were four cooking tanks, one railroad tank built in the spring of that year, 1864.

1305. In whose hand-writing is the expression "real estate, boilers, engine, belting, piping, benches, tables, kettles, pumps, shafting, &c., $7,000.40," in book D 1, dated Jan. 1st, 1863?

Charles S. Fithian's.

1306. What property does that last item represent?

The same property we have referred to as far as I know.

1307. After March 8th, 1865, was there another inventory of Mr. Fithian's stock and property made?

There was.

1308. In which book is the last named inventory contained?

Book marked Exhibit D 5.

1309. In whose hand-writing is this inventory?

My own.

1310. By whose direction was it made?

By Mr. Fithian's.

1311. How did he arrive, if you know, at the prices therein stated?

Made up his own prices without consulting me in the matter.

1312. The first item in the last named inventory, building, sheds, office, lot of ground, engine house, gas pipe and fixtures, boilers, steam pump, belting and shafting—by whose direction was that item so expressed in its phraseology?

Mr. Fithian gave me general directions about it, and I formed it myself.

1313. The item twelve cooking tanks, please state how they were situated at the time of this inventory, and what connected with.

They were situated around the sides of the main building inside, and connected by piping with the main building.

1314. How long do you know that they had been so used?

Four of them had been used less than one year; the balance I do not know how long they had been used.

1315. How long had they been so situated as you speak of, in that building?

I don't know the exact time; they were placed there during the Spring of 1864.

1316. During the time after they were so placed there, were they shifted from their original position? if so, how often? if you know.

They were never shifted, but were permanent.

1317. One railroad tank—give us the situation of that tank and its connection with the building at the time of the taking of the inventory.

It was situated in the main building in front of six of the cooking tanks referred to, and permanently fastened to the floor and side of the building.

1318. The item two double iron kettles and six copper kettles—how were they situated March 10th, 1865? and how were they connected with the building?

They were situated in the main building, permanently fixed in a structure placed there to receive them, and attached to the building by steam pipes.

1319. Any mason work, or brick work, or furnace connected with the kettles.

Not any.

1320. The items five tomato catsup tanks and two water tanks—how were they situated or connected in reference to the building?

The five tomato catsup tanks were built or made in a building purposely made to contain them, and stood upon the floor of that building. The water tanks were placed upon frame works erected for them to stand upon, outside the main building. They were not connected with the building only by pipes leading into them to conduct the water into them.

1321. How could the five catsup tanks be got out of the building they were made in?

They could not be got out without taking down the building, or taking to pieces the tank.

1322. How long had either the kettles or water tanks or catsup tanks been used where they were first placed?

The catsup tanks and one water tank had been used a little less than a year; the balance I do not know how long they had been in use.

1323. Please state how the items, Truman's cupboard, engineer's cupboard, work benches, &c., in tin shop, were situated or connected in reference to the buildings?

They were all attached permanently to the floor and sides of the building, except the engineer's cupboard, which I think was movable.

1324. The items two tomato tanks and two tomato scalders, how were they situated or connected in reference to the buildings?

Attached to them.

1325. How long had they been so used?

I do not know.

1326. During the time you were there, or less?

More; they were in use when I went there.

1327. Had they been moved during the time you were there, if so, how often?

They had not been moved previous to the purchase, or to the 8th of March, 1865.

1328. The two items, "twelve fixed benches, seven ditto," on page 8, of D 5, describe their use and connection with the buildings?

They were permanently attached to the inside of one of the buildings for the purpose of affording seats to the workwomen.

1329. The item on same page, one glass case, one case and drawers, two label cases, one steam pump, describe their connection, if any, and use in reference to the building.

They were all movable, except one label case; the glass case was used for holding samples of goods manufactured; case and drawers was used for holding books and merchandise; label cases were used for holding the labels; the steam pump was purchased with the intention of attaching it to the small boiler, and it had not yet been so attached.

1330. Was the steam pump intended to be attached to the boiler for permanent use, and if so, by whom intended?

It was so intended by Mr. Fithian.

1331. Which label case do you speak of as not being movable, and give its price as stated in the inventory, and state why you say it was not movable?

My impression is, that it is the one at the price of $40.00, as stated in the inventory, and is nailed to the side of the building.

1332. How long do you know, Mr. Seeley, it had been so nailed to the building, and used in that position without being moved?

It was in use in that position when I was first employed in the factory, and has not been moved since.

R. M. SEELEY.

Whereupon the examination was adjourned to Thursday, July 11th, 1867, at 9.30 A. M., at the same place.

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

1333. The item flagstaff and halliards, in D 5, of March 14, 1865, describe its situation and what it consisted of?

The staff was nailed fast to the peak of the main building, the halliards were attached to the top of the staff by a pulley, the flag lay in a drawer in the spire.

1334. What was the flag then worth?

I suppose not more than five dollars; it was in use when I went there.

1335. Please describe how the kettles and tanks you have spoken of, were fixed or arranged in the building.

The kettles were placed in a structure built to receive them, which was nailed fast to the timbers which was on the floor of the building, and were connected with the building by steam pipes, to which they were screwed fast. The tanks were placed upon the floor or joists of the building; surrounded or in front of them was a platform which was nailed fast to the tanks on the floor; they were also attached to the building by steam pipes, which were fastened to the tanks.

1336. How did the flooring come up to the tanks if there was any flooring around the tanks?

I think there was no flooring under the tanks; the flooring around them came up tight to the tanks.

1337. Were the tanks first built out of the building and afterwards put in, or otherwise?

The material was prepared out of the building, the tanks were put in the building.

1338. Which was constructed first, the flooring or the tanks? Describe that part of the structure.

I only know as to four of them, which were built after I went there. The flooring was built first around those.

1339. How were those four tanks then got in position?

The material was brought inside the building. The tanks were put together either upon the spot they were to stand, or very near to it, and moved into position.

1340. Were those four tanks constructed prior to December 21st, 1864?

They were.

1341. Describe how the water tanks, you have spoken of, as being outside of the building, are attached, if attached, to the real estate?

They were placed upon platforms erected for them to stand upon outside of the building. They were attached to the pumps in the building by pipes, which conduct water into the tanks, and also by iron pipes underneath the tanks, which are screwed into them, and lead to the boiler and different parts of the building, for the purpose of supplying water thereto.

1342. How do these pipes connect with the boiler?

They connect directly with the boiler, being attached to the injector for supplying the boiler with water.

1343. Is the end of the pipe you speak of secured to the boiler or any part of it with bolts or fastenings?

It is, by screws.

1344. Are the fastening the ends of the pipes to these tanks, and also the ends of the pipe to boiler, of a permanent or temporary character?

They can be detached, but it was not intended they should be except for repairs. One end of the pipe is screwed into

to the property that Mr. Fithian sold to Stout and his associates, except D 1, if so, what were they?

I do not recollect any books relating to the property.

1439. Since Mr. Stout has taken D 1 from the factory, has Mr. Fithian at any time inquired for it, and if so, when?

He has not inquired for it of me; he has asked me why I gave it to Mr. Stout, the week when the testimony was first taken here in Jersey City.

1440. Were there any bills of the prices or original cost of any of the property in question, in the factory when Mr. Fithian asked you concerning D 1, as mentioned in your last answer, if so, what were they, what has become of them?

There were a number of bills of property, of bills and merchandise, belonging to Mr. Fithian; he asked me for them, I sent them to him.

1441. What were those bills in then?

Pasted in two bill books.

1442. What were those bill books used for at the time, and how did the bills get out of them? State the circumstance connected with the asking for them.

The books were used only for pasting in bills; one book I sent to him entire, the other book was not full when Mr. Fithian sold the property, and I had used it for pasting in the bills of Stout, Dyer & Wicks, by his permission, and tore his bills from the book, returned the book in the office and sent the bills to him.

1443. What was the nature of those bills you sent him, as far as you know, and what property did they refer to?

They were bills of tools, fixtures and merchandise purchased by Fithian & Pogue, and C. S. Fithian & Co., in the carrying on of their business.

1444. Had you or Mr. Fithian referred to those bills in any way in the making up of the inventory D 1?

I do not recollect that either of us did; it might have been done in a few instances.

1445. Have those bills ever been returned by Mr. Fithian to the factory, or to Mr. Stout?

No sir.

1446. When was it that Mr. Fithian asked you for those bills, and you sent them to him?

At the same time that he asked me the question in regard to D 1.

1447. Did Mr. Fithian then complain to you because Stout had taken D 1 from the factory, if so, how?

He did not complain because Mr. Stout had taken it away, only said that I had no right to give it to him.

1448. In the sale of the property by Fithian to Stout and his associates, what articles did Fithian reserve?

Peaches and tomatoes.

1449. Do you know the amount or quantity of them so re-

served? Specify the articles so reserved if you know them as shown in inventory D 1?

The article tomatoes on page 24, amounting to $2,223.77.
Peaches, 16,737.21.

1450. Any other property except those two items reserved from the sale by Mr. Fithian?

There was.

1451. What were they?

$450 worth of Cumberland sauce; I believe that was excepted.

1452. What item refers to that last article in D 1? Please read the item.

It is the item next to the last on page 14, D 1, and is as follows:

"Less $900, Griffin & Porch, 50 per cent. off—$450."

I don't think of any other article reserved by Mr. Fithian.

1453. (Exhibit D 17 shown to the witness.) Mr. Seeley, the boilers, engines, piping and fixtures expressed in that paper, what property do they refer to?

They refer to the property in use in the buildings on the property.

1454. How long prior to the 14th of March had that property been used on the premises as far as you know?

They were in use when I first went to the factory.

1455. Where were the boilers and engines situated in reference to the building?

They were situated in a back building built expressly to receive them, adjoining the main building.

1456. Do you know whether the walls of the building were all completed before the engines and boilers were put in?

I do not; I was not present when they were constructed.

1457. From your own knowledge of the size of the boilers and engines, and of the passages into the building, could they have been put into the building after the walls were all completed?

They could not; the boilers could not, the engines could have been.

1458. How?

By taking it to pieces.

1459. How are the boilers and engines fixed or secured in the building?

The boilers were placed in a mass of brick-work built on purpose to receive them; the engine was placed on a brick foundation alongside of the boilers, connected by the boilers with steam pipes.

1460. Do you know the size or power of the engines, also the size of the boilers? Give them as near as you can.

I think the engine is about 7 horse power. Know nothing of the size of the boilers.

1461. Since you say that you have been in the factory, have the boilers or engines been moved from their place in the building?

The large boilers have not been moved, the small boiler has been moved and placed in a new position by Stout, Dyer & Wicks.

1462. What piping is referred to in that exhibit? (D 17 being shown to the witness.)

I suppose it refers to steam, water and gas pipe on the premises.

1463. Does it or not refer to the same pipes that you have referred to in your evidence heretofore?

It does.

1464. Are you acquainted, with A. S. Chittenden who has been a witness in this cause?

I am.

1465. Did you ever see him at Bridgeton?

I have.

1466. When?

In the winter of 1864, and some time previous to that. I can't fix the exact date.

1467. What part of the winter of 1864 was he there?

It was in December, 1864, or January, 1865.

1468. Did you see him examine any inventory or book in company with Mr. Fithian at Bridgeton, the last time you speak of his being there?

I do not remember that I did.

1469. Do you know what was the object of Mr. Chittenden's visit to Bridgeton at that time; if so, state it.

I know that he came by invitation of Mr. Fithian to look at the property, with a view of entering into business relations with him, and purchasing an interest in the business.

1462.*a*. What do you mean by saying "purchasing an interest," the whole or part?

I mean becoming a partner in business.

1463.*b*. Were Mr. Fithian and Chittenden then at the factory together, and if so, was it day time or night? Please state what you know about it.

Mr. Chittenden came from Philadelphia in the afternoon train, met Mr. Fithian and Mr. Wicks at the factory office, made an appointment to meet there again in the evening to talk upon the business for which he came down; they so met, but I have no personal knowledge of their conversation.

1464.*c*. Was the inventory dated Dec. 21, 1864, in D 1, taken, made or entered in that book before the time you say Mr. Chittenden so came from Philadelphia to Bridgeton?

I believe it was.

1465.*d*. Was D 1 in the factory office at the time you say

Mr. Fithian and Mr. Chittenden met there by appointment?

It was.

1466.*e.* (Paper purporting to be schedule of some of the property in D 1 and D 5 is offered in evidence, and marked Exhibit D 20, and being shown to witness, he is asked): Have you compared that paper with D 1 and D 5 as far as it extends?

I have compared it.

1467.*f.* Is it a correct statement from D 1 and D 5 as far as it extends?

It is.

1468.*g.* What does the right-hand columns footed up in black ink represent?

It represents the difference in the prices of articles as entered in D 1 and D 5.

1469.*h.* Entered more or less in D 5 than in D 1?

Entered more in D 5 than in D 1.

1470. Do you know what was the object of Mr. Fithian in taking your individual paper for the $5,000 spoken of, instead of a bond from the corporation, or from Stout, Dyer & Wicks?

I do not.

1471. Was that $5,000 a part of the price of the purchase of the property from Fithian?

It was.

1472. Look at D 5 item "one wooden bather, lot of muslin sash, lot of printing plates, lot of bottle moulds, 1 barrel bone dust, 1 barrel sage, 2 barrels hominy, 1 lot of labels, Cumberland sauce show cards, 1 old door frame, wooden rack, eight tumbler cap dies," state if you know which of those articles on the 14th of March were useless or worthless in the factory business to Stout, Dyer & Wicks?

I considered them all worthless to Stout, Dyer and Wicks except the bottle moulds.

1473. The item two sets candle moulds, one meat-cut box in D 5, in what condition were they on March 14th, 1865, and what use were they to Stout, Dyer & Wicks?

The candle moulds were good for nothing; the box I do not recognize.

1474. Those articles which you have spoken of as being worthless, or of no use to Stout, Dyer & Wicks, of what use, worth or value would they have been to the corporation?

Of no value.

1475. The item 4000 asparagus cans—how many of them were old ones, if any, on March 14th, 1865?

Three thousand were new; the balance were of no value except for the solder that was upon them.

1476. What became of the balance you speak of?

They were taken to pieces—thrown away.

1477. What was the solder worth in them that were thrown away?

I do not know—a small sum.

1478 The item 55,717 two-pound N. J. cans, in D 5—how many of them, if any, were old ones?

There were some old ones; I think less than 1000.

1478½. Can you give any idea of the number of old ones?

I cannot, nearer than I stated.

1479. The item, one lot of glass sash, $137.50, in D 5—in what condition was that article on March 14th, 1865, and what was it worth?

They were in very bad condition; I did not consider them worth over $25.00.

1480. The item in D 5, 732 five-gallon cans, $366—in what condition were those cans at that time, and what were they worth?

They were not fit for use any more, and were worthless after the material in them was taken out.

1481. What did they contain at that time?

Some of them were empty; some of them contained juices or jellies.

1482. Do you know what was the condition of the juices or jellies that you say was in some of them?

Some of the juices was soured and useless.

1483. From what cause?

From the imperfection of the cans.

1484. What proportion of it, if you know, was soured and useless?

I could not state.

1485. The item, 1765 gallons jelly juices—in what cans was that contained March 14th, 1865?

In the cans just referred to.

1486. The item, one 10 gallon keg, $3, in D 5—what was it worth then?

I do not know the value of such an article.

1487. Was it worth $3?

I should not suppose it was.

1488. One lot of flagging, in D 5, $3—what was that worth then?

I did not consider it worth anything.

1489. The items, one lot of boards, $2; two iron bolts, $2; lot of boards and crane, $2; one stove, $2; one stand and filter, $5; three iron bands and screw bolts, $3; one awning iron and crane, $6; fifteen candle stands, $3; one iron glass bather, $10; lot of iron rods and hooks, $5; three show racks, $2.25; fifteen dozen jars, $11.25; thirty-three tin cups, $3.30; eight fire pots, $4; water pot and can, $1.40; lot of stencil plates, $83; three hatchets and hammer, $3; two iron pumps, $15; two galvanized trays, $8; six M. M. knives, $3; eight sieves, $4; corn wheel, $5; steelyards and funnel, 75

cents; four iron jelly rims, $4; farmer's boiler, $4; one tin pump, $1.50; eight oyster stands, $8; ten knockers, $5; fifty pounds hoop iron, $5.50; twenty-three dozen jars, $23; 125 pounds hoop iron, $13.75; nine pounds of S. savory, $4.05; six pounds of S. Margerum, $2.70; thirty-one pounds pulv. thyme, $13.95; thirty-three pounds of sum. savory, $14.85; eight pounds sweet basle, $3.60; forty pounds white mustard seed, $10; gro. nutmegs, $97.50; six gro. flat two-inch corks, $4; twenty-two gro. double thick corks, $33; one ball candlewick, 10 cents, in D 5—of what value or use were those items then to Stout, Dyer & Wicks, or to the corporation?

All that I can testify in regard to them is that they were not needed in their business; some of them were of some value, might have been sold for something; some of them were worthless.

1490. Do you know which of them were then worthless? If so state them.

I consider of no value, three show racks, $2.25; eight fire pots, eight seives, corn wheel, steelyards, one tin pump, eight oyster stands, ten knockers, that's all I can say were of no value.

1491. The item in D 1, one horse and harness, $130; 103 dozen oysters, $171.67; cranberry sauce, $12.67; salad cream, $58; sixty-five dozen asparagus, $139.19; two dozen string beans, $5.20; 162 dozen pepper sauce, $353.60; four and one-half dozen honey, $11.83—were they included in the inventory D 5, or were those articles ever had by Stout, Dyer & Wicks, or by the corporation?

They were none of them had by Stout, Dyer & Wicks, or the corporation, except the bottles in which was contained the 162 dozen pepper sauce, and the boxes in which they were packed. They were not included in D 5.

1492. The bottles you speak of—are they included in D 5? Mention the item therein.

They are, I think it is. There were two sizes of the bottles. I think they are included in the items on page 13, D 5, the 6th and 7th line from the top, in the items, brandy fruit and brandy peach.

1493. What became of those articles that neither Stout, Dyer & Wicks, or the corporation had?

Mr. Fithian sold them previous to the sale. I can't tell to whom. The contents of the pepper sauce bottles was thrown away as worthless.

1494. After December 21, 1864, up to the purchase by Stout and his associates, did Mr. Fithian wholesale or retail any of the property on inventory D 1; if so, to what extent and to whom?

He did sell considerable property, he and his agents. To what extent and to whom, I do not know; it can be shown by his books of account.

1495. Did Mr. Fithian, at any time since the purchase by Stout and his associates, say the property in the mortgage in this suit, would not bring half, or less than the $10,000? If so, state what he said.

(Question objected to.)

I have no recollection of his making such statement.

1496. Was the government tax added to the cost of any of the property in D 1 by Mr. Fithian?

He always estimated the government tax in the cost of all such articles upon which the government tax was to be paid.

1497. Question repeated.

It was.

1498. Did Stout, Dyer & Wicks or the corporation get all the property and tools mentioned in D 5? State what you know about it.

They did to the best of my knowledge and belief, except some gallons of Cumberland sauce, which has been referred to, and has been corrected.

1499. What did Mr. Fithian say to you respecting the manufacturing of Cumberland sauce, as to keeping it or not in the business?

He once said to me he believed the firm would be better off if they would throw the Cumberland sauce in the creek.

1500. Letter marked exhibit D 21, and offered in evidence, being shown to the witness, is asked: in whose hand-writing is that letter?

In the hand-writing of Charles S. Fithian.

1501. Letters marked Exhibits D 22, 23 and 24, and offered in evidence, witness is asked: in whose hand-writing are those letters.

Charles S. Fithian's.

1502. Letter marked Exhibit D 25, is offered in evidence, and being shown the witness, he is asked: In whose hand-writing is that letter?

Charles S. Fithian's.

1503. Did Stout, Dyer & Wicks at any time after March 14th, 1865, pay to the government officer any government taxes on any of the property that had been manufactured by Mr. Fithian?

They did pay upon Cumberland sauce and catsup, as those articles were sold.

1504. Do you know whether monthly, or at any stated period, or how often?

Paid monthly; they rendered an account of the amount sold each month.

1505. Do you know if Mr. Fithian demanded of Stout, Dyer & Wicks any tax of either State, County or Township, to be paid to him by them, on the bond and mortgage in question, in addition to the interest, or on any of the bonds that have been made Exhibits in this suit?

(Question objected to).

I know that he demanded it upon the bond and mortgage for $10,000.

R. M. SEELEY.

Whereupon the examination was adjourned to Friday, July 12th, 1867, at 10 o'clock, A. M., at the same place.

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

1506. The item of piping, shafting and belting, referred to in either D 5 or D 1, what property did they mean at the time of the taking of either of those inventories?

They meant the property that was in use in the factory at Bridgeton, and were connected with the machinery and engines therein.

1507. The sheds referred to in either of those inventories, what property did they mean?

Buildings then situated upon the real estate,

1508. You have spoken of a correction made as to Cumberland sauce, by Mr. Fithian. Please state the amount and extent of that correction, and when made.

(Exhibit D 2 is shown to witness.)

The correction refers to the amount of $266.00. It covered about five barrels of sauce, which was supposed to have been full barrels when the account of stock was taken, but was afterwards discovered to be empty. The correction was made at the time. Dec. 14, 1865. I get the time from the date on Exhibit D 2.

1509. Who first called Mr. Fithian's attention to the error and when?

Mr. Wicks, in the summer of 1865.

And being cross-examined, he says:

1510. In taking the inventory in D 5, who counted those barrels of Cumberland sauce, in which the mistake was made?

Mr. Wicks; Mr. Fithian knew nothing about it.

1511. State the mode in which the government officer required C. S. Fithian & Co. to pay the government tax on manufactured articles. How often were the payments made?

(Objected to.)

There were some changes in the manner of estimating those taxes, and I do not know that I can tell exactly from memory the exact manner. I think the sauces were paid by the gallon, estimating them at what they cost, and the jellies by the pound. From the costs of the canned goods were deducted the boxes, labels.

1512. Cross question 1511 repeated.

to the property that Mr. Fithian sold to Stout and his associates, except D 1, if so, what were they?

I do not recollect any books relating to the property.

1439. Since Mr. Stout has taken D 1 from the factory, has Mr. Fithian at any time inquired for it, and if so, when?

He has not inquired for it of me; he has asked me why I gave it to Mr. Stout, the week when the testimony was first taken here in Jersey City.

1440. Were there any bills of the prices or original cost of any of the property in question, in the factory when Mr. Fithian asked you concerning D 1, as mentioned in your last answer, if so, what were they, what has become of them?

There were a number of bills of property, of bills and merchandise, belonging to Mr. Fithian; he asked me for them, I sent them to him.

1441. What were those bills in then?

Pasted in two bill books.

1442. What were those bill books used for at the time, and how did the bills get out of them? State the circumstance connected with the asking for them.

The books were used only for pasting in bills; one book I sent to him entire, the other book was not full when Mr. Fithian sold the property, and I had used it for pasting in the bills of Stout, Dyer & Wicks, by his permission, and tore his bills from the book, returned the book in the office and sent the bills to him.

1443. What was the nature of those bills you sent him, as far as you know, and what property did they refer to?

They were bills of tools, fixtures and merchandise purchased by Fithian & Pogue, and C. S. Fithian & Co., in the carrying on of their business.

1444. Had you or Mr. Fithian referred to those bills in any way in the making up of the inventory D 1?

I do not recollect that either of us did; it might have been done in a few instances.

1445. Have those bills ever been returned by Mr. Fithian to the factory, or to Mr. Stout?

No sir.

1446. When was it that Mr. Fithian asked you for those bills, and you sent them to him?

At the same time that he asked me the question in regard to D 1.

1447. Did Mr. Fithian then complain to you because Stout had taken D 1 from the factory, if so, how?

He did not complain because Mr. Stout had taken it away, only said that I had no right to give it to him.

1448. In the sale of the property by Fithian to Stout and his associates, what articles did Fithian reserve?

Peaches and tomatoes.

1449. Do you know the amount or quantity of them so re-

served? Specify the articles so reserved if you know them as shown in inventory D 1?

The article tomatoes on page 24, amounting to $2,223.77.
Peaches, 16,737.21.

1450. Any other property except those two items reserved from the sale by Mr. Fithian?

There was.

1451. What were they?

$450 worth of Cumberland sauce; I believe that was excepted.

1452. What item refers to that last article in D 1? Please read the item.

It is the item next to the last on page 14, D 1, and is as follows:

"Less $900, Griffin & Porch, 50 per cent. off—$450."

I don't think of any other article reserved by Mr. Fithian.

1453. (Exhibit D 17 shown to the witness.) Mr. Seeley, the boilers, engines, piping and fixtures expressed in that paper, what property do they refer to?

They refer to the property in use in the buildings on the property.

1454. How long prior to the 14th of March had that property been used on the premises as far as you know?

They were in use when I first went to the factory.

1455. Where were the boilers and engines situated in reference to the building?

They were situated in a back building built expressly to receive them, adjoining the main building.

1456. Do you know whether the walls of the building were all completed before the engines and boilers were put in?

I do not; I was not present when they were constructed.

1457. From your own knowledge of the size of the boilers and engines, and of the passages into the building, could they have been put into the building after the walls were all completed?

They could not; the boilers could not, the engines could have been.

1458. How?

By taking it to pieces.

1459. How are the boilers and engines fixed or secured in the building?

The boilers were placed in a mass of brick-work built on purpose to receive them; the engine was placed on a brick foundation alongside of the boilers, connected by the boilers with steam pipes.

1460. Do you know the size or power of the engines, also the size of the boilers? Give them as near as you can.

I think the engine is about 7 horse power. Know nothing of the size of the boilers.

1461. Since you say that you have been in the factory, have the boilers or engines been moved from their place in the building?

The large boilers have not been moved, the small boiler has been moved and placed in a new position by Stout, Dyer & Wicks.

1462. What piping is referred to in that exhibit? (D 17 being shown to the witness.)

I suppose it refers to steam, water and gas pipe on the premises.

1463. Does it or not refer to the same pipes that you have referred to in your evidence heretofore?

It does.

1464. Are you acquainted, with A. S. Chittenden who has been a witness in this cause?

I am.

1465. Did you ever see him at Bridgeton?

I have.

1466. When?

In the winter of 1864, and some time previous to that. I can't fix the exact date.

1467. What part of the winter of 1864 was he there?

It was in December, 1864, or January, 1865.

1468. Did you see him examine any inventory or book in company with Mr. Fithian at Bridgeton, the last time you speak of his being there?

I do not remember that I did.

1469. Do you know what was the object of Mr. Chittenden's visit to Bridgeton at that time; if so, state it.

I know that he came by invitation of Mr. Fithian to look at the property, with a view of entering into business relations with him, and purchasing an interest in the business.

1462.*a*. What do you mean by saying "purchasing an interest," the whole or part?

I mean becoming a partner in business.

1463.*b*. Were Mr. Fithian and Chittenden then at the factory together, and if so, was it day time or night? Please state what you know about it.

Mr. Chittenden came from Philadelphia in the afternoon train, met Mr. Fithian and Mr. Wicks at the factory office, made an appointment to meet there again in the evening to talk upon the business for which he came down; they so met, but I have no personal knowledge of their conversation.

1464.*c*. Was the inventory dated Dec. 21, 1864, in D 1, taken, made or entered in that book before the time you say Mr. Chittenden so came from Philadelphia to Bridgeton?

I believe it was.

1465.*d*. Was D 1 in the factory office at the time you say

Mr. Fithian and Mr. Chittenden met there by appointment?

It was.

1466.*e.*(Paper purporting to be schedule of some of the property in D 1 and D 5 is offered in evidence, and marked Exhibit D 20, and being shown to witness, he is asked): Have you compared that paper with D 1 and D 5 as far as it extends?

I have compared it.

1467.*f.*Is it a correct statement from D 1 and D 5 as far as it extends?

It is.

1468.*g.*What does the right-hand columns footed up in black ink represent?

It represents the difference in the prices of articles as entered in D 1 and D 5.

1469.*h.*Entered more or less in D 5 than in D 1?

Entered more in D 5 than in D 1.

1470. Do you know what was the object of Mr. Fithian in taking your individual paper for the $5,000 spoken of, instead of a bond from the corporation, or from Stout, Dyer & Wicks?

I do not.

1471. Was that $5,000 a part of the price of the purchase of the property from Fithian?

It was.

1472. Look at D 5 item "one wooden bather, lot of muslin sash, lot of printing plates, lot of bottle moulds, 1 barrel bone dust, 1 barrel sage, 2 barrels hominy, 1 lot of labels, Cumberland sauce show cards, 1 old door frame, wooden rack, eight tumbler cap dies," state if you know which of those articles on the 14th of March were useless or worthless in the factory business to Stout, Dyer & Wicks?

I considered them all worthless to Stout, Dyer and Wicks except the bottle moulds.

1473. The item two sets candle moulds, one meat-cut box in D 5, in what condition were they on March 14th, 1865, and what use were they to Stout, Dyer & Wicks?

The candle moulds were good for nothing; the box I do not recognize.

1474. Those articles which you have spoken of as being worthless, or of no use to Stout, Dyer & Wicks, of what use, worth or value would they have been to the corporation?

Of no value.

1475. The item 4000 asparagus cans—how many of them were old ones, if any, on March 14th, 1865?

Three thousand were new; the balance were of no value except for the solder that was upon them.

1476. What became of the balance you speak of?

They were taken to pieces—thrown away.

1477. What was the solder worth in them that were thrown away?

I do not know—a small sum.

1478 The item 55,717 two-pound N. J. cans, in D 5—how many of them, if any, were old ones?

There were some old ones; I think less than 1000.

1478½. Can you give any idea of the number of old ones?

I cannot, nearer than I stated.

1479. The item, one lot of glass sash, $137.50, in D 5—in what condition was that article on March 14th, 1865, and what was it worth?

They were in very bad condition; I did not consider them worth over $25.00.

1480. The item in D 5, 732 five-gallon cans, $366—in what condition were those cans at that time, and what were they worth?

They were not fit for use any more, and were worthless after the material in them was taken out.

1481. What did they contain at that time?

Some of them were empty; some of them contained juices or jellies.

1482. Do you know what was the condition of the juices or jellies that you say was in some of them?

Some of the juices was soured and useless.

1483. From what cause?

From the imperfection of the cans.

1484. What proportion of it, if you know, was soured and useless?

I could not state.

1485. The item, 1765 gallons jelly juices—in what cans was that contained March 14th, 1865?

In the cans just referred to.

1486. The item, one 10 gallon keg, $3, in D 5—what was it worth then?

I do not know the value of such an article.

1487. Was it worth $3?

I should not suppose it was.

1488. One lot of flagging, in D 5, $3—what was that worth then?

I did not consider it worth anything.

1489. The items, one lot of boards, $2; two iron bolts, $2; lot of boards and crane, $2; one stove, $2; one stand and filter, $5; three iron bands and screw bolts, $3; one awning iron and crane, $6; fifteen candle stands, $3; one iron glass bather, $10; lot of iron rods and hooks, $5; three show racks, $2.25; fifteen dozen jars, $11.25; thirty-three tin cups, $3.30; eight fire pots, $4; water pot and can, $1.40; lot of stencil plates, $83; three hatchets and hammer, $3; two iron pumps, $15; two galvanized trays, $8; six M. M. knives, $3; eight sieves, $4; corn wheel, $5; steelyards and funnel, 75

cents; four iron jelly rims, $4; farmer's boiler, $4; one tin pump, $1.50; eight oyster stands, $8; ten knockers, $5; fifty pounds hoop iron, $5.50; twenty-three dozen jars, $23; 125 pounds hoop iron, $13.75; nine pounds of S. savory, $4.05; six pounds of S. Margerum, $2.70; thirty-one pounds pulv. thyme, $13.95; thirty-three pounds of sum. savory, $14.85; eight pounds sweet basle, $3.60; forty pounds white mustard seed, $10; gro. nutmegs, $97.50; six gro. flat two-inch corks, $4; twenty-two gro. double thick corks, $33; one ball candlewick, 10 cents, in D 5—of what value or use were those items then to Stout, Dyer & Wicks, or to the corporation?

All that I can testify in regard to them is that they were not needed in their business; some of them were of some value, might have been sold for something; some of them were worthless.

1490. Do you know which of them were then worthless? If so state them.

I consider of no value, three show racks, $2.25; eight fire pots, eight seives, corn wheel, steelyards, one tin pump, eight oyster stands, ten knockers, that's all I can say were of no value.

1491. The item in D 1, one horse and harness, $130; 103 dozen oysters, $171.67; cranberry sauce, $12.67; salad cream, $58; sixty-five dozen asparagus, $139.19; two dozen string beans, $5.20; 162 dozen pepper sauce, $353.60; four and one-half dozen honey, $11.83—were they included in the inventory D 5, or were those articles ever had by Stout, Dyer & Wicks, or by the corporation?

They were none of them had by Stout, Dyer & Wicks, or the corporation, except the bottles in which was contained the 162 dozen pepper sauce, and the boxes in which they were packed. They were not included in D 5.

1492. The bottles you speak of—are they included in D 5? Mention the item therein.

They are, I think it is. There were two sizes of the bottles. I think they are included in the items on page 13, D 5, the 6th and 7th line from the top, in the items, brandy fruit and brandy peach.

1493. What became of those articles that neither Stout, Dyer & Wicks, or the corporation had?

Mr. Fithian sold them previous to the sale. I can't tell to whom. The contents of the pepper sauce bottles was thrown away as worthless.

1494. After December 21, 1864, up to the purchase by Stout and his associates, did Mr. Fithian wholesale or retail any of the property on inventory D 1; if so, to what extent and to whom?

He did sell considerable property, he and his agents. To what extent and to whom, I do not know; it can be shown by his books of account.

1495. Did Mr. Fithian, at any time since the purchase by Stout and his associates, say the property in the mortgage in this suit, would not bring half, or less than the $10,000? If so, state what he said.

(Question objected to.)

I have no recollection of his making such statement.

1496. Was the government tax added to the cost of any of the property in D 1 by Mr. Fithian?

He always estimated the government tax in the cost of all such articles upon which the government tax was to be paid.

1497. Question repeated.

It was.

1498. Did Stout, Dyer & Wicks or the corporation get all the property and tools mentioned in D 5? State what you know about it.

They did to the best of my knowledge and belief, except some gallons of Cumberland sauce, which has been referred to, and has been corrected.

1499. What did Mr. Fithian say to you respecting the manufacturing of Cumberland sauce, as to keeping it or not in the business?

He once said to me he believed the firm would be better off if they would throw the Cumberland sauce in the creek.

1500. Letter marked exhibit D 21, and offered in evidence, being shown to the witness, is asked: in whose hand-writing is that letter?

In the hand-writing of Charles S. Fithian.

1501. Letters marked Exhibits D 22, 23 and 24, and offered in evidence, witness is asked: in whose hand-writing are those letters.

Charles S. Fithian's.

1502. Letter marked Exhibit D 25, is offered in evidence, and being shown the witness, he is asked: In whose hand-writing is that letter?

Charles S. Fithian's.

1503. Did Stout, Dyer & Wicks at any time after March 14th, 1865, pay to the government officer any government taxes on any of the property that had been manufactured by Mr. Fithian?

They did pay upon Cumberland sauce and catsup, as those articles were sold.

1504. Do you know whether monthly, or at any stated period, or how often?

Paid monthly; they rendered an account of the amount sold each month.

1505. Do you know if Mr. Fithian demanded of Stout, Dyer & Wicks any tax of either State, County or Township, to be paid to him by them, on the bond and mortgage in question, in addition to the interest, or on any of the bonds that have been made Exhibits in this suit?

(Question objected to).

I know that he demanded it upon the bond and mortgage for $10,000.

R. M. SEELEY.

Whereupon the examination was adjourned to Friday, July 12th, 1867, at 10 o'clock, A. M., at the same place.

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

1506. The item of piping, shafting and belting, referred to in either D 5 or D 1, what property did they mean at the time of the taking of either of those inventories?

They meant the property that was in use in the factory at Bridgeton, and were connected with the machinery and engines therein.

1507. The sheds referred to in either of those inventories, what property did they mean?

Buildings then situated upon the real estate,

1508. You have spoken of a correction made as to Cumberland sauce, by Mr. Fithian. Please state the amount and extent of that correction, and when made.

(Exhibit D 2 is shown to witness.)

The correction refers to the amount of $266.00. It covered about five barrels of sauce, which was supposed to have been full barrels when the account of stock was taken, but was afterwards discovered to be empty. The correction was made at the time, Dec. 14, 1865. I get the time from the date on Exhibit D 2.

1509. Who first called Mr. Fithian's attention to the error and when?

Mr. Wicks, in the summer of 1865.

And being cross-examined, he says:

1510. In taking the inventory in D 5, who counted those barrels of Cumberland sauce, in which the mistake was made?

Mr. Wicks; Mr. Fithian knew nothing about it.

1511. State the mode in which the government officer required C. S. Fithian & Co. to pay the government tax on manufactured articles. How often were the payments made?

(Objected to.)

There were some changes in the manner of estimating those taxes, and I do not know that I can tell exactly from memory the exact manner. I think the sauces were paid by the gallon, estimating them at what they cost, and the jellies by the pound. From the costs of the canned goods were deducted the boxes, labels.

1512. Cross question 1511 repeated.

It was made upon the sales of those articles, from the returns of the sales required within the first ten days of each month, and made monthly.

1513. Did Mr. Fithian make his monthly payments upon his own sales, as long as he continued the business?

(Objected to as irrelevant.)

He did.

1514. Did the new firm of Stout, Dyer & Wicks, agree to pay the government taxes on the property liable to tax, which they purchased of Mr. Fithian?

They did.

1514½. State, as near as you can, the amount of sales of Cumberland sauce made by Fithian during the year previous to the sale to Stout and his associates, and the profits on such sales.

(Objected to as irrelevant.)

He sold in the previous year $10,000.00 worth of Cumberland sauce, at one time, to Mr. Dudley, of New York. Further than that I could not say. I could not say in regard to the profits.

1515. State where inventory D 5 was kept from March 14, 1865, to December, 1866.

It was kept in the safe in the office at the Bridgeton factory.

1516. Was not inventory D 5 made up by you, Wicks and Fithian, to ascertain the property then on hand in and around the factory?

It was made up for that purpose.

1517. Was any property included therein, not then on hand, or in the hands of agents, except the error in Cumberland sauce, above referred to?

Not to my knowledge.

1518. Did you then understand (from March 8, to March 14, 1865,) that if the sale was completed and the property purchased, you were to have an interest in the new concern?

(Objected to as irrelevant.)

I did, after March 8, 1865.

1519. When did you return from Philadelphia, after March 8, 1865?

On the evening of March 9th.

1520. Whilst on that visit, did Mr. Stout agree with you that you should come in the new concern?

He did.

1521. Did you agree, as one of the prospective partners, to take the property according to inventory D 5, and to pay for the same accordingly?

(Objected to as irrelevant.)

I did not consider that I was purchasing the property; knew nothing of their previous arrangements or bargaining about the price or payments.

1522. What did the $5000.00 which you agreed to pay Fithian, represent?

It represented part payment of the property purchased by Stout & Dyer of Mr. Fithian.

1523. Did Stout & Dyer agree to take the property according to inventory D 5, and make their payment and execute bonds and mortgages accordingly?

I believe they did.

1524. What were they to pay for the real estate?

(Objected to.)

My understanding was they were to pay $12,000.00.

1525. Did Mr. Fithian specify what should be considered real estate in that sale?

(Objected to.)

I do not know what he specified to them. My understanding of it was, the items set down in the inventory of stock, D 5, first item, page 1.

1526. Look at inventories D 1 and D 5, and state whether they now remain as they were March 8th and March 14th, 1865, and if not, what alterations, additions or erasures, have been made?

Inventory D 1 has not been altered to my knowledge or belief, nor inventory D 5, in regard to items or extensions. There have been some marks in lead pencil, in D 5, made for my own convenience in classifying accounts. There are also some figures in lead pencil, in D 5, made before the original entries by me, by direction of Mr. Stout, showing the differences in prices between articles in D 1 and D 5.

1527. Specify some of the additions referred to in the latter part of your last answer.

Upon page 1, D 5, ($6,000) in lead pencil, intended to be opposite first item ($12.00); on same page opposite second item, page 1, ($25) opposite fifth item on page 1; all of the rest of the additions in pencil marks, I believe have been made by me, except some writing and figures upon page 20. There have been no alterations by ink, to my knowledge.

1528. State in whose hand-writing are the entries on page 20, and when made.

The hand-writing of Mr. Dyer, made sometime after March 14, 1865.

1529. Where made, and why?

Made at Bridgeton, at the factory office, for his own convenience, I suppose, to show the arrangement of the obligations given to Mr. Fithian. Mr. Dyer took a copy of it, at the time, and put it in his pocket.

1530. State, as near as you can, how long after March 14, 1865, he made the entry.

It was before he returned to New York; I think the next day.

1531. Why did you date inventory D 5 March 10, 1865?

Because that was the time I commenced to copy it in the book. Mr. Fithian and Mr. Wicks had taken a partial inventory while I was in Philadelphia, and gave it to me for copying the next day.

1532. When, as you state, Stout & Dyer expressed surprise at the amount of the inventory D 5, were they examining that inventory?

I think it was, while they were examining it, and they commenced the examination.

1533. Did either of them find fault with the prices of any the articles, and if so, what articles, and what did they say about them?

They did object frequently; they would ask what different articles were for—what use they were for. I only remember particularly now the items of empty barrels and old labels. They objected to the price of the barrels, saying they could purchase them at considerable less in New York, and that the labels were valueless to them. They thought he ought not to charge for them.

1534. Did they afterwards agree to take the property?

Mr. Fithian said, in regard to the labels, they had cost him that amount of money; that he charged them nothing for the good will of the business, that they must take them. They took the property.

1535. Did Mr. Fithian, on the 14th of March, 1865, make any misrepresentations, to Stout or Dyer, as to the quantity or quality, or price of the goods sold? And if so, state what misrepresentations, and whether you informed Stout or Dyer of them.

(Objected to.)

I do not recollect any in my presence.

1536. Are the tomato catsup tanks, water tanks, kettles, tomato tanks, tinman's cupboard and the other articles spoken of by you as fixtures, now situated with reference to the real estate, as they were on March 14, 1865.

(Objected to as irrelevant.)

Some of them are not.

1537. State what alterations have been made, and in which articles.

There have been alterations made in the buildings. The two water tanks, six of the cooking tanks, two tomato tanks and the copper and iron kettles have been placed in new positions.

1538. Are the connections of the new tanks with the building the same now as on March 14, 1865? And if not, state how they differ in connection.

I believe they are connected in the same manner, only being placed in new positions—the pipes extended to them—the same general manner.

1539. Do the kettles now stand as they stood on March 14, 1865? And if not state how they differ.

No, sir; on March 14, 1865, the foundation was surrounded by brick pavement, and the frame work, in which they stood, was fastened to the timber embedded in the ground beneath them. They now stand in a different room, and the frame work is nailed fast to the joist of the floor upon which they stand.

1540. How soon after March 14, 1865, did you ascertain that any part of the jelly juices were not good?

I think we commenced to manufacture jelly within three months afterwards, and in taking out the cans of juice for use, we discovered that a number of them were soured and useless.

1541. What amount or proportion?

I should suppose one-fourth of them.

1542. Do you mean one-fourth up to the present time, or within three months after the sale, when you commenced using them?

I don't mean within the three months, and I don't know how many were spoiled at that time. I mean we have found them spoiled as we used them—about that proportion.

1543. Should jelly juices, contained in tin cans, be kept longer than one year after they are manufactured?

I believe they can be kept as long as the cans are air-tight.

1544. Were not these cans air-tight at the time of the sale?

I believe good many of them were not.

1545. Did you inform either Stout or Dyer of the defects in them?

I did not; I did not think of it. Do not know that I knew of it at the time.

1546. How soon after the sale did you discover it?

As we commenced making the jellies.

1547. State, as near as you can, at what price peach juice and apple juice could have been purchased in the market, on the 14th of March, 1865?

(Objected to as irrelevant.)

I have no knowledge whatever of the market value, never having purchased any, nor any being offered for sale.

1548. State, as near as you can, what would have been the cost of making these juices at the time of the sale—March 14, 1865.

(Objected to as irrelevant.)

I don't think they could have been made at that time—materials could not have been procured, except apples; the price of the apple juice would depend upon the price paid for the apples.

1549. State all your present business connections with John W. Stout.

I have no business connection with him, except that I am employed at his factory, as book-keeper and manager, for which I receive a salary from him.

1550. Is all your business, as a partner of Stout, Dyer & Wicks, closed up?

The business of the firm is not closed up—my business is.

1551. When was the partnership dissolved?

The partnership was dissolved April 1, 1867.

1552. Do you mean to state that you have drawn from the late firm of Stout, Dyer & Wicks all that you are to receive from them?

I do not; I mean to state that on April 1, 1867, I was not a member of the firm of Stout, Dyer and Wicks.

1553. What do you mean by stating that your business with the firm is closed, if you yet receive something from the assets of the firm?

I mean that I withdrew from the firm previous to April, 1867, and that the firm owe me an amount of money.

1554. What amount, who is to pay it, and when?

Is it necessary that I should state that? It seems to be a private business of my own. I hold a note for $5,000, payable by Stout, Dyer & Wicks, March 1, 1868. That's all.

1555. The date of the note, and by whom given?

It was dated in March, 1867, given by Stout, Dyer & Wicks to me.

1556. Did the books of the firm of Stout, Dyer & Wicks at the date of the note, March, 1867, show that there were $5,000 due to you at that time? If not, state why that sum was fixed.

The books were not closed up then, and I could not tell what my interest was. I agreed to take $5,000 for my interest, and they agreed to give it to me in that shape.

1557. Were you not a member of the firm of Stout, Dyer and Wicks at the time that note was given? If not, how long before that had you withdrawn?

(Objected to as irrelevant.)

I signed an article at the same time I received the note, withdrawing from the firm, giving up all my interest and profit of the past business, or any future business in which they might enter.

1558. Who else signed that article besides yourself, and with whom was it made?

No one else signed it except the witness. It was made with Stout, Dyer & Wicks.

1559. To whom was the article given?

To Stout, Dyer & Wicks.

1560. Who assumed the payment of that note or any other liabilities of the firm of Stout, Dyer & Wicks?

(Objected to as irrelevant.)

John W. Stout, H. B. Dyer and L. J. Wicks.

1561. Who now holds the agreement referred to by you?

I presume the same parties above referred to.

1562. To which of the parties was it delivered after its execution?

I don't remember, sir. It was executed in the store in New York.

1563. State the reason of your conveying your interest in the real estate to John W. Stout, by deed dated 18th Dec., 1866. (being Exhibit D 18, which is shown witness.)

(Objected to as irrelevant.)

The reason was he made an offer for the property, and we were willing to sell it.

1564. What price did he pay you for it?

(Objected to.)

He was to pay $10,000 for it.

1565. State if you have assigned any other reason for that transfer; and if so, what other reason?

(Objected to.)

I can't call any reasons to my mind now. I haven't thought of it since the transaction occurred, particularly.

1566. Did you state to Mr. Fithian, in conversation at any time, that the transfer was made that you might not be a party to this suit, and that you were opposed to this suit, or words to that effect?

(Objected to.)

I cannot recall it. I have stated to him frequently that I was opposed to this suit; hoped that there would not be any trouble about it.

And being examined in chief a second time, he says:

1567. Mr. Seeley, what do you mean by additions in your answer to question 1527? When were they made, and for what purpose, and do they alter the original footing of the inventory?

By additions I mean the figures placed in brackets in lead pencil marks. They were made in December, 1866, for the purpose of showing to Mr. Stout that these figures in lead pencil upon D 5 were the same as those upon D 1, as he wished to take D 5 to New York with him and examine it.

They do not alter the original footing of the inventory.

1568. For what purpose did he wish to take D 5 to New York with him then?

I think to examine it—to show it to Mr. Dyer.

1569. Why were the positions and connections of the tanks and kettles changed, as you stated, after March 14, 1865?

Because some new buildings or additions were made to

the main building, and the kettles and tanks were placed in situations which we thought were more convenient than they were before.

1570. Were the kettles, tanks, piping, belting, boiler, engine and machinery in the same position and connection on the 7th, 8th and 14th of March, 1865, as they were on Dec. 21, 1864?

They were.

1571. Did you in making up the inventory D 5, as you have stated, then examine the property and overhaul it for that purpose?

I did not make a general examination. I may have counted some items, but most of the items were copied from D 1.

1572. How long had the jelly juices, spoken of in your cross-examination, been made before March 7th, 1865?

Some of them were on hand when I went to the factory. I could not state with any certainty what amount.

1573. Did you see Mr. Dyer make the entry in D 5, page 20, you have spoken of?

I did not see him make the entry, but he called my attention to it afterwards—I think upon March 14th or 15th, 1865.

1574. What do you mean by Stout & Dyer examining D 5, March 14th, 1865—did they then go over all the items therein?

That's my impression; that they read over all the items that were set down in D 5 at that time.

1575. What could peach and blackberry juice be manufactured for in the summer of 1864?

Peach juice could be manufactured for 5 cents per gallon, and blackberry juice would cost 50 cents per gallon at least. That was the cost of some manufactured by Stout, Dyer & Wicks the following summer.

1576. Why did Stout, Dyer & Wicks agree to pay the government taxes that you speak of, if you know?

I do not know personally.

1577. Did Mr. Fithian pay the government tax on the manufactured articles or property which he sold to Stout and his associates?

He did not.

1578. Have you any interest in the event of this suit?

None at all.

R. M. SEELEY.

Sworn and subscribed before me, July 12, 1867, at Jersey City.

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

AUGTSTUS LEE CLEMENTS, a witness produced on the part of defendant, being duly sworn, deposes and says:

1579. What is your age and occupation? Do you know the parties to this suit, and for how long?

I am 23 years of age. I am in the canning goods business. I know the parties to this suit since August, 1865.

1580. Were you present at any time when Mr. Stout made a demand of Mr. Fithian respecting the charge for walnut juice? If so what was the nature of it, when and where?

I was present in June 15, 1866, at 91 Barclay street, New York. Mr. Stout remarked to Mr. Fithian that the price was wrong on the walnut juice, and he should like to have him make it right, as he was to have the goods at cost.

Mr. Fithian replied that he had no recollection of selling at cost, but may have said it. Mr. Stout asked Mr. Fithian to think of it. Mr. Fithian replied it would do no good. Mr. Stout further said, that the walnut juice could be manufactured at 15 cents a gallon. so Mr. Wicks said. Mr. Fithian replied that Mr. Wicks was mistaken, that it was walnut catsup. It is also my impression, from the remarks made afterwards, that Mr. Fithian allowed that if it was walnut juice, it was worth only 15 cents a gallon. That was about the substance of it.

1581. Did Mr. Fithian make the correction which Mr. Stout then requested of him?

He did not.

1582. Did Mr. Stout, in your presence, name to Fithian the sum per gallon which Mr. Fithian had set down the walnut juice at?

I can't say.

1583. What walnut juice was the subject of that conversation between Stout and Fithian?

The walnut juice at the Bridgeton factory, which Mr. Stont was to have at cost at the time of sale.

And being cross-examined, he says:

1584. Were you a clerk in the employ of Mr. Stout at the time of the above conversation? If so, how long were you with him?

I was in the employ of Stout, Dyer & Wicks, and continued so to the time of the dissolution, April 1, 1867.

1585. In whose employ are you now?

John W. Stout.

1586. You say in your examination in chief, "My impression from the remarks made afterwards;" made by whom, to whom, and when?

By the general conversation between Mr. Stout and Fithian. This was June 15, 1866. I knew nothing of the

cost of those goods before that time; and from what was said then, that informed the above impressions.

A. LEE CLEMENTS.

Taken, sworn and subscribed before me, July 12, 1867, at Jersey City.

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

DANIEL W. KING, a witness produced on the part of defendant, being duly sworn, deposes and says:

1587. What is your age and occupation, and how long have you known either of the parties?

I am 38 years of age; my occupation is a manufacturer of pickles. I think I have known Mr. Stout since 1863. I am not acquainted with Mr. Fithian.

1588. Since when have you been in the employ of Mr. Stout?

I have been in the employ of the firm with which he has been connected since 1863.

1589. From you acquaintance with Mr. Stout, do you know whether he was personally acquainted with the mode of the manufacture of canned fruits, or whether he has, during the time you have been acquainted with him, paid any attention to the mode of manufacturing canned fruits, jellies, juices, sauces, meats or vegetables? State what you know about it.

(Objected to.)

Up to the time of the formation of the firm of Stout, Dyer & Wicks, Mr. Stout took no part or control in the manufacture of canned goods, to my knowledge; since then I don't know anything about it, because the goods were manufactured at Bridgeton.

1590. What firm was he connected with in that business, up to the formation of the firm of Stout, Dyer & Wicks, and how long?

Well, to my knowledge, just before the firm of Stout, Dyer & Wicks, it was Stout, Dyer & Co. Before the firm of Stout, Dyer & Co., the business was carried on by John W. Stout alone. Before Stout, was the firm of Broadmeadow and Stout. I can't call to recollection with regard to the time. There were so many changes, that the times have slipped my mind.

1591. Who attended to the business for Mr. Stout in those respective connections, and in what other business was Mr. Stout personally engaged, and when and where?

At the time the business was in the name of Broadmeadow & Stout, and also in the name of John W. Stout, William W.

Stout attended to it, and had charge of it for John W. Stout; and at that time Mr. J. W. Stout was in business at Red Bank, in the clothing business; at the time of the firm of Stout, Dyer & Co., I was not much at the store, and did not know who had charge of it.

1592. Where was this canning fruit business carried on, at the times you have spoken of?

Previous to the formation of Stout, Dyer & Wicks, it was carried on at 91 Barclay street, N. Y.

10 1593. Who personally attended to the manufacturing of those articles during the times you have spoken of?

William W. Stout had the general supervision of it.

DANIEL W. KING.

Sworn and subscribed before me, July 12, 1867, at Jersey City.

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

COPY OF EXAMINATION.

Cumberland Circuit Court.

IN EQUITY.

CHARLES S. FITHIAN, *Complainant*,
and
JOHN W. STOUT, *Defendant*.
} *On Bills, Etc.*

Examination of witnesses in the above cause, taken before me, Charles E. Elmer, a Master and Examiner in said Court, at my office in Bridgeton, on Tuesday, the 6th day of August, A. D. 1867, at 11 o'clock, A. M., in presence of John T. Nixon, of Counsel with complainant, and Robert Allen, Jr., of Counsel with defendant.

C. E. ELMER, *Master*.

WILLIAM L. MORRIS, a witness produced on part of defendant, being duly sworn, and Exhibit D 6, on part of defendant being shown witness, says: On the 30th day of January, 1867, I served a copy on Charles S. Fithian; I handed him the notice at the office of the woolen mill, and said to him: Mr. Fithian, here is a notice I received from Mr. Stout; Mr. Fithian took the notice and read it, and says, I don't know that I can make this out; I think Mr. Stout has all the papers belonging to him; I will see to this, however, hereafter; I suppose you have nothing more to do with it; he kept the copy.

Being shown Exhibit D 26, on part of defendant, says: I served a copy of this notice on Charles S. Fithian on the third day of August instant. He kept the copy.

The solicitor for complainant says: that in answer to the notice Exhibit D 26, the books and papers named in that notice, are now here produced and subject to inspection of defendant and his counsel.

W. L. Morris.

Sworn and subscribed before me this 6th day of August, 1867.

C. E. Elmer,
Master in Chancery of New Jersey.

Lorin L. Wicks, a witness produced on part of defendant, being duly sworn, (it is objected on part of complainant, that this witness cannot be re-called and re-examined on part of defendant,) (the defendant objects to the above objection,) says: the twelve cooking tanks are built of two-inch plank, planed and matched, and secured by frame work and bolts; they are connected with the factory by steam and water pipes; the water pipes are screwed through the sides of the building and into the tank; the steam pipes enter the tanks from the top, extending to the bottom and across the bottom into the two divisions, and they are connected with the main steam pipe by screws and gum packings; they were originally put up in that way; four of them have been moved since they were originally put up; the building they were first put in was too small, and we had to put up an addition to put in more tubs and tanks, for which reason we had to take the steam pipes down to extend it into the new tubs; and while the pipes were down the four tanks in question were raised up for the purpose of putting heavier timbers under them, and then connected as before with the steam pipes; the whole building and floor was raised at the same time about eighteen inches, and a new foundation put under it; those four tanks were moved in the spring of 1863; none of the twelve tanks have been moved or changed at any other time.

Question—Were all of those twelve tanks permanently secured to the building and property; if so, how?

(Question objected to on part of complainant.)

They were made fast to their place or places by being put on to the timbers of the floor before the floor was laid; then the floor was laid around the tanks, and a platform about eight inches high built around them to stand on, and further secured to their places by water pipes going through the side of the building and into the tanks, and the steam pipes entering them from above; these tanks were used for cooking canned goods by steam; these twelve tanks were absolutely necessary for the manufacture of canned goods.

The R. R. tanks in Exhibit D 5 was built on the floor where it now stands; I helped to build it myself, and it was built by first setting up legs of joist on the floor; the legs being nailed to the floor, supporting cross-pieces, to which the bottom of the tank was nailed; then the sides and ends were put up and secured by ties and bolts; then the drop-table was put into the tank; said table being on wheels, which gives it the name of a railroad tank; this movable leaf covers about one-half of the tank, the other half being covered by boards; stationary; there is a supply water pipe comes into the tank, through the floor, being screwed into the tank water-tight, and a waste pipe going from the tank, through the floor, in the same manner; this tank is built around a post that holds up the roof, and the west end of the table-leaf nailed to the side of the building; this tank was built in the spring of 1864, if I remember right; it has not been changed or moved since it was built; it was absolutely necessary for the business.

The two double iron kettles and six copper kettles in Exhibit D 5; the two double iron kettles stood in a frame by themselves, and the frame contained four supports; two of the legs, or supports, were the timbers of the side of the house and could not be moved; they were further connected with the property by steam pipes; the six copper kettles stood in the middle of a room independent of the sides of the house; the legs of this frame were nailed to two timbers, which were bedded in the ground and covered with brick tile; these kettles were further secured to the property by steam-pipes and waste-pipes; the water pipes being buried in the ground under brick tile; all of these kettles were put up before I came to Bridgeton in 1862, at least, I found them up when I went there; these kettles were all moved in the spring of 1865 by John W. Stout, under my supervision, for the purpose of getting more room; none of these kettles were moved, or changed in position, previous to March 14, 1865; they were used for making jellies, soups, and making juices for jellies, and were indispensable for the factory business.

The kettles were set into the frames, and boards fitted around the kettles at the top, and the boards then covered with tin, and the edges of the kettles soldered to the tin, and the tin nailed to the boards; the steam-pipes connected with the main steam-pipe from the boiler; the steam-pipes passed through the boards around the kettles, and entered the kettles about half way from its top to bottom; the water-pipes from the kettles left the kettles at the bottom and entered the pipe which was buried under the ground; the cooking process was by steam in these kettles; four of the copper kettles were twenty-five gallon kettles, and two twelve gallons each; the two iron kettles are twenty gallons each.

Five tomato catsup tanks, in Exhibit D 5, are sixteen feet long each, about four feet wide and about four feet, six inches deep; three of them are built of planed and matched boards, secured in frame-work, which rests upon the floor; they were built in the building in which they now stand, said building being built expressly to cover them; they cannot be taken out of the building without taking the tanks to pieces or taking down a portion of the building; they are open on the top, and covered over with batten doors, made of half-inch stuff; they were built in spring of 1864 by Mr. Leake, carpenter, for C. S. Fithian; none of these tanks have been changed or moved since they were built, and are necessary for the factory business; two water tanks in Exhibit D 5, are used for pumping water into from two wells; one of those tanks was on the property when I first came to Bridgeton, the other tank Mr. Fithian had made in 1863; I think they are about five feet across the bottom, slightly tapering to the top, and about seven feet deep; there are water-pipes from these tanks leading to various parts of the factory, and are entered by a steam pipe, so that in case they are frozen up, the water could be thawed by steam; both tanks were moved in the spring of 1865, after Mr. Stout bought the property; the tank which was in the factory when I came to Bridgeton, was moved once before Mr. Stout bought the property; there is a water-pipe goes from each well to each tank; they are not put through the tank, but laid on the tank so the water can run in; these tanks are indispensable for the factory business, and were always kept full, except when it was necessary to repair them.

Gas-pipe, steam-pump, belting and shafting, Exhibit D 5: The gas-pipe are led through the building, and have attached twenty-eight burners, and fixed to the building in the usual way of putting gas-pipes into buildings; all the burners, except four, were put in by Mr. Fithian, and four by Mr. Stout; the steam-pump is connected with the two main boilers of the factory; this pump was set previous to 8th of March, 1865; the belting and shafting referred to, were put up by Mr. Fithian previous to March, 1865, and used for pumping water into the two tanks; the belting, and steam-pump, and shafting were necessary for the factory business; the steam-pump, shafting and belting have not been moved since they were put up by Mr. Fithian; the business of the factory could not be carried on without the use of those kettles, tanks, pumps, gas and water piping, belting and shafting.

Question—State, if you please, what the twelve cooking tanks cost Mr. Fithian.

I cannot say what they cost Mr. Fithian; those tanks were built under my direction, as to the size and manner of construction; I built four tanks just like them, in 1858, in New York city, which cost $7.50 each, and I do not think

those tanks built by Mr. Fithian actually cost any more, for the lumber, in the tanks built by Mr. Fithian, did not exceed $30 per thousand, which he furnished himself, and were built by men whom he paid by the day, at the rate of $6.50 per week; the tanks I built in New York were made of lumber which I paid $40 per thousand for, and my time was secured at $2 per day while building them.

Six of those tanks had been used 3 years prior to March 8, 1865; ten of them had been used two years, and four of them one year previous to that time. The one R. R. tank, I can't say what it cost Mr. Fithian, but I think it cost him the price marked in inventory D 1. I don't know what the 2 double iron kettles, 6 copper kettles and 2 water tanks, cost Mr. Fithian; I don't know what the 5 tomato catsup tanks cost Mr. Fithian, but I have made three separate estimates of those 5 tanks in question, each estimate so far apart that I have forgotten the figures of the former estimate; and at no estimate have I made the tanks cost, at a fair profit to the builder, over $40 apiece, or less than $36; and I will any time buy the lumber and make one or more fac simile tanks for the sum of $40 each. These tanks had been used by Mr Fithian one year previous to March, 1865. The cost of the R. R. tank consists of the machine work inside of the tank; the movable leaf runs on eight wheels and shafts; these wheels run on eight separate iron trucks; the whole of this movable leaf is made of iron, with the exception of six wooden strips, three inches wide and 16 inches long. The work benches in tin shop, exhibit D 5, page 2, are supported by hemlock joists, nailed to the building at one end and standing on legs at the other end on cross pieces; these legs are nailed to the floor; the leaf, which is some three feet wide, is constructed of three pieces; the first is of ash and oak plank, spiked into the hemlock joists, and filled in back of that with rough pine boards, which are nailed to the joists, all of it unplaned. I presume there is about fifty feet of this bench in length. The bench is fastened to the sides and end of the building, to the studs and to the floor; the bench runs the length of the end and part of the side continuous; this bench is all of one structure, with the exception of a piece about six feet long, which stands by itself in another part of the building; the bench six feet long is connected with the building in the same way. These benches have been used for making tin cans on, and that is what they were built for; they were part built before I came to Bridgeton, the rest of them after I came down here, and previous to March, 1865, by Mr. Fithian; none of them were constructed on or after December 21, 1864. I made an estimate of the cost of all these benches, and made it out that they cost between twelve and thirteen dollars; 550 peach crates, exhibit D 5, page 8, I believe they cost Mr. Fithian 30 cents

apiece; he paid a man 10 cents apiece for making them; there is six ounces of hoop iron in them at 10 cents per pound; 5 ounces of nails at 8 cents a pound, 3½ feet pine lumber at $30 a thousand—the balance of them are made of old glass crates, which cost Mr. Fithian nothing, and for which, in my estimate, I allowed 15 cents for labor in knocking them to pieces to nail into those peach crates. There is 49 feet boards in one of those old glass crates, and there is 19 feet of the same stuff used in each of those peach crates. Mr. Fithian sometimes sold those glass crates at 10 cents apiece, and by reckoning one-half of that, which is 5 cents, would make the peach crates cost 35 cents each.

The work benches were not moved or changed in any way after they were constructed. One tinman's cupboard, exhibit D 5, page 2, I believe it cost Mr. Fithian not exceeding $2.75; the building makes three sides of the cupboard; there is about 9 feet rough boards in it for shelves, has a front door, and perhaps 6 feet rough boards around the door; there is a lock on it worth about 30 cents, hinges and screws, perhaps worth 15 cents; it was built in 1863, and has never been moved, can't change it without changing the building.

There has been no additions made to shafting, belting, pipes, pumps, tanks, kettles or benches, by Mr. Fithian, since December 21, 1864.

There were on the premises, December 21, 1864, the main building, as it is called, the engine and boiler house, an old shed, 20 by 40 feet, posts standing on the ground, board roof; against this shed was another shed, 10 by 40 feet, supported at the ends by posts, the other ends of the rafters being nailed to the shed against which it stood; this last shed had a gravel roof; then there was what is known as the long building, which has a cellar under the entire building; there was a sawdust house, two stories high, probably 16 by 20 feet; there was the catsup house, which contained these five tanks, one story high, with gravel roof; solder house, 10 by 16 feet, one story high; there was another shed 20 by 40 feet, posts standing in the ground, used to store boxes in; a carpenter's shop, about 16 by 18 feet, two stories high, a good frame building. I think that takes in all the buildings, and when I have given the dimensions, I have guessed at it. Between December 21, 1864, and March 14, 1865, Mr. Fithian did not put any additional buildings on the premises, or any additions to those there, or any expenses in the building. I don't know how long Mr. Fithian had used the buildings, some of them were on the premises when I came to Bridgeton, and the others were added previous to New Year, 1864.

I don't know that Mr. Fithian ever told me what the buildings cost altogether, but in settling with me in 1863 and 1864, he put them in at $6,000. Mr. Fithian told me, in speak-

ing of the main building, that it was built so as to be turned into a double dwelling, and cost him $800. The building, known as the long building, he said, cost him $600. The boiler and engine house and stock, containing boiler, engine, steam pipe, belting, steam pump and injector, he always estimated as costing him $3,000. I have no recollection of hearing him mention the cost of any other of the real estate.

In the estimate of $6,000, above spoken of, I understood was included the buildings, land on which they stood, the boilers, engines, tanks, steam pipes, gas pipes, tables, benches, and all the tools used for making and manufacturing cans, book-cases, show-cases, label cases, cooking machines, tubs and pails, shovels, fire-pokers, &c. I think Mr. Fithian had it in his account of stock, in writing, though I never looked at it. I think he had it in book known as D 1; I don't remember that he had it in any other of the books, excepting this inventory, D 1. When Mr. Fithian and I settled in 1863 and 1864, he kept the books and had an inventory of the property, and told me what was coming to me out of each year's work. The books he kept were other books than book D 1; they were books of his business, kept by his clerk. When I settled with Mr. Fithian, in 1863 and 1864, I can't say by what books I settled; the accounts were read to me by him and his clerk, containing the profit and losses of the business; he and his clerk then read from his ledger. Mr. Fithian was his own clerk in 1863, and Robert M. Seeley his clerk in 1864. Mr. Seeley was present when Mr. Fithian read me the accounts in 1864. I did not examine any of the books myself; I do not know whether the $6,000 basis of settlement between myself and Mr. Fithian was entered in any of those books, but I believe it was in the ledger. Mr. Fithian, in our arrangement, charged me 2 per cent. on $6,000, which represented the property mentioned, and also charged me 2 per cent. on what money he borrowed to carry on the business, this being according to our article of agreement, if I remember right. It was 2 per cent., because there was three of us in partnership. I can't say how long there were three in partnership. After Mr. Fithian bought Mr. Pogue out, I continued to pay the 2 per cent.

And being cross-examined, says:

It was about New Year's, 1863, when Mr. Fithian told me the main building was built so that it could be turned into a double dwelling, and that it cost him $800; I mean by the main building, which cost $800, the building which has the peaked roof to it, fronting the property and covering a cellar the full size of the building; I think that building is 20 by 30 feet. If I understood right, there was included in that building for the $800, a shed the entire length of the rear of

the building, and the south end 10 feet wide, which contained the six copper kettles and four iron kettles referred to, but the kettles were not included in the $800. These sheds were torn down by Mr. Fithian, and a two-story building put on the same ground and joined to this front building with the peaked roof.

The new building, put up by Mr. Fithian at the south end, is 10 feet wide by 34 feet long; the one in the rear is about 12 feet wide and 30 feet long; in the rear of the rear building there was put up a one-story shed; the south end of it is about 20 feet square, and the north end of it was perhaps 10 by 12 feet. There were no other additions made to this main building by Mr. Fithian, to my remembrance. Yes, there was a jelly room finished off in one part of it, and furnished with shelves, and the south part of the second story was appropriated to a tin shop. I understood from Mr. Fithian that the $800 only included the cost of the main building and shed. The additions put to the main building by Mr. Fithian, cost, I should think, about $800—did not exceed that amount. That estimate is only my judgment; I never made any calculation about it. The settlement I made with Mr. Fithian in 1864, I made, I think, from inventory D 1, and I think they referred to the ledger also.

Question—Are the water tanks, cooking tanks, tomato catsup tanks, tables, kettles, benches, &c., spoken of by you as being included in the real estate, valued at $6,000, so included in inventory D 1, or are they there set down as personal property?

(Question objected to by defendant.)

I do not remember; I am not at all acquainted with the book.

(Book shown to witness, items pointed out to him by complainant, and question re-read.) Says:

They are there set down as separate from the real estate, but, if my memory serves me right, they were all included in my settlement as real estate in the $6,000. I can't say, as a witness, for what purpose the inventory taken in February, 1864, was made. It is my impression that there was another inventory besides that of February 1st, 1864, taken to ascertain the business of 1863.

(This question and answer objected to by defendant.)

I don't know whether I made the settlement for the business of 1863 by the inventory made Feb. 1, 1864, or not, but believe it was that and the ledger.

(The inventory of February 1, 1864, being shown witness,) he says:

The real estate on page 2 foots up $7,225, and I do not think that the tanks, benches, tables, &c., are included in that inventory as real estate, but I still think that in Mr. Fithian's settlement with me it was all included in the $6,000.

(Question and answer objected to by defendant.)

The cooking tanks in inventory D 5, are set down as personal property.

Exhibit D 1 being shown witness, says: The cooking tanks in that inventory are put down as personal property.

(Question and answer objected to by defendant.)

("Account of stock S., D. & W., April 1, 1866," Exhibit D 5, writing next following D 5, being shown witness.) I don't know what that means; I presume that it is an account of stock taken by Mr. Seeley for Stout, Dyer & Wicks, dated April 1, 1866; the cooking tanks in that account are put down as personal property at $180.

(All evidence on part of complainant in relation to this inventory is objected to on part of defendant.)

The steam-pipes and water-pipes can be unscrewed, and when unscrewed, the floor and platform which surround the cooking tanks attached them to the building; the platforms are nailed to the tanks and nailed to the floor.

Question—In making this purchase, and sale, in March, 1865, did you treat those twelve cooking tanks as personal property, or real estate?

(Question and answer objected to by defendant.)

I did not treat them at all, or know how they were taken in.

Inventory D 5 being shown witness, says: One R. R. tank is put down as personal property at $125.

Inventory D 1, page 7, being shown witness, says: One R. R. tank is put down as personal property at $125.

Account of stock S., D. & W., April 1, 1866, being shown witness, says: One R. R. tank is put down as personal property at $125.

(Questions and answers objected to by defendant.)

The frame for the R. R. tank was set up and nailed to the floor before the tank was put on it; then the bottom of the tank was nailed to the frame work, and then the sides and top added; and there is a post, that holds up the roof, passes through the tank and rests on the floor beneath; the west end of the leaf of this tank is also nailed to the west side of the house.

(Adjourned till 9 o'clock, August 7.)

August 7th, the cross-examination of L. J. Wicks resumed.

Exhibit D 5 being shown, witness says: That in this inventory two double iron and six copper kettles are stated as personal property, the iron at $40, and the copper at $300.

Inventory D 1, page 9, being shown, witness says: That in this inventory, the iron and copper kettles are put in as personal property, the iron at $40, and the copper at $150.

In account of stock, S., D. & W., the same kettles are put in as personal property, the two iron kettles at $40, and the six copper kettles at $50 each, and two copper kettles at $57 each; the last two kettles were furnished by Stout, Dyer & Wicks; the last two kettles are thirty-six gallon kettles, and had been set up before they were sent to the factory here by Mr. Stout.

In inventory D 5, the five tomato catsup tanks are put in as personal property at $500, and in inventory D 1, the same tanks are put in as personal property at $500, and in account of stock, S., D. & W., the same tanks are put in as personal property at $500; these tanks were built by Mr. Leake, in the employ of Mr. Wm. C. Whitaker; and Mr. Whitaker was employed by complainant to build them.

The two water tanks, at the time of the sale by Mr. Fithian, stood outside of the factory, and stood upon a frame work resting upon a stone foundation; if the steam and water-pipes were unscrewd from the tanks, they would not be attached to the building; the pipes could be unscrewed.

In inventory D 5, March 10, 1865, the two water tanks are put in as personal property at $100; in inventory D 1, the same tanks are put in as personal property at $100; in account of stock, S., D. & W., April 1, 1866, the same tanks are put in as personal property at $100.

In inventory D 5, the gas-pipes and fixtures, steam pump, belting, boiler and shafting are put in with the real estate and set down at $12,000.

In inventory D 1, none of the articles named in my last answer are put down as personal property, that I see.

In account of stock, S., D. & W., April 1, 1866, I don't find these same articles put down as personal property, and think they are included in the first item of $14,000, in that inventory.

In inventory D 5, March 10, 1865, the benches in tin-shop are put down as personal property at $100.

In account of stock, S., D. & W., April 1, 1866, the same benches are put down as personal property at $100.

In inventory D 5, March 10, 1865, the 550 peach crates are put down at $550; and in account of stock, S., D. & W., April 1, 1866, the same crates are put down at $550.

In inventory D 5, March 10, 1865, the tinman's cupboard is put in as personal property at $6; and the engineer's cupboard put in as personal property at $2.

In account of stock, S., D. & W., the same articles are put in as personal property at $8; the account of stock, S., D. & W., April 1, 1866, was taken by Robert M. Seeley, one of the partners of Stout, Dyer & Wicks.

Question—At what time, and for what purpose?

(Objected to by defendant).

It was taken April 1, 1866, and I suppose for the purpose

of making returns to the store in New York, of the business of the factory for the preceding year; it is in the hand-writing of Robert M. Seeley; no one, to my knowledge, assisted Mr. Seeley in making up that account, except the old account books; I might have held the candle while Mr. Seeley counted some things, or I might have counted some myself; but it was done under Mr. Seeley's supervision; I was at the factory when it was taken, and was one of the partners of Stout, Dyer and Wicks.

Account of stock, S., D. & W., April 1, 1866, in inventory D 5, is offered as an Exhibit No. 5, on part of complainant.

Mr. Fithian's ledger for the years 1863 and 1864 being shown, witness says:

Question—Please show where in that book any settlements you had with Mr. Fithian, the real estate and fixtures are put down at $6,000, as stated by you yesterday?

I believe this is the first time I ever had the book in my hands; don't know where to look for any account of settlement with me and Mr. Fithian, in the book, the settlement generally being made by Mr. Fithian and his clerks, and reading to me the proceeds of the business of the previous year; and it is my impression that in settling with me in 1863 and 1864, the real estate and fixtures were put in at $6,000; and if I should see it at any other price in this book, or any of the books, I should not know how to understand it, as Mr. Fithian generally made quite a large deduction on the business at the end of each year, which he termed rest accounts, &c., which I never understood or inquired into, having implicit confidence in Mr. Fithian, and thinking he would give me my just dues.

Question—Is that the ledger to which you yesterday alluded, by which you settled with Mr. Fithian and his clerks in 1863 and 1864?

I believe it is; but cannot say, as I never examined it.

(All questions asked this witness by complainant, as to what items are set down in D 1 and D 5, and in account of stock, S., D. & W., April 1, 1866, as personal property, or the amount thereof objected to by defendant).

And being again examined in chief:

The steam and water pipes were never separated from the water tanks, except for repairs.

In my last settlement with Mr. Fithian in the Spring of 1865, for the business of 1864, and up to the latter part of March, 1865, this was a final settlement of our previous business, as I understood it; the ledger I have spoken of, and the account of stock, D 5, was referred to in that settlement; Mr. Robert M. Seeley was present at that settlement, no one else that I recollect.

D 5 and D 1 being shown witness, the item $12,000, page 1, of D 5, and the item $6,000, D 1, page 10, says: In that settlement with Mr. Fithian, I suppose I had the benefit of the difference between these two items, my share being $2,000. I should like to answer that question a little differently. The difference of $2,000 between the two items of $12,000 and $6,000, was credited to me as being my share in the increase of the account of stock in D 1 and D 5; but I do not believe that I was benefitted by this increase of stock, as it has since been proved to me by experience that the account of stock in D 5 was taken far above value, which was in a great measure unknown to me at the time of my settlement with Mr. Fithian; my settlement with Mr. Fithian was before the account of stock, S., D. & W., in D 5 was taken.

I did not read the items in inventory of March 10, 1865, in D 5, or of inventory D 1, at the time they were taken; after these inventories were taken, the first time I ever read the items, was in this cause at Jersey City; previous to that I never had them in my hands; I did not dictate to R. M. Seeley or Mr. Fithian's clerk how any of the items should be written therein, or how any of the articles should be classified, or what price to attach to the articles therein named, except in the case of some tools or machinery, or improvements that I had made for the interest of the business when Mr. Fithian asked my opinion.

I did not give any directions as to how the account of stock, S., D. & W., April 1, 1866, should be made up, or how it should be entered in the book. The firm of Stout, Dyer & Wicks did add buildings and make improvements to the property in the Spring and Summer of 1865 to the amount of $2,000.

Question—Why?

It was for the convenience and to facilitate business and to avoid night work.

And being again cross-examined:

Question—Did you as one of the partners of Stout, Dyer & Wicks, agree to take the property at the price named in inventory D 5, March 10, 1865?

I did not either agree to it or object to it.

Question—Did you as one of the partners take the property at that price?

(Objected to on part of defendant.)

I will answer the question in this way, it being the only way I know how to explain it: Mr. Stout and Mr. Dyer bought out Chas. S. Fithian, he owning all the personal property and real estate on the premises, and having the sole right to dispose of it, and in that sale, according to our article of agreement between Mr. Fithian and me, I was entitled

for my services to one-third of all the net profits of Mr. Fithian's business, which sum, according to his statement to me, amounted to some $12,000 at the time of the sale, which sum he deducted from his sale to Stout & Dyer, and Stout & Dyer gave me credit for the same amount on their books, and this is the way I came in partnership with Stout & Dyer.

The last question repeated to witness, he says:

I suppose my signing articles of agreement with Stout, Dyer & Wicks is an acknowledgment to that effect; the reason why I answer in this way is because I have no recollection of ever being personally asked whether I would accept the account of stock as taken in D 5, or whether I disapproved of it.

Question—Were you present when Stout & Dyer examined inventory D 5?

I recollect Mr. Dyer having inventory D 5, but don't recollect ever seeing it in Mr. Stout's hands previous to this year.

Question— Did Stout & Dyer take the real estate and personal property of Mr. Fithian at the price set down in intory D 5?

I believe they did.

And being again examined in chief:

During the negotiations between the complainant and Stout & Dyer respecting the property in question, Mr. Fithian did not direct the attention of Stout and Dyer particularly as to the manner in which the property was set down in D 5, as to the items of personal and real estate.

Mr. Dyer might have had D 5 from half to an hour, but I do not recollect distinctly of his having it but a few moments, and I might as well state the transaction. Mr. Fithian handed Dyer an account of stock which I believe to be D 5; Dyer sat down with the account, and Stout sat down by his side; Dyer commenced to read over items and says to Fithian, "How shall we know that all of these things are on the premises?" and proposed to go through the factory with the inventory and hunt up all these items, to which Fithian objected, stating that the account of stock was taken correctly, and that all the articles therein contained were on the premises, and referred to Mr. Seeley and me as witnesses, when I think Dyer laid down the inventory and did not go through with the items; Mr. Fithian said the property was in good working order, and all the articles therein named were necessary to carry on the business, and could not be replaced at the same price, that is, at the prices set down in D 5.

Question—Did Dyer or Stout, during that negotiation, refer

or mention in any way to the manner in which the items of property were set down in the inventory D 5 or D 1, as personal property, or classified as fixtures or real estate?

In the inventory D 5 Fithian put the factory property at $12,000; Stout asked Fithian "if that included everything?" meaning, as I suppose, everything necessary to the manufacture of canned goods, to which Fithian replied: "Yes, except some few tools which don't amount to any great deal;" I believe this conversation was on March 14th, 1865; neither Stout or Dyer mentioned as to the manner in which the property was set down in the book distinguishing real and personal property.

LORIN J. WICKS.

Sworn and subscribed before me Aug. 6, 1867.

CHARLES E. ELMER,
Master in Chancery, N. J.

R. M. SEELEY, being duly sworn on part of defendant.

(Solicitor of complainant objects to the examination of this witness as to any new matter, having already been examined in chief.)

Witness being shown Exhibit D 27 on part of defendant, says:

This paper is in my own hand-writing, and contains a list of articles taken from Exhibit D 1, showing the alterations in the prices of those articles made by Mr. Fithian before they were copied into D 5, and list of articles contained in D 5 and not in D 1, and also a list of articles that were upon D 1 and not placed in D 5, and which Stout, Dyer & Wicks did not receive.

(Complainant objects to this paper as being irrelevant to the issue.)

The figures, page 2, $10,707.92, represent the difference of prices of those items between D 1 and D 5, increase of price in D 5 over D 1.

Question—What does the expression, 40 per cent., deducted in D 5, and 50 per cent. deducted in D 1, refer to or mean?

It refers to the items of Cumberland sauce contained in the three lines above, of this statement, and means that upon D 1, fifty per cent. was deducted from the gross price, and from D 5, forty per cent. was deducted.

On pages 1 and 2 of this statement, the items and figures were made by me, and correctly taken from inventories D 1 and D 5.

Pages 3, 4, 5, 6 and 7 of this statement, were correctly taken, as to items and figures, from inventory D 5, and show the articles that were in D 5, and not in D 1, and amount in gross to $12,595.61.

Pages 8 and 9 of this statement, both as to items and figures, were correctly taken from inventory D 1, to show the articles that were in D 1 and not in D 5, amounting in gross to $23.198.02.

Question—Did Stout, Dyer or Wicks, or John W. Stout, or the corporation ever have any of the articles referred to on pages 8 and 9 of that statement, or the benefit of them?

They did not.

Mr. Fithian did manufacture and sell goods between December 21, 1864, and March 14, 1865, but I can't state to what amount; he did keep an account of the goods so sold; I was his clerk and kept the account for him; I can tell the amount of the sales by reference to the books.

(Examination adjourned until 3 o'clock, P. M.)

(Resumed at 3 o'clock, P. M.)

I have referred to the books during the recess, and place the amount of the sales at between $7,000 and $7,500; I referred to the journal and ledger of C. S. Fithian & Co.; there are no peaches or tomatoes included in statement.

(Exhibit D 27, and statement being shown witness, by defendant,) says: There are peaches and tomatoes on statement D 27, page 9, shown as being upon D 1 and not upon D 5; none of these peaches or tomatoes were purchased by Mr. Fithian after December 21, 1864; the following articles not in D 1, and in D 5, mentioned in the statement of D 27 on page 9, were purchased by Mr. Fithian after December 21, 1864:

One steam pump, $23; 47,700 two-pound cans, at 11 cents, making $5,247; two sets round dies, $45; sixty-nine boxes of tin, $1,181.62; eighty boxes coke tin, $16.62, making $1,330; 1,000 cans, part made, $10; 425 pounds solder, at 40 cents, $170; 1,056 pounds lead, at 13¾, $145.20; 660 pounds of strip tin, at 57 cents, $376.20; nineteen pounds bar copper, 71 cents, $13.94. That is all I can testify to; I think there were spices and wrapping paper purchased, but I don't know the amount; the 47,700 tin cans spoken of, I mean, were manufactured out of tin purchased by Mr. Fithian.

Question—Were you present on the 14th of March, 1865, when Stout, Dyer, Wicks and Fithian were together at the factory?

(Question objected to as being repetition of former examination.)

I was at the factory at the time.

Question—Did Fithian particularly direct the attention of Stout or Dyer to the manner in which the items of property were entered in Exhibit D 5, or classified therein as real estate, fixtures, or the distinction between the real and personal property?

(Objected to on part of complainant as being leading and a repetition of former examination.)

I do not remember that there was any remarks made as to classification of the property as real estate or personal property. The inventory was shown to them and they examined it.

Question—Did either Stout or Dyer then express themselves in any way to Fithian that either of them noticed that any of the tanks, kettles or benches were set down as personal property distinguished from real estate?

(Objected to by complainant as being leading and repetiiton of former examination.)

There was no reference made to them in my hearing in that connection; L. J. Wicks is a mechanic—a good one.

Exhibit D 5, account of stock, S., D. & W., April 1, 1866, being shown, witness says: That is my own hand-writing, and all the writing subsequent to that, in that book, is mine.

Question—Were the items of tanks, kettles and benches entered in that account of stock for the purpose of showing that they were considered as personal property?

(Objected to as leading, by complainant.)

No they were not entered for that purpose at all—at least, I had no thought of them in that way; that account of stock was made principally by myself; Mr. Wicks assisted som it was made without any directions or instructions from either Stout, Dyer or Wicks, in regard to the manner of making it up; the business of the factory was kept entirely distinct from the store, and all articles I sent away from the factory I was directed to charge the store at cost price, and I gave the store credit for all articles received from them, and this account of stock was taken by me to show whether there had been a loss or a gain at the factory. The items were put down as they were in the former stock, as being the most convenient way of getting at the loss or gain of the business of the year. The first item in the inventory of real estate, &c., is put down at $14,000, because we had expended $2,000 in improvements during the year. Mr. Wicks assisted in counting bottles, cans, &c., and some of the hands about the factory might have assisted in the same way. Mr. Wicks did not see or know how I entered the property in that account. I did not examine the book.

And being cross-examined by complainant:

Paper marked Exhibit D 27, page 8, being shown, witness says:

I don't think of any articles in that inventory included in D 1 and not in D 5, except a bill of tumblers; I placed in D 5 the whole amount of tumblers, $228, and in D 1 such as had not been used when D 5 was made out; I mean that I have placed in the list of articles, set down as not in D 5, the bill of tumblers amounting to $228, and then placed upon the list set down as not in D 1, the amount of tumblers that had not been used at the time D 5 was taken.

The items of tumblers on page 5, put down at $126, upon the list of articles as not in D 1, are included in the item bill of tumblers, (Sheets & Duffy,) $228, upon page 8.

The items boiler, engine, &c., $125, page 8, was considered by Mr. Fithian as real estate and included in the item $12,000, in inventory D 5.

The item two boxes coke tin, $30; half box square tin, $10, I suppose were used up as I did not find them on inventory D 5. There was a large quantity of coke tin in inventory D 5, and I put down upon D 5 the amount of tin that was not in D 1, exclusive of those items referred to.

Question—Does not the article, 80 gallons of syrup, $100, appear in some way in the list of articles set down in inventory D 5, and if so, how?

It appears in D 5 as 80 gallons Cumberland sauce—no, not Cumberland sauce, but walnut catsup; in making up D 1, there were two barrels supposed to contain syrup, and were afterwards found to contain walnut catsup.

Question—The items two and one-half tons coal, one-half sack salt, thirty-seven dozen pint Cumberland sauce, $83.25; 108 dozen one-half pint Cumberland sauce, $135; fifty-five gross jelly corks, $27.50; jelly corks. $30,25; lot of vial corks, $18.75; ten gross vial corks, $2.50; do any of these articles appear in inventory D 5, and if so, how?

Those articles had been used by Fithian in the manufacture between December, 1864, and March, 1865, and were not upon the inventory D 5, excepting there may have been some of the corks in the bottles of manufactured articles.

Question—The two items, 10,000 feet boards, $400; 1,800 feet of plank, $81; are these items represented by articles in inventory D 5?

(Question and answer objected to by defendant.)

I will give them to you as they are on the two inventories: In D 1 there is 10,000 feet of boards, $400; 20,000 feet of boards, $640; 1,800 feet of plank, $81; 10,000 feet of plank, $340; and upon D 5, there is 20,393 feet of boards, $665.22; 15,878 feet of plank, $547.79. I put the two items, 10,000 feet of boards and 1,800 feet of plank, in statement D 27, because I did not consider they were in D 5; I made this statement in D 27, to show the difference between the two inventories, D 1 and D 5.

Mr. Stout never saw the inventory, S., D. & W., April 1,

1866, until he took inventory D 1 from the office; no copy of it was furnished to him; I don't think there was a copy; the aggregate amount was sent to him; I sent it to him at the close of the year, to show the amount of stock at the factory; I sent it to him as the real estate, fixtures. tools and everything that was in permanent use at the factory, that I always kept on my books in an account styled "Real Estate and Fixtures," and I sent it in that shape; I sent to him as real estate and fixtures, $20,511.93; merchandise, $25,117.39; I can't be positive whether I gave him the items as to what constituted the real estate and fixtures; I may have done so, but they never interfered with my way of keeping the books down here.

I suppose within ten days after this inventory was taken, I furnished Mr. Stout the statement above spoken of, and they at the same time took an account of stock at the store in New York, and wished to know the gains or loss at the factory during the year.

And being again examined in chief says:

I sent the statement, spoken of above, to Mr. Stout by mail; the $20,511.93 in statement which I sent to Mr. Stout, as real estate and fixtures, is the first item on page 48 of D 5, and reads as follows: "Real estate and Fixtures, $20,511.93." I can't remember how in the statement I expressed to him the item of merchandise, $25,117.39.

Between December 21, 1864. and March 8, 1865, Mr. Fithian used up some of the coal, lumber, boards and plank which were in inventory D 1; it was used in the manufacturing business.

I cannot state from memory the amount so used and consumed; it is shown in Exhibit D 27.

I had sole control of the account of April 1, 1866, and if a copy of that account had been sent to Stout or Dyer, I certainly should have known it.

Prior to April 1, 1866, I had sole control and charge of the books and accounts of Stout, Dyer & Wicks at the factory here, and did not previous to that time send to Stout or Dyer any statement concerning the property.

(Journal of C. S. Fithian & Co., being shown witness,) says, that is the book from which I got the account of sales of C. S. Fithian, between December 24, 1864, and March 8,1865; it is marked Exhibit D 28, on part of defendants.

(This book, containing other accounts, it is agreed by counsel of the parties, shall be put in the hands of complainant, subject to be called for, if wanted by either of the parties to this suit, or their counsel.)

And being again cross-examined:

Mr. Stout visited the factory at Bridgeton, I suppose, once a month; he was frequently down. The amount of additions to the property, made by Stout, Dyer & Wicks, between the time of the purchase and April 1st, 1866, was about $2,000; these improvements were made with the knowledge and consent of Messrs. Stout, Dyer & Wicks.

R. M. SEELEY.

Sworn and subscribed before me, Aug. 7, 1867.

CHARLES E. ELMER,
Master in Chancery, N. J.

JOHN HUMMILL, a witness produced on part of defendant, being duly sworn:

I am 61 years old, and reside in Bridgeton; am engaged in the canning factory, and have been for three years past—the factory formerly owned by Mr. Fithian. The tinman's cupboard is at foot of stairs; the house forms two sides of it, a partition another, and it has a door in front; I don't know what it cost to build it; it was there, I think, before I went there; I made an estimate, and think it could be built for $2.73; this includes the lock and hinges.

I know the work-benches in tin shop in the factory; I think they were there when I went to work there, and they have been in use ever since. They are along one side of the building, and part of one end; there are legs in front, with cross-pieces nailed to the studs of the building which the bench rests on; the bench is put on and spiked to the cross-pieces; these benches have not been moved or changed since I went there, and the same material is in the benches as was in them when I first knew them; they could have been built six or seven years ago, for $12.76—that includes work and materials of every kind; there is white oak and ash plank, sap boards and hemlock plank in them. I put the white oak and ash plank at $30 a thousand, sap pine boards at $12, hemlock at $14; I was in the lumber business some fifteen or eighteen years. I put the labor at $3, allowing $1.50 per day.

I made an estimate on the five catsup tanks, and think they could be built for $36 each; I put the lumber at $30 per thousand. They were built, where they now stand, three years ago, and have not been moved nor changed since.

And being cross-examined, says:

I am now in the employ of Mr. Stout, and have been since he purchased of Mr. Fithian, with the exception of three or

four months in the winter; before that I was in the employ of Mr. Fithian. My business is to oversee the women at the factory; in the winter I work in the tin shop, cutting off can bodies, cutting drops, piling away cans, squaring up the yard.

Mr. Wicks requested me to make the estimates I have mentioned above. Mr. Wicks was with me when I made the estimate on the tanks, and to-day I made one alone; no one requested me to make the estimate to-day. I knew I had to be on evidence; I expected to be called on account of the benches and tanks, and such things.

There was no difference between the estimates I made to-day, and those made before Mr. Wicks and I took the estimate of the lumber, and work on the tanks the first time.

And being examined in chief:

My estimate is made up on my own judgment, independent of Mr. Wicks.

his
JOHN ⋈ HUMMILL.
mark.

Sworn and subscribed before me August 7th, 1867.

C. E. ELMER,
Master in Chancery of New Jersey.

Adjourned until 9 o'clock, A. M., August 8, 1867.

Nine o'clock, A. M., examination resumed.

CHARLES S. FITHIAN, complainant, being duly sworn on part of complainant, says:

I am complainant in this suit; aged 43 years, and reside in Bridgeton; on the 7th of March, 1865, Mr. Wicks and myself, and Mr. Jno. W. Stout and H. B. Dyer, by agreement at the American Hotel in Philadelphia, to endeavor to make arrangements to put up canned fruits and vegetables; I was a manufacturer of hermetrically sealed goods, and they were manufacturers and sellers of the same, and also of pickles; my place of business was Bridgeton, New Jersey, and theirs, New York City; we were to furnish the goods to them; the business here was conducted under the name of Charles S. Fithian & Co.

Question—Who constituted the firm of C. S. Fithian & Co.?

Chas. S. Fithian. Lorin J. Wicks had an interest in one-third of the profits of the concern by special agreement, and having such, was consulted by me in all business matters, and accompanied me on that day to Philadelphia to make that contract spoken of above; the contract was to be made with Stout, Dyer & Co.; the firm was composed as far as I know, of John W. Stout, Henry B. Dyer, and a brother of Mr. Stout, whose name I think is Wm. W. Stout; I was not acquainted with him at that time; we met in Philadelphia about 10 or half-past 10 o'clock in the morning; we spent the day together until about 5 o'clock, in making the arrangements, at which time we closed the terms of a bargain for putting up for them 150,000 cans of hermetrically sealed goods, and what amount of catsup the pulp would make that should collect on hand in putting up the goods; I was also to put up for myself, or for C. S. Fithian & Co., 50,000 cans, which were to be one-quarter of the 200,000 cans of each kind, pro rata; they were to furnish the money as required, for putting up the 150,000 cans; I then drew up an agreement to this effect and read it to all the parties together; Mr. Stout and Mr. Dyer said it was correct, but not as full in one or two items as they wished; I then remarked that Mr. Dyer might draw up one as full as he wished, and make it embrace what they wanted; he commenced doing so, when I left them and returned in about half an hour; went to the room in which we had been writing, found Mr. Dyer writing alone; I inquired where Mr. Stout and Mr. Wicks were; in consequence of what he said I went down stairs and found them; sat down alongside of them, and in a few moments Stout remarked to me, "Mr. Wicks says he don't know but what you might be bought out;" I was very much surprised after concluding the bargain with them, at the proposition; after a few moments' thought, I replied, "that if Mr. Wicks is willing, and we can agree upon terms and price, I will sell; Mr. Stout left the room to inform Mr. Dyer; we agreed to stay there all night, and on the next day, March 8th, came down to Bridgeton to view the premises, when I would fix a price to the real estate; we came down March 8th in the morning train; spent the day (excepting for dinner) at the factory, until the afternoon train left, examining the real estate, personal property, and talking over the final arrangements for sale; I finally agreed, in case we agreed upon the personal property, on the 14th of March following, to sell them the real estate, which it was expressly understood to consist of the ground on which the factory stands, all the buildings thereon, steam pumps and water pumps, gas pipes, water pipes and steam pipes, with the fixtures belonging to these pipes, which were the valves, cocks and burners, which were attached to them; shafting and belting, and which is the same property men-

tioned in D 5 as real estate; I mean the first item in Exhibit D 5, of March 10, 1865; I also included in the real estate three boilers, two engines and steam pump for the price of $12,000.

We were then to make an inventory of all the other property then on hand at the factory, except a lot of peaches and tomatoes, which they did not want to purchase; also a lot of goods in the hands of Archer & Reeves in Philadelphia, belonging to us, and an account of goods in the hands of Merrill & Shute in Chicago, at such prices as I was willing to sell them at.

They were to return on the 14th of March following, and if at that time, after an examination of the inventory so taken, they were satisfied with the quantities and price, the bargain was to be considered closed and the papers executed.

We took an account of stock as per agreement; by we, I mean Lorin J. Wicks, Robert M. Seeley and myself principally; Mr. Wicks and myself done most of the counting, and Mr. Seeley done the writing.

The inventory thus taken is contained in Exhibit D 5, dated March 10, 1865, and is contained in pages from 1 to 21 inclusive, excepting page 20, which is Mr. Dyer's writing and figures.

Part of the terms of payment were arranged upon the 8th of March, upon condition of their so closing up the contract on the 14th, and were as follows: $5,000 cash, $10,000 bond and mortgage, $5,000 in a short time after the 14th of March; don't remember the time fixed, but it was to be in a few days; the balance that would be due me to be easy payments to suit them and amply secured to me.

They were there on the 14th of March, according to agreement; I mean Stout and Dyer; I can't say whether they came on the 13th or 14th to Bridgeton; I handed them the inventory marked D 5, taken March 10, 1865.

In handing them the inventory I made the following remarks: "There is an inventory of the stock taken by Wicks, Seeley and myself, representing three distinct interests; Seeley a buyer, Wicks a buyer and seller, and myself a seller, which I believe to be correct, and is what I am willing to take for the property, and if you wish to examine the items to see if they are on hand, I am willing to show them to you." "I am ready to show them to you," was the expression.

Stout and Dyer took the book, the inventory, and I believe examined it all through, item by item; my impression is they came to the factory about half-past ten o'clock in the morning, and the inventory was given to them as soon as they came; they sat together, side by side, and were both looking over it, and both made remarks about the items; I am not positive which one held the book.

Question—Were you requested by either Stout or Dyer to show them the property on that day?

No, sir.

They spent the balance of the day at the factory, and had time, and might have seen whatever goods they wanted; as they examined the inventory they objected to some of the items, two of which I remember; one was a lot of barrels, on page 11, D 5, 203 in number, price $2.50 each; they objected to the price; another item, was labels, page 13, D 5, amounting to $945, both of which they afterwards agreed to take at those prices, upon condition that I would allow them to use the name of Fithian & Pogue, and Chas. S. Fithian & Co., upon the goods they should put up at this factory.

Those were labels for canned goods, catsups, jellies and such goods as we had put up previously; some of them having the name of Fithian & Pogue, and some of them the name of C. S. Fithian & Co., on them.

Exhibit D 14, on part of defendant, shown, witness says: In that paper I agreed that the West Jersey Canning and Pickling Company should use the name of Fithian & Pogue, and Chas. S. Fithian & Co., in the prosecution and management of their business.

John W. Stout and H. B. Dyer took an act of incorporation, which I had procured the previous winter, and organized under it, with the other partners, and all the papers from me in reference to this sale were executed by me to that company, and by that company to me. I mean the securing the purchase money.

I do not at present recollect of any other articles to which exceptions were taken; they expressed surprise at the sum total of the footing up, and finally agreed to take the property as expressed in that inventory, D 5, amounting to $50,900, the $79.13 being thrown off.

Question—Was there anything said by Stout or Dyer on the 14th of March, in reference to the price of the real estate?

Not to my rememberance.

Question—State more definitely what conversation passed on the 8th day of March, between you and Stout and Dyer about the real estate.

They were to have the real estate at $12,000.

Question—Please state what you told them was included in the sale of real estate on the 8th of March.

The lot of land on Bank street, the buildings thereon, three boilers, two engines, one steam and water pumps, belting, shafting, steam-pipes, water-pipes, gas-pipes and their fixtures, which fixtures meant the valves, cocks and burners then attached to the said pipes, and for which I agreed to take, upon condition that the bargain for the personal prop-

ert on the coming 14th of March should be closed, $12,000, and which they agreed to give upon those terms.

Sometime about noon of the 14th of March, I don't recollect the exact time, the bargain was closed for both real estate and personal property, and they agreed to take the same as stated in inventory D 5, for the sum of $50,900.

On the 9th of March, 1865, I first heard that Mr. Seeley was to be a partner in the firm of the new concern; it was after Mr. Seeley's return to Bridgeton; he had gone to Philadelphia with Stout and Dyer on their return from Bridgeton after the 8th of March.

I told Mr. Seeley on the 8th of March, that Stout and Dyer were talking of purchasing the property, and probably would do so; if he wished an interest in the new firm of Stout, Dyer & Wicks, and they were willing to have him as a partner, I would loan him $5,000; he replied he would like to make the arrangement if he could make any money by it; I told him he knew what we had done, as he kept all of our books, and knew all of our business, and the future would depend altogether upon the management of it and the demand for the goods, about which I could tell him nothing; but if he wished it, I would mention the matter to Mr. Stout and Dyer, and he could afterwards see them himself, and get their decision; I did so mention it to Stout and Dyer, and recommended Seeley to them as being the right man in the right place—just such a man as they wanted; Mr. Seeley afterwards, on the 9th of March, told me they had agreed to take him in as a partner.

I understood from Wicks, Stout and Dyer, that Wicks was to be a partner in the concern, which share was to be in amount whatever sum he could put in from the firm of Chas. S. Fithian & Co.

When the inventory D 5 was taken, on the 10th of March, 1865, it was understood that both Wicks and Seeley were to be partners in the concern, and that is the reason why I made the remark to Stout and Dyer about the three interests when I handed them the inventory. I don't mean that the inventory was taken on the 10th of March, that was the day in which it was copied; I don't recollect how many days we were in taking it.

On the afternoon of the 14th day of March, 1865, I first learned that the deed for the property was to be made to a corporation, instead of to individuals; the act of incorporation was procured by me, I think in the winter of 1864 and 1865, for the purpose if I ever took in a partner or altered the name of the firm from what it then was, I should organize as a company under that act, for the reason that each party would only be liable to the amount of stock held; the private property could not be taken for the debts of the corporation. The passage of this act, and my reasons for

getting it, were, I believe, known to both Wicks and Secley.

I do not remember whether I mentioned the fact of my having the act of incorporation to Stout or Dyer, or whether they first asked me in regard to it. I only remember in the conversation which took place in regard to the act of incorporation. I informed Stout and Dyer my reasons for getting it passed, and if they wanted it they could have it for nothing, I having paid the expenses up to that time. They agreed to take it, and were glad to organize under it, more particularly John W. Stout, who had more property at stake outside of what he had in the business, than any other member of the firm, the other members of the firm, I understood, having in the firm all that they were worth. I think it was about 3 o'clock in the afternoon when they concluded to have the deed made to the corporation. There had been no organization under the act previous to that time. Mr. James J. Reeves, one of the corporators, was sent for, and I think came up to the factory about 4 o'clock in the afternoon, and by the request and consent of all the parties buying, organized a corporation with the corporators named therein, except Providence Ludlam, who was not present. Mr. Reeves and myself resigned as soon as the officers had been appointed, Mr. Stout and Dyer taking our places as members of the corporation. Reeves nor myself subscribed any amount of stock, as the whole transaction, by Stout and Dyer's request, was done under Reeves' direction, I not knowing anything about the forms that had to be gone through, or any of the rest of us, I think. Reeves said we would have to organize in that way before they could take possession of the charter as corporators. I consented to the use of my name to enable them to organize under that charter, having no interest in the organization. I think Lorin J. Wicks was made President, H. B. Dyer, Secretary, John W. Stout, Treasurer.

I do not remember the exact time they retained the property under the corporation, but suppose from three to five weeks. There was a change made from the corporation to the individuals of the firm for the title to real estate.

(Exhibit No. 4, on part of complainant, being shown witness,) says:

Stout told me that there had been a mistake made in the the selection of their officers, and that he was dissatisfied with the selection, although he was much the heaviest stockholder; he, as treasurer, held an inferior position, and his name would not come before the public on the labels, as the names of the president and secretary was commonly written upon them, and not the name of the treasurer, and that he wished his name in the business, as a member of that firm, to come prominently before the public; so that in case the firm should ever be changed, his name would be known to the public as

a manufacturer of canned goods. I don't mean to convey the idea that Stout was dissatisfied with the qualifications of the officers, but that it did not give him a prominent position.

Examination adjourned until 3 o'clock.

Resumed at 3 o'clock.

My impression is, that I had two conversations with Stout in reference to his being in an insubordinate position in the company.

Exhibit D 15 on part of defendant being shown, witness says:

They afterwards changed the deed of real estate from the corporation to the individuals; I can only tell the time of the transfer from the date of the deed, which is April 28, 1865, and from Exhibit 4, which is of the same date, when this transfer was made.

(Answer objected to, as the paper to which witness refers speaks for itself, if genuine.)

They gave me this bond (Exhibit 4) dated April 28, 1865, in which John W. Stout, H. Ballard Dyer, Lorin J. Wicks, William W. Stout and Robert M. Seeley, separately and collectively, agreed to indemnify and save me harmless against any loss which I may sustain by reason of any default on the part of the West Jersey Canning and Pickling Company.

Question—To save you harmless from what indebtedness?

Any obligations that I at that time held against that corporation, signed by the president, Lorin J. Wicks.

At that date I held three bonds, I think; the amount was $4,633.33 each, excepting one, which was $4,633.34 against that corporation.

Exhibits D 2, D 3 and D 4 on part of defendant being shown, witness says:

These are the three bonds to which I allude; my statement is incorrect as to the cents, two of them being for $4,633 each, and one of them for $4,634.

Exhibit No. 3 on part of complainant being shown, witness says:

These three bonds were secured to me on the 14th day of March, 1865, by the West Jersey Canning and Pickling Co., through L. J. Wicks, their president, by giving me a chattel mortgage for $23,900, which also secured the $10,000 bond and mortgage given to me by the same company; this was collateral security for the last bond and mortgage.

This last mentioned paper, the chattel mortgage, is made Exhibit No. 3 in this cause.

The $10,000 bond and mortgage is also made Exhibits in this cause, No. 1 and No. 2.

I held these bonds and mortgages against the company on the 28th of April, 1865; these are the papers which I held against the company at that time, and which are referred to in the bond or agreement.

These three bonds, Exhibits D 2, D 3 and D 4 on part of defendant, and chattel mortgage No. 3, and bond and mortgage No. 1 and 2, were given to me in part payment for the real estate and personal property sold by me to John W. Stout and his associates, on March 14, 1865, according to inventory D 5; they gave me also a check for $5,000 drawn by Stout, Dyer & Co., I believe.

Exhibit D 11 on part of defendant being shown, witness says:

That is the check, and is endorsed by me; they also gave me a note, payable in a few days, for $5,000.

Check D 13 being shown, witness says:

I presume that check paid the note; it is for the same amount, and has my endorsement on it.

The balance of the consideration of the sale was paid to me by Robert M. Seeley, giving me his bond for $5,000, and Lorin J. Wicks, having $12,000 coming to him as per our settlement, which I took from the amount of inventory D 5, as cash.

James J. Reeves drew up the papers to make the transfer of property from myself to the West Jersey Canning and Pickling Co.

Exhibits D 16 and D 17 on part of defendant being shown, witness says:

That, D 16, is the deed by which I transferred the real estate; and this, D 17, is the bill of sale for the personal property.

These are the only papers which I executed to transfer the whole of the property.

Question—Will you explain why in that deed the consideration is put down at $6,000, and in the bill of sale the consideration is put down at $28,000.

(Objected to by defendant.)

The bill of sale embraces all of the engines, boilers, piping and fixtures which was sold in the sale as real estate according to my statement made this morning.

Question—Did you give the scrivner any instructions as to the arrangement of these considerations, as to the personal and real estate in the papers?

I have no distinct recollection of it; the papers were executed about 11 o'clock at night, and in a great hurry; Stout and Dyer wished them closed up that evening; I don't remember that they stated why; I gathered from general conversation that they were afraid I would fly from my contract.

Inventory D 1 on part of defendant being shown, witness says:

That is an account of stock taken Dec. 21, 1864, (the purpose for which it was taken is objected to by defendant), made for Chas. S. Fithian & Co., for the purpose of ascertaining the profits or losses of the preceding year in our business. It was made by C. S. Fithian, L. J. Wicks and R. M. Seeley. The account of stock was made up on a basis of what the property would realize at a sheriff's sale, or what it would realize, if I died, at a forced sale; some items were much below; some about cost, and some were put in at a little over cost, depending upon the demand for the articles in the market.

The item, real estate, $6,000, was put below the cost, as in case of a forced sale, very few would want to buy that kind of property.

I did not exhibit this book to either Stout or Dyer, on the 14th of March, 1865, as it had no connection whatever with the sale.

Question—Did you then or at any other time agree to sell to Stout and his associates, your real estate and personal property as contained in that inventory D 1, or according to the prices therein stated?

I did not; on the contrary, on the 14th of March, 1865, I handed them an inventory, the first line of which was dated March 10, 1865, and the first item therein is real estate, $12,000.

The two books not only differ in the date at the heading, and the amounts of the real estate differ in D 1, it being $6,000, and in D 5, the first item is $12,000; I further stated to them, when I handed them D 5, on the 14th of March, that D 5 was taken by Wicks, Seeley and myself, representing three different interests: Mr Seeley, a buyer; Mr. Wicks, a buyer and seller, and myself, a seller, which could not, by any construction of the English language that I know of, make it apply to inventory D 1; the two inventories were also very unlike in articles, prices and quantities; D 1 had in it peaches and tomatoes in cans, to the value of $19,000, which was not in D 5—they not wishing to purchase them, and they were reserved by me in the sale to them on the 14th of March, 1865; there was in D 5 and not in D 1, tin and tin cans to the value of over $8,000; in D 1 there was a lot of pepper sauce, amounting to $353.60, which was not in D 5—it being spoiled and thrown away before the sale, but the bottles and boxes that it was in was included in D 5.

There is also a boiler and engine, stated as personal property in D 1, at $125, which is not so entered in D 5, being there put in as real estate.

A number of articles in D 1, as spices, charcoal, glass, corks, boards, canned goods, and other items, amounting to between $2,000 and $4,000—I believe it is about $3,000—

had been used or sold between December 20, 1864, and March 10, 1865, and were not in D 5.

In D 5, and not in D 1, besides the tin and difference in the real estate, there was an increase in quantity and price of goods amounting to some $6,000 or $7.000.

In D 5, there was no erasures of peaches and tomatoes, to the value of $18,915.98; there was no alteration in the price of real estate from $6,000 to $12,000, but put down at first at $12,000; neither do I think that there is any alterations or erasures in D 5, and the idea of any business man mistaking D 5 for D 1, never occured to me until I first heard it in this suit.

D 1, although belonging to me, and my private property, having two other inventories taken the two previous years in it, and other memorandums, was left by me at the office of the factory of Stout, Dyer & Wicks, along with most of my other papers and books connected with that business, in the care of R. M. Seeley, one of the members of the firm of Stout, Dyer & Wicks, at all times open to the inspection of any members of the firm.

In making up inventory D 5, I stated the prices at which I was willing to sell them at; at the same time I endeavored to put those prices at what I believe the articles would be worth in the market, and to a person carrying on the business.

Question—Did you on the 14th of March, 1865, or at any other time, agree with J. W. Stout and his associates to sell that property at cost price?

I did not; Mr. Seeley wrote out the inventory D 5, and knew that the prices in D 5 were not strictly cost; Mr. Wicks, also a buyer, knew the prices of the heavier articles, such as real estate and tin cans, as we together took the account of stock; we went over all the goods that were in the factory, item by item, counting the cans, weighing the spices, counting the barrels of walnut juice and walnut catsup, also the cans and bottles of jelly juice. Wicks counted the barrels of Cumberland sauce alone; he manufactured it and knew all about it, and I did not.

I will further state that Stout and his associates received from me upon the amount of inventory D 5, a credit of amount due Mr. Wicks, of $12,000 as cash.

I would further state, that Wicks, if I had held him strictly to our article of agreement, would have had a credit upon that inventory of not to exceed $5,000, as he was entitled to one-third of the profits of the concern; if the books had been settled up March 14, 1865, I doubt their showing a profit to his credit of $5,000; this was occasioned by the above named peaches and tomatoes not having been sold, and the unsettled accounts on the ledger, one-third of which two amounts would have been due him from me, when said

peaches and tomatoes were sold and paid for, and when said ledger accounts had been paid; but, as he was anxious to enter the new firm with as large an amount of capital as he could, I purchased of him at a fixed price the peaches and tomatoes, and also assumed the ledger accounts, allowing him in our settlement to use them as though I had received the cash for them; those accounts were arranged in this way by an agreement between Wicks and myself, that he should pay me one-third of the amount of whatever of such accounts as I could not collect, and for such unsettled accounts not collected, I had his bond at the present time for something in the neighborhood of $900.

Question—In your conversations with Stout and Dyer, on March 7, 1865, in Philadelphia, did you agree to sell them your property at the prices stated in inventory D 1?

I did not, and had not D 1 with me at that time, and did not expect to sell them the property at that time.

Question—Did you then and there offer or agree to sell them the said property at its cost price?

I did not.

Question—In your conversation with them on the 8th of March, in Bridgeton, did you offer to sell them the said property at the prices stated in D 1?

I did not, or I never should have presented them an inventory, the first item of which was real estate, $12,000, and in D 1 it was set down at $6,000.

Question—Did you then and there offer or agree to sell them said property at cost?

I did not.

Question—After the execution of the deed for the real estate, and the bill of sale for the personal property, executed March 14, 1865, were all the goods and property set down in D 5, delivered to the parties purchasing, and if not, state what was not delivered. I believe they were all delivered, except an error in the account taken of Cumberland sauce, by Mr. Wicks, who in counting the barrels of Cumberland sauce counted some for full which were not. The barrels had covers on them, and had to be taken off to ascertain whether they were full or empty; this was afterwards reported to me by Mr. Seeley, and the value of the sauce not delivered, (Exhibit D 2 shown witness,) $266, was allowed to them on the payment of Exhibit D 2; that amount was taken out of the principal of the bond.

Question—When that bond, D 2, was paid to you, how was it paid?

Two hundred and sixty-six dollars was deducted out for Cumberland sauce, not delivered, leaving a balance of $4,367; interest on that amount for 10 months and 3 days, was added, amounting to $220.63, altogether amounting to $4,587.63, for which I received a note of Stout, Dyer &

Wicks, payable one month from December 14, 1865, which note was paid at maturity. The item $220.63, is the interest referred to in J. W. Stout's answer to question 103 on part of defendant.

Question—After the sale made by you to J. W. Stout and his associates, March 14, 1865, did J. W. Stout or H. B. Dyer, ever make any complaint to you in reference to the quality of the articles you sold them?

They did not, nor did they make any complaint as to quantity of Cumberland sauce to which I have referred; nor did they report to me any complaints from their customers as to the quality of any of the goods sold by me to them.

Question—Is it the custom of trade in this branch of business, when any defects as to quality or quantity are discovered in goods sold, to report the same to the seller as soon as discovered?

It is; and if satisfactorily proven, and a demand has been been made within a few weeks after the sale, it is generally allowed.

After the sale by me to Stout and his associates, at their store in New York, I don't recollect the time, but it was the time referred to by Clements, a witness on the part of defendant. Stout complained to me of the price of walnut juice, and I don't remember that any other article was alluded to. He then asked me if I would make any deduction in price on that juice. I replied that I should not, as it was a fair sale, and he knew the price when he bought it, and agreed to give that for it. He replied, didn't you sell it to me at cost? I replied, speaking ironically, I think not sir; he answered, I think you did sir, and the matter was dropped.

Question—In your reply, "I think not," did you mean to imply any doubt in your own mind how you sold?

I did not; I meant just the reverse of selling at cost.

Adjourned until 3 o'clock, August 9.

Nine o'clock, Aug. 9, examination resumed.

After the sale took place, during the years of 1865 and 1866, I had several interviews with Mr. Stout; once or twice Stout and Wicks came out to my farm on business matters, and I have met him several times, once in front of the hotel; don't remember other places. He did not at any of these interviews make any complaint at the price for which he purchased. During the years of 1865 and 1866, I had correspondence with the firm of Stout, Dyer & Wicks, in New York, and in this correspondence no complaint was made by them in relation to the sale.

(This answer objected to by defendant.)

Papers purporting to be letters from Stout, Dyer & Wicks, now marked Exhibit 6 on part of complainant.

These are letters from Stout, Dyer & Wicks received by me; I have not any other letters from them in relation to this business; the walnut juice in the sale was prepared by L. J. Wicks, who had charge of all the manufacturing department, and whose reputation as a processor stands high; this juice had been prepared for the purpose of making walnut catsup; we used walnut catsup in the manufacture of Cumberland sauce; I should suppose the cost of turning walnut juice into walnut catsup, would be about twenty-five cents per gallon for materials and labor; and the evaporation of walnut juice in the process would be equivalent to about one-fifth of the amount of walnut juice used. Walnut juice is not an article sold in the market as such; walnut catsup is sold in the market, and I have no positive proof of its value on March 14, 1865, but believe it was worth in the market, $1.38 per gallon.

(The last answer objected to by defendant).

My reason for fixing this price is, we had bought some prior to that date, and at the same time, mushroom catsup at the same prices; I mean the walnut catsup and mushroom catsup at the same price, $1.25 per gallon each; we afterward purchased mushroom catsup at $1 38 per gallon, but I have no bills of walnut catsup purchased after that date; but my impression is that we did purchase some at the same price; the catsup spoken of all through was American catsup, the English catsup cost more money; we imported some ourselves and put it in the inventory at $2 per gallon, although it cost us more money; I mean in inventory D 1 and D 5; I put walnut juice in inventory D 5 at seventy-five cents per gallon, which would make it cost, when manufactured into walnut catsup, $1.15 per gallon. I would state in this connection, when thus manufactured at a cost of $1.15 per gallon, it had in it some anchovies which the American walnut purchased at $1.25 per gallon had not. Walnut juice was put down in inventory D 1 at fifty cents per gallon, and I have no particular reason for so putting it; it was so put in our general account of stock to balance our books, as we supposed it to be worth more than that to us in our business. In the sale made by me to Stout, Dyer & Wicks, there was no property included in the inventory except what had been purchased, used or manufactured by me in the prosecution of my business; all of this property was useful to the new firm, if they had carried on the same kind of business; and I was led to believe from the fact of their having a much larger amount of capital, more members of the firm, and a store located in the city of New York, that they designed doing a much larger business than I had ever done in all its branches. The new firm did not change the nature or character of the business, to my knowledge, after their purchase from me. They, in answer to a question after March 14, 1865, informed

me that they expected to put up a large amount of meats and poultry; but at that time, by the combination of the two stocks of H. B. Dyer and John W. Stout & Co., or whatever the firm was, I don't know its name, and by heavy orders given by the firm of Stout, Dyer & Co., previous to March 14th, they had enough meats on hand to last them for some months.

Question—State the amount of your sales of Cumberland sauce during the year previous to your sale to Stout, as near as you can.

January 1, 1864, to January 1, 1865, we sold to U. H. Dudley at 30 per cent. discount, net amount, $7,046.05; sold to others through our agents, $6,339.38. upon which amounts our books show a profit of $2,075.56; these sales were made under great disadvantages, as we had no store, either in New York or Philadelphia, and were obliged to offer it to our agents, to some of whom, we gave a heavy discount.

I think we had four agents; for their special exertions and advertising, we made various discounts, in proportion as they advertised and made it a specialty. Gilbert in Boston, I believe, paid $24 per gross for half pints, and $45 per gross for pints, net; I do not remember Archer & Reeves' commission; they bought some May 1st, 1864, half pints at $30 per gross, less 22½ per cent. After discontinuance of agency (I am reading from Reeves & Parvin's letter, dated August 2, 1867,) Reeves & Parvin bought to fill orders, 2 gallons at $1.90 per gallon; also 12 dozen pints at $57 per gross, less 50 per cent., and 18 dozen half pints at $32 per gross, less 50 per cent. We had an agency at New Orleans, Griffin & Porch, to whom, I think, stating from memory alone, we took off 30 per cent. discount; after March 14, 1865, said sauce not being sold, to close the account with them, if they would purchase it, we offered to make the discount on the whole of fifty per cent., and so closed it up; we had an agent at Chicago, I do not remember the terms of his commission.

I think that our commission to Archer & Reeves was 15 per cent.; we to have the benefit of all advance in price over the price of five gross lots; the price of lots of five gross and over was $30 per gross for one-half pints, and $54 per gross for pints; when sold in lots less than one gross, an advance in price of $6 per gross was obtained.

Question—In your contract with agents, for the sale of Cumberland sauce, previous to March 14, 1865, did your discounts with them vary according to the amount they were willing to expend in advertising and pushing the thing upon the market, or did you have a fixed rate?

It did so vary.

I did make the remark to Mr. Seeley, which he alleges in his answer to question 1499, on part of defendant, "that the firm would be better off if they would throw the Cum-

berland sauce into the creek;" the reason was, the great difficulty in our procuring suitable men as agents, who would make it a speciality, and that we were obliged to act entirely through them in advertising and selling it, and that we could make more money on the same amount of capital on canned goods.

Question—How long would the walnut juice you sold have lasted the new firm, upon the basis of the sale of $50,000 worth of Cumberland sauce per year?

(Objected to by defendant.)

At $30 per gross for half pints, and $54 per gross for pints, which was the price our agents got in lots of five gross and upwards, I think between one and two years.

Question—For what purpose was the jelly juices used?

For making jellies—the juice is made into jelly by adding sugar and boiling it.

Question—Taking your sales of jellies for the preceding year, as an indication of what the new firm would sell, how long would the juices, you sold to them, have lasted them in the manufacture of jellies?

(Objected to on part of defendant.)

About four months.

Item 732, five gallon cans, page 3, D 5, being shown, witness says:

Three hundred and fifty-three of these cans, at the time of the sale, contained jelly juice; the residue of these cans, at that time, contained spices, herbs; the balance were empty; I suppose fifty contained spices and herbs; I will correct that, I think it is wrong; I speak only from memory—make that fifty, thirty.

I believe they were counted five gallons of jelly juice in a can; the number of gallons of juice being 1,765, and being divided by five, gives 353 cans.

Those 732 cans were put down in the inventory at fifty cents, because they had been used, part of them, one year, part of them longer, and the fifteen cans, the next item, were new, and put down at $1 apiece.

The first complaint I ever heard from Stout about any defect in the 1,765 gallons of jelly juice, was in his answer to interrogatory 193, in giving his testimony in this cause.

Question—Had you any reason, at the time of the sale, or have you any reason now, for believing that the jelly juice had soured?

(Objected to by defendant.)

I believed then, and believe now, that on the 14th of March, 1865, it was good.

The 763 gallons of tomato pulp is put down in D 5 at twenty cents per gallon, and the same article in D 1 is put down at forty-five cents per gallon, and is 1,500 gallons; that article was used for the manufacture of tomato catsup.

That pulp was made by Lorin J. Wicks, and its quality was good, and was part of the same used by us previously in the manufacture of tomato catsup, of which tomato catsup, we sold to one house in New York, between October and December, 1864, over $1,200 worth, of which we had no complaint; this was in addition to the sales made by our general agents, Archer and Reeves.

The tomato catsup sold by me to Stout and his associates, on the 14th of March, was made from the same pulp; that lot was fully as good as the catsup sold to the parties above named.

The Cumberland sauce show cards, were cards got up for the purpose of being given to purchasers of Cumberland sauce, and by them placed in their places of business for advertising the sauce; the same remarks will apply to their using them, which I have formerly used in reference to the labels, which is, that they contained the name of C. S. Fithian & Co., and they had the right to use them according to our article of agreement.

The printing plates were got up for the purpose of printing labels for our canned goods, and had on them the name of Chas. S. Fithian & Co. They were in good condition, and, I believe, cost the price they were put in at in D 5, and could have been used by them under the above mentioned agreement.

The bottle moulds were private moulds, with the name of Fithian & Pogue, or C. S. Fithian & Co., on them, in good condition, and could have been used under the above agreement, or they could have had them altered, at a small expense, and their own names put in them.

The lot of labels, $945, I think that I stated to Stout and Dyer, that they cost me that amount of money, and that I was not willing to sell them for less.

The eight tumbler cap dies, with the name of the firm and the kind of jelly engraved on them, and were used for making and preparing tinfoil into caps for the tumblers of jelly, they were in good condition, cost what they were put in at, in D 5, and could have been used by them under the above agreement.

The sage was used in putting up meats; the bone dust was used for filtering the liquor that was used on brandy peaches; the hominy was used in manufacturing zea mays; ground nutmegs was used by us in making apple sauce. I believed at the time of sale, as well as now, that they were all in good condition, except the two barrels of hominy, which Seeley or Wicks, sometime after the sale, I don't remember how long, informed me was not good.

Question—Did you ever, except as to the article of hominy, hear any complaints as to these articles until after the commencement of this suit?

I have not, as to my recollection.

The lot of hot-bed boards, set down as worthless in the testimony of Dyer, I afterwards bought them back of R. M. Seeley, one of the members of the firm of Stout, Dyer & Wicks, and paid him, I believe, $25 for them; it was either $20 or $35, my impression is, it was $25; the boards are now in my fence.

The muslin sash were made for hot-bed purposes, for raising plants; I should suppose cost $1.50 each; they were about 100 in number; the muslin with which they were covered, on part of them was torn, and part of them was sound; the frames, I think, were all sound; we had to use them in raising tomato plants, and were made for that purpose to cover the hot-beds.

The apple jam and 20 dozen zea mays were delivered to them after the 14th of March, 1865, and were the same kind and quality of goods as were previously sold by us, and I believed them to have been of good quality at the time of the sale, and have heard nothing to the contrary from Stout or Dyer previous to this trial.

The wooden bather is a lattice work, square, with iron rods at the ends, crossing at the top, with an eyehole to attach a hook or rope, and is used for the purpose of processing jelly juices in glass bottles in hot water. The iron bather spoken of by the witness, as partly worthless, was used for the same purpose, and has an iron bottom.

Stout, Dyer & Wicks, after the purchase, built baths for bathing glass in, and had no further use for the others; I believe they did. The glass sash were hot-bed sash, used for the purpose of raising tomato plants; they cost, when made, from $5.50 to $1.50 apiece; they were made at different times; I think there was about one hundred sash in this lot; the glass had been broken out of some of them. I mean some of the glass was broken out of some of the sash; I considered these sash worth to me the $137.50 at which they were put down, and was not willing to take less for them; they cost me more than that amount when new.

The six copper kettles, set down in inventory D 5, at $50 each, and which Stout, in answer to question 197, in his examination says cost $25 each, according to bills in my possession and estimates, cost me $50 each.

(The examination is, by consent of the parties, adjourned until Tuesday, the 13th day of August at 10½ o'clock, A. M., at this place.)

At 10½ o'clock, A. M., Aug. 13th, the cross-examination of Charles S. Fithian, resumed.

Question—In making up inventory D 5, what governed

you in the prices of the articles? Had you any reference to the cost, if not, why?

The prices were put down at what I was willing to sell the goods at, to be subject to their inspection on the 14th of March, the time agreed upon for their return from New York to Bridgeton; some were put in at or about cost, some more than cost, and some were less than cost; I had no reference to the cost of the articles in making up the inventory, because they were not sold at cost; I will state I have made an examination of some of the articles in D 5, with which the defendants have found fault, in regard to price, and find from bills and receipts and book accounts, that I had paid out over $9,000 for the real estate, in which account is no charge for labor done by any of our day hands, from Feb. 1, 1861, to March 14, 1865, in making fence, laying trunks, digging cellar, helping on buildings, and of any work not done by regular mechanics; I only find one of Frederick Bowen's machinists bills; I think he had several; no account of lightning rod or smoke stack; no account of digging and walling up one well, I suppose about 36 feet deep; no account of settling one well; no account of any stone, except for part of what was used under one building; no account of any tinman's work in gutters, spouts, &c.; only a small amount of carting in the bill; no account of any white pine siding used in weather-boarding one building 85 feet long, by 14 feet wide, 12 feet posts; also one building 16 by 16 feet, and 14 feet posts; no account of any white pine boards, purchased by us by the cargo, and used in making boxes, and in buildings on the premises, from 1861 to 1865, as we were in the habit of using these boards in our improvements as we wanted them, when we had them on hand, as we did not have them at all times, with the exception of about $15; no account of any carpenter's work on any of the following buildings:—One building on cellar, 85 feet long by 14 feet wide, posts 10 and 14 feet high, with gravel roof; one building 16 feet by 16, with 14 feet posts, shingle roof; one building 36 feet long by 20 feet wide, 8 feet posts, with gravel roof; one building 16 feet by 8½, 8 feet posts, with board roof; one building 40 feet long by 20 feet wide, 8 feet posts, with board roof; one building 20 feet square, 16 feet posts, gravel roof; one shed 20 by 40 feet, 8 feet posts, and gravel roof.

Six copper kettles put down in D 5 at $50 each, from bills and estimates, I find is about their cost.

Five tomato catsup tanks, put in at $100 each in D 5, by an estimate made by Wm. C. Whitaker, who made them, and who received $25 a piece for building them, we finding all the materials, amounted in said estimate to $80 apiece.

I find two sets of candle moulds put in D 5, at $9 each, cost that amount; the quality was about the same as when

we purchased them; they were second-handed when we bought.

1,016 half-gallon bottles, extra, put down at $30 per gross, the price at which Mr. Bodine, glass manufacturer, reported to us that they would cost, if made at that time, March 14, 1865.

50 gross pint ovals, put down at $8 per gross, and a lot of quart brandy peach bottles, the prices of which were obtained from the same source.

112 wooden trays, many of them made by Horace S. Carter, put down at 30 cents each, are less than the price he said he received for making them, when he found the lumber.

I have no means of knowing what those wooden trays cost, and have no bills in reference to them.

Hot-bed boards put down at $25, afterwards were purchased and paid for by me at the same price.

55,517 two pound New York cans put down at 11 cents each, I presume did not exceed the price that Stout & Dyer were to give us for making 150,000, as per our agreement with them, on the 7th of March, 1865, in Philadelphia, as they made no objection to the price of them when they examined the inventory of March 14, 1865.

I have no recollection of the price put in that agreement; we did, in that agreement, agree to furnish like cans at a fixed price, and they to furnish the tin at a fixed price.

Twelve sets of round dies, in D 5, at $20 a set; we had two sets made by Smith & Webb, February, 1865, of the same kind, for which we paid $22.50 per pair or set.

Twenty-five gallons of peach brandy, put in D 5 at $2.50 per gallon; the only sale which I recollect of it, was made at $3.50 per gallon.

In regard to the spices in D 5, from bills on hand, and from information procured since March 14th, I believe they would have cost to have purchased them in the market all they were put in at.

By the article spices, I mean to include such articles as cayenne pepper, allspice, mace, ginger, &c.

Item 5,392 boxes; I find bills, November 7, 1864, for 7,000, at 20 cents; 1,000 at 26½ cents each; 1,200 at 23½ cents each, in shooks in Philadelphia; it cost about 3 cents each for nails, labor, freight and cartage, to put them into boxes as I sold them; they were put in the inventory D 5, at 24 cents each, less 3¼ cents per box, for 1,000 boxes.

Item Cumberland sauce, 396 dozen pints, $54 a gross, amounting to $1,782 in D 5; 2,050 dozen one-half pints of same sauce, at $30 a gross, amounting to $5,125; Chicago shipment of Cumberland sauce, $312—40 per cent. discount on the whole amount. I find no evidence of any sales being made or commissions allowed for that article to exceed 30 per cent, before March 14, 1865.

The statement made by me in the previous part of this examination, in which I stated, reading from Reeves & Parvin's letter, that they had purchased Cumberland sauce at 50 per cent. discount, is incorrect; it should have been 5 per cent., as Francis B. Reeves, one of the partners, and who wrote the letter above referred to, informed me last evening, I having mistaken what he wrote for 5 per cent. off, to be 50 per cent. off.

Question—State what per cent. was taken off of Cumberland sauce in inventory D 1, and why it was done?

Fifty per cent. was taken off for the purpose of balancing our books in taking an account of stock.

Question—Was that discount made in inventory D 1, in reference to any sales you had made or proposed to make at that rate.

No, sir.

Question—State generally what amount of goods in inventory D 5, were hermetrically sealed, so that they could not be examined?

Apple jam, 35 dozen, $87.50; 20 dozen fruit in case, $60; 1,765 gallons of jelly juice, $882, is all that I remember; spoiled hermetrically sealed goods generally swell when spoiled, but not always; it swells the tops and bottoms of the cans out.

Wicks and Seeley, I believe, knew the cost and quality of those goods as well as I did at the time of the sale.

Question—In the settlement made between you and Wicks in 1863 and 1864, or at any other time, did you estimate the cost of the real estate and fixtures at $6,000, as stated by him?

No, sir; all settlements made with him were made according to inventory D 1.

Question—Was your settlement with him made in 1863, made according to inventory D 1?

Yes, sir.

Please explain your answer to the last question.

Our agreement with Wicks was made January 20, 1863. Paper marked Exhibit No. 7, on part of complainant, is the paper I refer to; our settlement with him February 1, 1864, was made according to the account of stock taken and entered in D 1, February 1, 1864, as compared with the stock account taken January 1, 1863, and all settlements made after that date, to March 14, 1865, were made according to the inventories in D 1, and according to the price at which the real estate was there put down.

The business of the year, from December, 1864, to March, 1865, was settled with Mr. Wicks, according to inventory D 5.

Question—Examine Dyer's answer to question No. 785, and state your recollections in reference to the conversation?

I did see Dyer after this suit commenced at his store in Barclay street, New York, and made remarks to him in substance, I think, about as he has stated it here; my reasons were that I had learned from personal conversation with members of the firm of Stout, Dyer & Wicks, and in conversations with others who had derived their information from members of the same firm, that the firm of Stout, Dyer & Wicks had lost in their business several thousand dollars; that they were dissatisfied with Dyer, and were determined to get him out of the firm as quickly and as quietly as possible, so that they could have the books examined by a practical book-keeper, as he had kept them, and they could not understand them; I considered this conversation strictly private between Dyer and myself, and should not have mentioned the above facts, if I had not been compelled to have done so in self-defence; I mean in reference to Dyer's charge against me.

Examination adjourned until 3 o'clock, P. M.

Three o'clock, P. M., resumed examination.

And being cross-examined, says:

Stout and Dyer manufactured canned goods, as I understood, in New York, previous to buying me out; I did not know it of my own knowledge.

The agreement spoken of, as between Wicks and myself, is a written agreement, and marked Exhibit No. 7 in this cause; there was no other prior to March, 1865, between us.

Question—Did you not, on March 7, 1865, in Philadelphia, in your conversation with Stout and Dyer, relating to the sale of the property, refer to the inventory D 1 in any way?

Not to my recollection; I did not then say, to my recollection, that I had at Bridgeton, at that time, an inventory of the property in question.

Question—Did you not say to Stout or Dyer, on March 7, 1865, at Philadelphia, that you would sell the property by an account of stock you had taken before then for the express purpose of taking in a partner, or selling out on?

No, sir, or I should not have shown them an inventory March 14, 1865, when they came down to close up the contract for sale, the first line of said inventory D 5, bearing date March 10, 1865, thus showing that it was not inventory D 1; neither would I have left D 1 in their safe at Bridgeton, until it was removed by Stout.

Question—Did you leave any other books in their factory, at Bridgeton, besides D 1?

I did—several—bills and papers.

We never successfully used the bone dust, as a filterer; we did successfully use the hot-bed sash for the purpose for which they were made; I did not reserve from the sale apple jam and zea mays; I believe they were not in our possession at the time of sale; and by the contract for sale, I only agreed to reserve the peaches and tomatoes; they were to take all the rest of the stock; there was some Cumberland sauce at New Orleans, in the hands of our agent, which they did not take; it was reserved from the sale; I first reserved the peaches and tomatoes from the contract for sale on the 8th of March; I do not remember to have done so on the 7th of March.

I do not remember to have shown Stout or Dyer D 1, on the 8th of March, at Bridgeton, though I may have done so.

We spent the day on the 8th of March, 1865, at Bridgeton, in examining the property and endeavoring to consummate the sale. I do not remember that there was anything said on March 7th, as to the amount of cash that was necessary to consummate the sale on the 8th of March. $5,000 was agreed to be paid in cash on the 14th of March, if they then agreed to take the property. Dyer said something on the 8th of March in regard to entering into a written contract respecting the sale of the property; he said it to me. I told him I expected to fulfill my part of the contract, and did not think it was necessary. I mean by *we* examining the property, Stout, Dyer and myself, and presume Wicks was with us, but don't remember. Stout and Dyer came to Bridgeton on the 8th of March, in the morning train, about 10 or half-past 10 o'clock, and left in the afternoon train about half-past 3 o'clock. I do not remember that I was with them at the factory all the time; I know they came down in the morning train, for Wicks and myself came down with them, for the purpose of showing them the factory property. I do not remember what was shown them; they came down for the express purpose of examining the factory property, and I suppose did so to their satisfaction.

Question—Did you show them the twelve cooking tanks?

I can't answer it any better than by the former answer.

Question—Did you show them the railroad tank?

I do not know; I only can say that most of those tanks and boilers stand now as they stood then, and no person can pass through the building without seeing them.

Question—Did you show them the two iron kettles and six copper kettles, at that time?

They were situated in the centre of the main building, and would have to be seen by any person in that building, and I have no doubt that all the above tanks and kettles were seen and examined by Stout & Dyer, as they came from Philadelphia for that purpose, and no other.

Question—Did you show them the two water tanks then?

They stood upon the outside of the main building, and no person could pass out of it towards the engine house, which was one of the main passages, without seeing them.

Question—Did you show them the work benches in tin shop and tinman's cupboard?

I have no doubt they saw them, as they came down from Philadelphia expressly to view the property, and had every facility for doing so.

Question—Did you yourself specially direct their attention to any of the items lastly referred to?

I have no doubt but that I did, although I have no distinct recollection of it, as it is not probable that they would come down to effect a purpose, which was an examination of this property, in my company, and go home without seeing anything.

Question—Were the 12 cooking tanks, railroad tank, kettles, the 5 tomato catsup tanks, water tanks and the work-benches on the 7th and 8th of March, 1865, and from that time to the 15th of March, 1865, connected with the machinery and boiler and property and building ready for use?

They were all, I believe. There were two tomato tanks besides the five, which were connected with piping with the boilers; said piping had frozen and burst during one winter, and the connection had been severed; my impression is that this occurred in the winter of 1864 and '65, although it may have been in the winter of 1863 and '64.

We successfully used the muslin sash for the purposes for which they were made.

The hot-bed glass sash were of different sizes.

I have the bill for the American walnut catsup, which I said I bought; I have only one bill.

I think we abandoned the use of the wooden and iron bathers before we sold to Stout, Dyer & Wicks, but don't remember how long. I know we used them for some time.

When I spoke of the real estate costing $9,000 and over, it was exclusive of the loss of the boiler explosion.

Chas. S. Fithian & Co. furnished the lumber for the 5 tomato catsup tanks. I don't remember of whom it was purchased, nor the price. They had been used, I think, one year before they had been sold to Stout, Dyer & Wicks.

The other tanks and kettles were bought and built as they were needed.

Wicks came to our place in the spring of 1862. I believe all the tanks, excepting 4, were made after that date; one copper kettle was bought in July, 1861; the other copper kettles were purchased in June, 1862. I gave for them, the six, $240; they were afterwards set in a wooden frame composed of scantling and boards, tinned over on the top and soldered fast to the kettles, which arrangement, I suppose, would cost at least $60.

In getting the bills together to ascertain the cost of the real estate, I have endeavored, as far as I knew, not to put in any bills for repairs, although there may be some items in. The bills are on the table subject to the examination of Mr. Stout; many jobs that were done I have no bills for, and have no account of them; the wells and lightning rods spoken of before, are samples. Mr. Whitaker made the estimate of the five tomato catsup tanks at my request, last week, as to what he would have built them for, March 14, 1865.

The lot of land cost me $700; one lot purchased in 1860 for $600, containing one hundred and ninety feet front on Irving street, and two hundred and four feet on Bank street; the second lot purchased of C. E. Elmer, November 25, 1862, thirty-five feet on Irving street, and one hundred feet deep for $100.

October 7, 1862, sold to Hammond, forty feet on Bank street, one hundred feet deep, for $200, which at that time at the same rate would have made the first purchase worth $1,000. Said two lots of land being put in the above calculation at $500. On the 8th of March, 1865, I expressly told Stout & Dyer what would go in as real estate, and the remainder would go in as personal property.

Question—Did you show to Stout & Dyer all of the articles of property on the 8th of March, 1865, that you expressly classified as personal property independent of the real estate?

They came down from Philadelphia to Bridgeton on the 8th day of March, for the purpose of examining the property, which I afforded them every facility for doing, after which examination I told them my price for the real estate, $12,000, expressly naming what should be considered real estate, the balance of the property to be personal.

In making up inventory D 5, I believe Wicks and myself were together all the time in taking that inventory, both of us counting the goods, as we were disengaged.

Question—Did Mr. Wicks, in the taking of inventory D 5, act for Stout, Dyer & Co.

No sir. He acted for himself. I think Seeley counted and weighed some of the property. I particularly remember that we were all three present in taking an account of the walnut juice.

Question—In taking or making up of inventory D 5, did Seeley act for or represent Stout, Dyer & Co.

He was in my employ as a clerk at that time, and knew that if a sale was effected on the coming 14th of March, when by agreement Stout & Dyer were to return to Bridgeton, he would be a partner in the new firm to the amount of $5,000. Mr. Wicks also knew that he (Wicks) was to be a partner in the new firm to the full amount of what capital he might be able to command. I first urged that Seeley should be a partner in the new firm. He had been a faithful clerk

to me,—we had made money at the business, and if the war had not closed within about a month after the sale, and the business had been properly managed by the members of the firm in New York, I am satisfied that they would have made money. On the 8th of March I first informed Seeley that I had urged Stout & Co., to take him (Seeley) as a partner.

Neither Seeley nor Wicks, except by suggestion, regulated the prices set down in that inventory. The property was mine, and under my control. It was only their duty, if they had believed any article either was put in at too high a price, or was not needed in the business, or was not of good quality, or was not on hand as purporting to be in D 5, to have so informed Stout or Dyer, on the 14th of March, when I presented them with inventory D 5, and appealed to them for its correctness.

Seeley was my book-keeper, and had charge of all the books and bills. Mr. Wicks was the processor, and manufactured all the goods, and they both had access to all the calculations that were made as to the cost of the goods.

Question—At the time, on March 14th, 1865, that you say you handed D 5 to the parties, and appealed to Seeley and Wicks for the correctness of it, was either Seeley or Wicks a partner with either Stout or Dyer?

They were not at that time, but had Stout & Dyer's promise to be taken in as partners, if the sale was closed.

Examination adjourned until 9 o'clock, Aug. 14th, 1867.

At 9 o'clock, examination resumed.

At the time I say Stout & Dyer examined inventory D 5, March 14th, 1865, I did not describe to them the condition or size of the tanks or kettles, because they had previously, on the 8th of March, made a personal examination of them. I did not afterwards describe to them their size or condition, to my recollection.

Neither Stout or Dyer were at the factory between the 8th and 14th of March.

I did not, to my recollection, take them to and show them the Cumberland sauce in barrels, on the 14th of March.

I did not, previous to March 8th, 1865, make up any inventory or account of stock at the factory, for the purpose of taking in a partner or making a sale of the same. We did make an inventory, dated Dec. 21, 1864, and is the same one contained in book known as D 1, for the purpose of ascertaining the profits or losses of our business of the preceding year, ending December, 1864, by which our books were balanced.

The inventory D 1 was made up under my supervision; at that time I had sole control of the property; I was engaged

in the canning business two or three years before Wicks was employed by me; I can't state the precise time; during that time I canned principally peaches and tomatoes, and did not know how to put up the other goods, such as peas, corn, meats, &c.

On the 7th, 8th and 14th of March, Stout & Dyer were together most of the time when the conversations referred to occurred, and I cannot remember which of the two did the most of the conversation.

Seeley and Wicks were present when I delivered to Stout & Dyer inventory D 5, on the 14th of March, in the office at the factory, and was the same time at which I made the remark above stated, and am positive I offered to show them that the goods on hand agreed with those put down in the inventory.

The buildings are all on the ground, as stated by me to have been purchased of Sheppard and Elmer, except a building some 12 or 14 feet square, which is on a rented lot; this building is, I should suppose, 50 feet from the office, on the opposite side of the street, what is known as the main building, and to which the office is attached, and in which is the tin-shop, benches and closets above referred to, also the copper and iron kettles, 12 cooking tanks and railroad tank, and about three feet from the main building, on the south side, was the engine house, in which were the engines and boilers; about 8 feet from the engine house, and some 10 feet from the main building, was an open shed and building together, used for skinning tomatoes and pearing peaches, and in which were two tomato tanks and scalding kettles.

Adjoining this last building and shed, or within a foot or two of it, was what was known as the long building, in the cellar of which was the jelly juices, walnut juice and walnut catsup; the first floor of this building was used as a store-room; this building is 25 feet probably from the main building; some 14 feet from the end of this building was the building known as the ice-house; the lower floor of the ice-house building was used for storing saw dust, the upper floor for storing baskets. I should suppose this building was 50 feet from the main building, adjoining the ice-house building, and about 50 feet from the main building was that known as the tomato catsup building, and in which was the five tomato catsup tanks; about four feet from this and 50 feet from the main building, was the building known as the coal-house, in which charcoal was kept; some three feet from the coal-house and fifty-five or sixty from the main building, was that known as the box-house, and was used for storing boxes; attached to the box-house was a building known as the carpenter shop, the first floor of which was used as a carpenter shop, and in the second story the spices and herbs were kept; the carpenter shop is some sixty feet from the main building.

The office in front of and attached to the main building, has four windows, one door opening from the main street, and two doors communicating with the main building.

Question—Was this office an enclosed room on all sides, or was it an open room?

It was an office enclosed on all sides, and communicating with the main building by two doors; one side of the room was formed by the east side of the main building. The catsup tanks leaked after they were built, but not to hurt them; I think they leaked at the time I sold to Stout and his associates; three of them were made out of inch boards, and two I think out of inch and three-quarter plank; these made from inch boards were bolted together by iron rods running through the entire length of the tank, and across each separate division.

Question—Did not Wicks at the time you made them tell you they ought not to be made out of inch stuff?

(Objected to by complainant as being irrelevant to cross-examination.)

He may have done so, but I do not recollect it; I do not remember whether the bolts were put in at the time they were made; my impression is, they were put in afterward.

Question—When you put the five tomato catsup tanks in the inventory at $100 each, or when you proposed to inventory them at $100 each, did not Wicks tell you, you ought not to so put them in the inventory, at that price; that they were not worth $25 apiece, or were not worth the price you proposed to set them down at?

I have no recollection of it whatever, and strongly doubt his ever saying so, from the fact that I believe on this trial he has sworn that he made no remarks in regard to prices of any articles, except two small items which he named; neither can I believe that if he had told me so, when I appealed to him for the correctness of D 5, on the 14th of March, as being made out in accordance with the terms of the sale, and with which he says he was familiar, that he would have been dishonest enough to have allowed his future partners to pay $500 for what he believed was worth only $125.

Question—Did you not, on the 7th of March, in Philadelphia, mention to Stout & Dyer, or either of them, the price of the real estate, and say it was set down in the inventory at $6,000?

I did not; I told them to come down on the 8th of March, when we would examine the property, and I would fix the price that I was willing to take for the real estate, which at that time I did.

Question—Did you not, on the 8th of March, tell Stout or Dyer that the real estate was set down in the inventory at $6,000?

I do not remember having done so, although I may; one

thing is certain, it was set down in inventory D 1 at $6000, and if they saw and examined that inventory, they would know that fact without my telling them. Stout and Dyer did object to taking the labels of me, and afterwards agreed to take them at the prices mentioned in D 5.

Question—When they objected to taking the labels, did you not say to them, you (Stout & Dyer) agreed to take the property at cost, I charged you nothing for the good will of the concern or business, and I insist on your taking the labels at that price, or words to that effect, as they cost me that?

I did not; I did say that they had cost me that amount of money, and I was not willing to sell them for less money than the amount put down in D 5, and if they took the property they must take the labels at these figures, as I had charged them nothing for the good will of the concern.

Question—Did you not say on the 7th or 8th of March, to Stout or Dyer, "that Wicks' interest in the concern was $10,000," instead of $12,000?

I do not remember having said so; if I did it was incorrect, as our books, balanced up Dec. 31, 1864 showed a balance due him of $4,347.07; there was at the same time a rest or profit and loss account, amounting, I believe, to $11,180.49, which in case of the settlement of the business, this should prove to be a profit, he would then have been entitled to one-third of said rest account; but as the books stood, there not having been a settlement of that account, he was only entitled to $4,347.07, above named, which was due him in cash from me, and which he would have been entitled to have received from me, irrespective of any losses that I might have sustained in my business up to the time of the expiration of our agreement, (made an exhibit in this cause.) Mr. Wicks' whole interest in the concern at that time, Dec. 31, 1864, was the $4,347.07, and whatever actual profit might have accrued between Jan. 1, 1863, as per inventory, D 1, and a final settlement of it had been made, Dec. 31, 1864, one-third of that amount was his. The rest, or profit and loss account, of $11,180.49, represented the unsold property of the concern, at the prices set down in inventory, D 1, and which were affixed to these, said goods and property being unsold, and prices merely arbitrary, they being so fixed to balance our books. I mean the profits that would have been realized if the said property and goods should be thereafter sold for the prices stated in said inventory. He was also entitled to one-third of any amount that might accrue for the goods and property, bringing more money than they were set down at in D 1, from which this rest account was made.

Question—Did you not tell the defendant on March 8, 1865, that the 203 barrels cost you $2.50 each?

I do not remember doing so.

Question—Did you not tell him so on the 14th of March, 1865?

I do not remember having done so.

Question—Would the walnut juice have brought at sheriff's sale, on the 8th or 14th of March, 1865, 75 cents per gallon?

It was not a saleable article in that condition—it being used to make walnut catsup, which was a saleable article.

Question—Would the Cumberland sauce, in bottles, the the catsup in bottles, and the jelly juices, in cans, either of them brought at sheriff's sale, on the 8th or 14th of March, the prices they were respectively set down at in inventory D 1 or D 5?

As we were never so unfortunate as to get in the sheriff's power, it is utterly impossible for me to say what they would have brought at sheriff's sale.

Question—Would they have brought at that time, at a forced sale or public auction, the prices stated in D 1?

We were never so unfortunate as to have them offered at a forced sale, or public auction, but what we afterwards sold up to March 14th, through our agents, did bring those prices and considerable more.

Question—Would the walnut juice or walnut catsup, have brought at a forced sale or public auction, the prices they are stated at in D 1?

We were never unfortunate enough to have them offered in either way; and I do not know what they would have brought; those articles was used by us for the manufacture of Cumberland sauce, from the sale of which we realized from walnut juice and walnut catsup much more than the prices affixed to them in D 1; the sales alluded to were in the course of our regular business.

The boiler, engine, &c., was put down as personal property in D 1, at $125, and was included in the real estate in D 5; the price of the real estate was increased $125 by the boiler, engine, &c., being included in that item.

I don't think that any of the cans of jelly juices were swelled at the time of the sale to Stout; I believe that they were all good; I ascertained the number of cans of good jelly juice by counting them; Wicks and myself counted them.

Examination adjourned until 3 o'clock, P. M.

At 3 o'clock, P. M., examination resumed.

I do not know of any reason for putting the tomato pulp in D 5, at twenty cents per gallon.

Wicks has told me repeatedly, since this suit commenced, that he had never heard the word cost used in reference to

this sale; except that he had an indistinct recollection that the tomato pulp was to be put in at cost, and that he could be of no use to either party in this suit, as he knew nothing of the terms of the sale; that after having brought us together, he paid no further attention to it; this is the only explanation I can give in reference to the tomato pulp.

Question—Was there nothing said in regard to the tomato pulp, on the 8th of March, between you and Dyer at the factory?

Not that I remember; that pulp is set down in D 1 at 45 cents per gallon.

Question—Was there anything said between you and Mr. Stout, on the 8th of March, in regard to the price of the tomato pulp, at the factory?

Not to my remembrance.

I sold the $1,200 worth of tomato catsup to Bogle & Lyle, of New York, in the fall and winter of 1864.

Question—Did you not tell Stout and Dyer, or one of them, either on the 8th or 14th of March, 1865, that you had just made the five catsup tanks, and that they cost you $100 apiece?

Not that I know of; I think they were all made in the summer of 1864; it might possibly have been the summer of 1863.

Question—Was there any government, revenue, or other taxes, estimated or embraced in the prices of property set down in D 1?

The prices in D 1 were fixed without reference to taxes or cost, and at such prices as I thought could be realized for the whole property in case of my death; I do not remember that I told Stout or Dyer that the taxes were not embraced or included in the prices of the property in D 1; our taxes were all paid upon the sale of the goods, and not when they were put up.

Question—How came you to bind Stout and his associates to pay the revenue taxes for the goods?

Because a question as to who was to pay these taxes might have arisen, and as I was not willing to pay it, to avoid any trouble afterwards, it was put so in the agreement; I had it put in the agreement.

Question—Did you not tell Stout and Dyer, or one of them, that the reason they should pay these taxes, was that you had sold them the goods at cost?

No, sir.

Question—Did you not tell Stout, and Dyer, or one of them, that the taxes were not secured in the prices at which you had sold them the goods?

No.

Question—Did you not tell Stout and Dyer, or either of them, on March 8th, 1865, that $12,000 included all the real

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estate and everything connected with it, the fixtures and tools, excepting a few tools?

No, sir, or I never should have presented them D 5 on the 14th of March, for inspection.

Question—Did you not fix the price of the tomato pulp, on the 8th of March, 1865, with Stout and Dyer, or either of them?

It may have been done, although I have no recollection of it.

Question—Did you not tell Stout on the 8th of March, 1865, that Cumberland sauce cost the five gross price with 40 per cent. off; that is, five gross price being $30 per gross for half-pints, and $54 for pints?

I have no recollection of doing so.

Question—Did you not tell them so on the 14th of March, 1865?

I have no recollection of doing so.

Question—Did not Stout or Dyer, or either of them, through Wicks or Seeley, or either of them, before the 15th of June, 1866, complain to you as to either the prices in D 5, or the quality thereof, or the quantity thereof?

They complained of the quantity being short of Cumberland sauce, and for which amount being short, I paid them; and in general conversation with Wicks and Seeley, I learned some months after the 14th of March, 1865, they had discovered some of the jelly juices had spoiled. This conversation was not made with reference to any request of Stout or Dyer, nor accompanied with any intimation that they wished me to make any allowance for said juices. In the same general conversation, I learned from them, more particularly Mr. Seeley, that Stout had expressed to him dissatisfaction in regard to the price of walnut juice and jelly juice. I think these conversations occurred in 1865. There was no intimation of a demand made on me by Stout or Dyer, through them, in their conversations. I do not at present remember of any other conversations, and these remarks were only made by them, Seeley and Wicks, in talking our ordinary conversations. These conversations were some months after the 14th of March, 1865.

Question—Did not Mr. Wicks tell you, after the 14th of March, that Stout would sue you if you did not make a reduction in the amount of inventory D 5—if so, when was it?

He did not.

Question—Did not Mr. Seeley after March 14th, 1865, demand of you that you deduct from inventory D 5, the amount of the label plates? if so, when was it?

I learned in conversation with Seeley a few days ago, that he was under the impression that he did; I have no recollection of it, and think he is mistaken.

Question—Did you not tell Mr. Stout on the 8th or 14th of March; that the jelly juices would keep for five years?

I think not, as I knew they would not; I did not make any correction with Stout and his associates as to the two barrels of hominy, as it was never asked for.

Question—Did you not tell Mr. Wicks before March 8, 1865, that you would manufacture up the quantity of walnut juice, so as to run up your stock, for the purpose of joining a partner with you or for selling out?

(Objected to by complainant as irrelevant).

No sir.

Question—What articles are below cost in D 1 or D 5?

In D 1, real estate, 1 iron furnace, lot of glass sash, lot of muslin sash, 1 press, 12 sets round dies, 250 gallons English catsup; that is all I see in glancing over D 1 hastily.

In D 5 are items: one iron furnace, hot-bed boards, hot-bed sash, one press, 250 gallons English catsup,—these are the only items I see in looking over it hastily.

On the 7th or 8th of March, 1865, in talking over the property with Stout or Dyer, the horse and harness were not included; I have no remembrance of any conversation as to it, at that time; it was not in inventory D 5, because they were not sold.

Question—Did you not tell Stout or Dyer on the 14th of March, 1865. that you had not included the horse and harness in D 5, because your wife objected to letting it go, as it was the only one she could drive?

No, sir; she never drove a horse in her life.

Exhibits 7, 8, 9, 10, 11 and 13 being shown, witness says:

I received the money on these notes and checks, which have my endorsement thereon, and I myself received the money on those which have the endorsement of Chas. S. Fithian & Co. I don't know whether they were put in bank for collection or discount; I don't remember whether I received the money on D 7, 8, 9, and 10 before they were due or not. I endorsed them before they became due, either for collection or discount; I parted with the possession of them before they became due, either for collection or discount.

When the allowance of $12,000 spoken of to Mr. Wicks on the 14th of March, 1865, was made, Mr. Wicks' account was afterwards balanced on my books by Mr. Seeley, and he was allowed that amount for his interest in my business; I can't state distinctly whether he gave me a receipt for the amount.

Question—Did you not tell Mr. Seeley or any other person, after the mortgage in question was executed, that the real estate in the mortgage would not bring half of the amount of the mortgage, or less than the face of it?

(Objected to as being indefinite by complainant.)

In a complaint to Mr. Seeley, made by me, because he having made the sale of the real estate in question, to John W. Stout, had without consulting or informing me of the sale, until some weeks after, had after he made such sale, gave to Henry B. Lupten, Secretary of Cumberland Fire Insurance Co., at Stout's request, and taken out a new fire insurance policy in Mr. Stout's name; thereby having a policy pledged to me by Stout, Dyer & Wicks, as collateral security for the above named bond and mortgage of $10,000, canceled, as Mr. Stout wished to use the new policy to raise money on; I told him it was not an honest transaction, as in case of a fire, the buildings being destroyed, the land would not bring what the bond and mortgage called for; neither would the property, as it stood, if sold at sheriff's sale, bring $10,000, as very few wanted to purchase that kind of property; said conversation occurred some weeks after the above sale had been made, and also, I think, after the first notice served on me by Morris, for Stout, Jan. 30, 1867; this being the first knowledge that I had that this sale had been made by Seeley & Wicks to Stout. This sale having been made by Seeley & Wicks, as I was informed by them, to enable John W. Stout to bring this suit, as they were opposed to it, and would not allow their names to appear in it, Wicks having told me that he was satisfied, and so told Mr. Stout, and that he (Stout) could not recover a dollar.

Question—Did Mr. Seeley request you to surrender up the chattel mortgage, spoken of, after it was paid off?

It has not been paid off.

Question—Did Seeley ever ask you to surrender it?

He may have done so.

Question—Did not you, a short time after all of the bonds, exhibits 2, 3 and 4, were paid off, tell Mr. Seeley that the real estate in the mortgage in this suit would not bring half the mortgage, or less than the face of it, and prior to the times referred to in your former answer?

(Objected to as irrelevant by complainant.)

In the conversation above referred to, I think I did make the remark in regard to the real estate not bringing $10,000, if sold at sheriff's sale, and may have made the same remark prior to that time, as I have had no doubt in my mind for three years past, that the real estate, if sold at sheriff's sale, would not bring $10,000, as few parties want to purchase that kind of property.

The estimates made for me by Mr. Whitaker, as to the cost of the five tomato catsup tanks, was made in writing. I have it, here it is. I paid him for building each tank $25; it was not done by day's work.

The boards spoken of, were on my farm at the time of the sale to Stout, and were there when I purchased them; I wanted to build a fence, and bought them of Seeley. I think

Seeley came out to look after them, and I bought them at that time.

Question—Did you not buy the boards by reason of Seeley's complaining, when he found them, that they were of no use to him or his associates, and did you not then buy them of him for less than you sold them?

(Examination adjourned until 9 o'clock, A. M.

(August 15th, at 9 o'clock, examination resumed).

No sir; Seeley did complain that they would have no use for them; I bought them because I had use for them. I think I paid $25 for them, the price set down in D 5, which impression is confirmed, as Seeley told me last Saturday, that I paid him the same amount at which they were put down in D 5.

Question—How much of the stock did you sell or dispose of between December 21, 1864, and March 7th, 1865, contained in D 1?

I do not know the amount; I sold all that is contained in D 1, and not contained in D 5, except tomatoes and peaches in D 1; and the Cumberland sauce in D 1, in the hands of Griffin & Porch, New Orleans.

I believe I reserved nothing in the way of goods that were in D 1, and were on hand, March 8, 1865, except the items named.

Question—When did Mr. Seeley first tell you that he was to be a partner in the new firm, as you have stated, and with whom did he then say he had made such an arrangement to become partner?

On the 8th of March, 1865, Mr. Seeley went to Philadelphia, in the afternoon train from Bridgeton, with Stout and Dyer. On his return, which I believe was on the 9th of March, he informed me that Stout and Dyer had agreed to give him an interest in the business in case they concluded to purchase. Mr. Seeley went to Philadelphia at that time to procure a substitute for him in the army; I do not know whether he made the arrangement with Stout or with Dyer; I understood him it was with both; I was not present during any part of that arrangement; I was in Bridgeton; all I know of it is what Seeley then told me.

I do not remember whether I had commenced taking an account of stock in D 5 before Seeley returned from Philadelphia.

There may have been some reference to the horse and harness in the conversation with the parties on the 8th of March, but I don't remember any; nor do I remember of any such reference on the 14th of March.

Question—Haven't you since the commencement of this

suit, shown and read to Mr. Wicks a written receipt signed by him, in your possession relating to the business between you and him concerning the factory property?

I have in my hands an agreement made between Mr. Wicks and myself, dated March 25, 1865, closing up our business, showing the terms and amounts upon which our business was closed up on March 14, 1865. I may have shown it to Wicks. I certainly should if he had wished to see it. I have not had any other receipt or agreement, to my knowledge, executed since March 14, 1865, in regard to our settlement at that time.

(The solicitor of complainant offers to solicitor of defendant the agreement of witness referred to in this answer, to be made an exhibit in the cause, if he so desires.)

The horse mentioned in D 1, I think, had been used at the factory but for a very short time; it was not a gentle horse at the cars, but gentle anywhere else.

And being again examined in chief:

Question—On the sale of this property to Stout and his associates, March 14, 1865, did you not expressly reserve the horse and harness last spoken of?

(Objected to on part of defendant.)

I did, and it was not put down in inventory D 5.

Question—Explain, then, what you meant in your statement in your cross-examination, "that no goods were reserved except peaches, tomatoes, and Cumberland sauce in the hands of Griffin & Porch, at New Orleans"?

I meant manufactured goods, and supposed the question to refer to that alone.

Question—In your estimate of the cost of real estate, spoken of in your cross-examination, did you include the cost of the tanks, kettles, benches, cupboards, and all the fixtures that in inventories D 1 and D 5, and put down as personal property?

(Objected to by defendant.)

I did not.

Question—If any reference was made to you at Philadelphia, to any inventory, for what purpose was such reference made?

(Objected to by defendant.)

To show the kind of goods on hand.

Paper—estimate by Whitaker, marked Exhibit D 29, on part of defendant.

Paper—agreement between Fithian and Wicks, marked and memorandum attached, Exhibit D 30, on part of defendant.

And being again cross-examined, says:

The memorandum attached to D 30, is a copy of the balances and accounts unsettled on the books of Charles S. Fithian & Co., made March 25th, 1865, by Robert M. Seeley, the book-keeper.

Question—Did you not, since this suit was commenced, read to Mr. Wicks a receipt, which you said was signed by him and in your possession, and in connection with such reading, tell him that he should be liable to you for part of the expenses of this suit, and that you would hold him liable to you for any loss, or for any of the mortgage that you might not recover in this suit, by reason of the defendant defending in this suit, or words to that effect?

(Question objected to by complainant, on the ground the cross-examination being once closed, the counsel for the complainant objects to any further examination, except under the rules of the court.)

(And the defendant objects to that objection being taken or allowed.)

I have no recollection of ever reading to him from any other papers, except the two marked exhibits, No. 7, on part of complainant, and D 30, on part of defendant; but I did tell him, and believe yet, that as according to the terms of our agreement, marked No. 7, on part of complainant, he was entitled and could have recovered in an action at law, $12,000 in cash, as being due him on the settlement of our business, so made by the sale of the property of Charles S. Fithian & Co., March 14th, 1865, to Stout & Dyer, but, he preferring to go in as a partner with them, and have the $12,000 placed to his credit in said firm by me, in said sale, and which credit he acknowledged to have received, I considered, and do yet consider, that he is bound to me both in law, honor and honesty, for one-third of any loss I may incur, or expense I may be at in this suit now pending.

Question—When did you so tell Mr. Wicks, as mentioned in your last preceding answer?

(Objected to on part of complainant, for the reasons stated in the last preceding objection.)

I do not remember the time, but it has been since this suit has been commenced. I also told him at the same time, I had no doubt he would be called on as a witness in this trial, and all that I asked of him, in case that he was so called, was to tell all that he knew in regard to the whole transaction. He replied emphatically, I know nothing about the terms of sale, have never heard the word cost mentioned, except I think something was said about it in relation to tomato pulp.

Question—At the time of the conversation you have referred to with Wicks, did you show, read or refer to the paper D 30, or any part of it?

(Question objected to by complainant for the reasons stated in the previous objection.)

I may have done so, but my impression is I did not, as I think this conversation occurred in the tomato factory of Stout, Dyer & Wicks, in Bridgeton, and I do not remember having any papers with me at that time, although I may have had.

Question—How did you expressly reserve the horse and harness that you have spoken of?

By not putting it in the inventory; that is the only way I recollect of; but in my final settlement with Wicks after the 14th of March, I allowed him for one-third of the horse and harness; I think it was on the 19th of March.

Witness in reading over his cross-examination at the bottom of page 81, in answer to question, "Was your settlement with him made in 1863, made according to inventory D 1," and to which I answered, "Yes, sir," is incorrect, as I supposed the question referred to the settlement of the business of the firm for the year 1863, and answered it in that way; it should have been, "no, sir."

CHARLES S. FITHIAN.

Sworn and subscribed before me, Aug. 15, 1867.

C. E. ELMER,
Master in Chancery, N. J.

COPY OF EXAMINATION:

Cumberland Circuit Court.

IN EQUITY.

CHARLES S. FITHIAN, *Complainant*,
and
JOHN W. STOUT, *Defendant*.
} *On Bills, Etc.*

Examination of witnesses in the above cause taken before me, Charles E. Elmer, a Master and Examiner in the Court of Chancery of New Jersey, at my office in Bridgeton, on Tuesday, the 10th day of September, A. D., 1867, at eleven o'clock, A. M., in the presence of John T. Nixon, of counsel with complainant, and Robert Allen, Jr., of counsel with defendant.

C. E. ELMER, *Master*.

LORIN J. WICKS, a witness reproduced on the part of defendant, being duly sworn, on his oath, says:

Question—The 5 tomato catsup tanks referred to by Mr. Fithian in his evidence, have you measured them; if so, what is the size?

(Question objected to on part of complainant.)

I have measured them four different times, the last time was during the previous examination at this office; three of the tanks are made of boards, are 16 feet long, 4 feet 4 inches high, and 4 feet wide; two of them are made of $1\frac{1}{2}$ inch plank, 16 feet long, 4 feet 4 inches high, and 3 feet 7 inches wide; the two last ones were made of $1\frac{1}{2}$ inch plank worked down to $1\frac{3}{8}$ inches.

Question—Have you made an estimate of the cost of them?

(Objected to by complainant, on the ground that the witness has already been examined on this point.)

I have made an estimate; made it before Mr. Fithian gave his evidence in relation to the tanks; after I found out that Mr. Whitaker was making an estimate, I made one; I have not made an estimate since Mr. Fithian's examination, but have reduced the estimate made before that time to writing.

Question—When did you reduce the estimate to writing?

(Objected to by complainant.)

It was after Mr. Fithian gave in his evidence that I reduced it to writing; this is the estimate made by me, marked Exhibit D 31 on part of defendant.

(Exhibit objected to by complainant.)

Question—Have you, since Mr. Fithian gave his evidence, examined the tanks to see if your estimate was correct?

(Objected to on part of defendant.)

I have Mr. Fithian's estimate; differs in size from the size I gave in D 31; the tanks are not all of the same size.

I do not know that Mr. Whitaker measured the tanks; I did not see him, but understood that he measured them; I am acquainted with William C. Whitaker.

Question—Did you have any conversation with Whitaker as to the tanks?

(Objected to on part of complainant).

I had not; did not hear him say anything about the tanks.

Question—Did you help make up the inventory D 1, with Mr. Fithian, either as to price or quantity?

I had nothing to do with making the inventory D 1 as to price, except in some tools or machinery, which I had made, and which Mr. Fithian asked me what I supposed they were worth; nor in the amount of the inventory except in counting some boxes or cans, or something like that; I was present when Mr. Fithian put down some of the prices, but not when all were put down.

Question—Did Mr. Fithian at the time when that inventory was being made, or at the time it was finished, or at any time prior to his sale to Stout and his associates, say to you or any one else in your presence that the inventory of D 1, was made up on a basis of what the property would realize at a sheriff's sale, or what it would realize, if he died, at a forced sale?

No, sir, he did not; I do not think that inventory was made up in reference to what the property would bring at a forced sale.

Question—How long a period of time was Mr. Stout and Mr. Dyer at the factory, on the 8th of March, 1865?

Two hours and a half probably, not to exceed three.

Question—From your knowledge of the nature of the property and the condition of it, could a person who had not seen the property before then, examine and investigate the different articles in question satisfactorily in regard to a sale or purchase, without depending on the representations of the seller.

(Objected to on part of complainant.)

I do not think they could.

Question—Do you know whether, before Stout and Dyer came to the factory, March 14, 1865, any of the papers were already written or made out by Mr. Fithian or his agent in respect to the sale of property; if so, state how and what you know of it, and what papers?

I believe that there were such papers made out, from the fact, that it was the understanding between Mr. Fithian and Mr. Stout and Dyer, on the 8th of March, that the papers relative to the sale, and purchase, should be prepared ready for execution when they came down on the 14th; and I have further evidence for believing that they were made out, from the fact, that on the 14th, when Mr. Stout and Mr. Dyer came down, that when the parties parted for dinner, Mr. Fithian said that he would bring the papers to the office factory when he came from dinner; and when he came to the office, after dinner, which was quite late, probably after two o'clock, he said he had been talking with his counsel, Mr. Reeves, the man he had employed to make the writings, and that Mr. Reeves had knocked the calculations for the papers into a cocked-hat; that Mr. Reeves believed, and he, Mr. Fithian, thought so too, that he could not give a good title to the property unless he made it to a corporation; and then said the corporation would have to organize, and then there would have to be new papars made out, which makes me think there had been papers made out previous to this interview; I suppose the papers were the deeds for the real estate and property, so that they could be executed on the return of the parties on the 14th, without any detention.

I recollect distinctly of Mr. Stout saying to Mr. Fithian, on the 8th of March, that he wanted the papers fixed so that he could sign them and go back home on the same day, on account of his business.

Question—When did Mr. Fithian and Mr. Stout first come to the factory on the 14th March?

They, Stout and Dyer, came to Bridgeton in the forenoon train, and came immediately to the factory, and met Mr. Fithian about half-past eleven o'clock; all of them went to dinner about twelve o'clock, and immediately on Mr. Fithian's return, which I think was after two o'clock, he made the remark alluded to, which I suppose was to explain the reason of his not bringing up the papers, and to advance the idea that they had got to be made out in a different form.

Adjourned until 2½ o'clock, P. M.

At 2½ o'clock, P. M., resumed.

Question—Was the sum of $12,000, spoken of by Mr. Fithian, in his evidence, referred to by him on the 7th, 8th or 14th of March, and if so, in what way?

The sum of $12,000 was mentoned by Mr. Fithian on each of those days, if I remember right; I think it was first called out by a question from Mr. Stout, when Mr. Fithian said he would sell out according to inventory D 1. Mr. Stout asked him what part of that inventory was real estate, and what part merchandise. Mr. Fithian said the factory property would amount to about $12,000—this, I think, was on the evening of the 7th, in Philadhlphia. It was referred to again on the 8th, at our office in Bridgeton. Mr. Stout, I remember very well, went to the inside office door and says, this is the property you say you will take $12,000 for; and I thought he was going out into the outer part of the building to look around; and Mr. Fithian answers his question, and says yes. Mr. Stout, still standing with his hand on the door knob, says: what, does that include everything? Stout came away from the door and sat down, as if he had forgot where he was going. Mr. Fithian says: yes, all except a few tools which won't amount to much, and he referred to a set of dies, which were not in D 1, and some other things in the way of tools, &c.

Question—What was the property which Mr. Fithian then referred to or expressed to be for the $12,000.

I don't recollect that he personalized anything in particular, not on the 8th; I think on the 14th, Stout asked him how he made the property cost $12,000, and he then personalized the ground as costing a certain sum, and the engine house; I think this was on the 14th; it might have been on the 8th.

Question—Did Mr. Fithian on the 7th, 8th or 14th, in reference to the $12,000, express any particular items of property that he reserved, as not included in the real estate?

I do not recollect any.

Question—Did you and Mr. Fithian and Mr. Seeley on the 14th of March, go over the property with Stout & Dyer, item by item.

No, sir; not to my remembrance.

Question—Did you at any time tell Mr. Fithian or Mr. Nixon that you did not know anything about the sale of the property made by Mr. Fithian, or that you did not know enough about this suit to be a witness?

No, sir; but I did say to Mr. Fithian two or three times, in answer to his asking me certain questions, that I did not remember much about the affair; after I considered the bar-

gain was made, and in reply to his asking me if he said he would sell out at cost, I have always said no, because that was not the expression made use of to my remembrance; the expression was about cost, and in reply to Mr. John T. Nixon, here in this office, in answer to the question, "Did Mr. Fithian show Mr. Stout an inventory of any kind in Philadelphia?" I replied no; Mr. Nixon then wanted to know what was said in Philadelphia, and not caring to particularize anything in the affair, so as to be called upon as a witness; I replied, I did not remember much about the conversation, and did not know that I could be beneficial as a witness to either party; I would like to add that at that time I did not remember a great deal of the testimony that I have given. which has been brought to my mind by hearing the testimony of others, but which is just as clear in my mind as anything I ever did remember.

Question—On either the 7th, 8th or 14th of March, was any reference made by either of the parties to a horse being included in the sale; if so, what was said by Mr. Fithian?

There was; Mr. Fithian said that he had told his wife that he had sold the horse with the rest of the property, and it was so much against her feelings, or she objected so strongly, that he would like to keep the horse, as it was their family horse, and his wife or children could drive it anywhere.

This conversation, I think, was on the morning of the 9th, after Stout had returned to New York; and when Mr. Stout came down on the 14th, Mr. Fithian mentioned it to him; Fithian then made the same excuse to Stout for wanting to keep the horse, which I thought was very reasonable; I don't remember the horse being partictularly alluded to on the 7th or 8th of March, only as it was in the inventory of the sale.

Question—Was there anything said on the 7th or 8th of March, by Mr. Fithian, about reserving the horse?

Not to my remembrance.

Question—How long would it take to use the walnut juice which you know Mr. Fithian had on hand, between Dec. 21, 1864, and March 7, 1865?

The last year Mr. Fithian was in the business, I made a little over 6,000 gallons of Cumberland sauce, and when Fithian sold out to Stout, he sold him walnut juice enough to make him 24,000 gallons, if I remember my estimate right; I have no written statement, but believe that to be right; I should think it would take about fifteen years to sell it, or use it up.

Question—Did Mr. Fithian sell the Cumberland sauce you speak of, and if so, to whom and how?

He had sold part of it previous to the time of selling out to Mr. Stout, and sold the balance of it to Mr. Stout and Dyer.

Question—Did Mr. Fithian say for what purpose he made up such an amount of walnut juice?

I think it was in the summer of 1864 that the walnut juice was made, at Mr. Fithian's request. He said there was plenty of walnuts that year, and it did not cost much to make the juice, and he thought I had better make up a good lot of it, as it would show so much more stock on the books, and would show to a good account in case of a change in the firm, as he anticipated taking in a partner, or getting incorporated, or selling out himself, if there was a favorable opportunity. So Mr. Fithian bought the walnuts and I worked them up, until he was satisfied.

Question—How long would it take to work up and dispose of the jelly juice, which you know Mr. Fithian had on hand, between December 21, 1864, and March 7, 1865, at the same rate at which Mr. Fithian worked it up and disposed of it?

I think it would have taken about two years, as it was mostly peach juice, which we do not use at all in some kinds of jelly, and only mix it with some other juices for jelly, which juices we would have to manufacture to work the peach juice up.

Question—Prior to Mr. Fithian's sale to Stout, did Fithian consult you in all transactions in relation to the factory business?

He did not; he used to ask my opinion about many things, and then do as he had a mind to, which I considered he had a perfect right to do.

Question—Did you occasionally go out to Mr. Fithian's place after the 14th of March, and did you occasionally see Mr. Fithian after his sale to Stout; if so, did you and Mr Stout make any complaint to Mr. Fithian respecting the property in question?

I often met Mr. Fithian after the sale to Stout; do not remember seeing him at his homestead; do not recollect of hearing Mr. Stout personally make any complaints to Mr. Fithian about the sale; but Mr. Stout complained to me about the price, and wanted I should talk to Mr. Fithian on the subject, and see if Mr. Fithian would make any deduction in the sale; and he then said he would see Mr. Fithian if he did not make a deduction; this was late in the Spring or early in the Summer of 1866; it occurred in New York. When I came home, I went out to the woolen factory, and saw Mr. Fithian, and told him what Stout had said: Mr. Fithian replied that he would not deduct one cent, and Mr. Stout might sue as quick as he had a mind to, and that he would never recover anything.

Mr. Fithian wanted to know how Stout had become dissatisfied all at once; I told him that Mr. Stout thought he had bought at cost, and Mr. Stout had found out that he hadn't; Fithian wanted to know how he had found out that he hadn't

bought at cost; I told him I supposed he had found out through Mr. Seeley, from the statements from the factory to the store in New York, as Mr. Seeley had to, in every shipment, to send a statement of what everything cost that we sent to New York; and we had made some juices for jellies, and in Mr. Seeley's statement to the store, he had put those juices down at a less cost than Mr. Fithian sold out at; and that had led to the inquiry about the cost of other things; and by Mr. Stout's request, Mr. Seeley had informed him what several things cost to manufacture, and among these articles was the walnut juice; and here was where the dissatisfaction came in, in regard to the sale, according to my remembrance.

Mr. Fithian remarked that it was ungenerous in Mr. Seeley to impart any such information to Mr. Stout, as he had befriended Mr. Seeley, and it was through him that Mr. Seeley had an interest in the firm of Mr. Stout; I told Mr. Fithian that Mr. Seeley was so situated that he could not do any other way, as he had to give an exact account of the cost of everything that we sent to New York, that Mr. Stout and Mr. Dyer would know at what prices to sell; this conversation was in front of the woollen mill, on the bridge across the race that leads to the first mill.

I had another conversation some time after with Mr. Fithian, in the street, in relation to Mr. Stout's dissatisfaction. I told him that Stout & Dyer both contended that they bought at cost, and that Mr. Stout said that he would never pay Mr. Fithian another cent in God's world without a deduction or a law suit. Mr. Fithian replied that he might sue as quick as he was a mind to, and that he would never recover a cent.

Mr. Fithian then asked me if he ever told Mr. Stout, that he would sell at cost, and I said no, not in my presence; the reason for my making that answer was, that I did not remember the expression at cost; the expression I remember being used was about cost; but I did not care to tell Mr. Fithian what I did remember, neither have I ever told Mr. Stout anything further than I have told Mr. Fithian, further than it was drawn out of me upon my examination.

Question—When was this last conversation?

Some time in the fall of 1866, a few months after the previous conversation. There were no other persons present, than Fithian and myself.

(The solicitor of complainant declines any cross-examination of this witness, upon the ground that his re-examination has been chiefly a repetition of matters upon which he was before examined, and therefore illegal without the order of the Court.)

(Objected to on part of defendant.)

LORIN J. WICKS.

Sworn and subscribed before me this 10th day of September, A. D. 1867.

CHARLES E. ELMER,
Master in Chancery of New Jersey.

ROBERT M. SEELEY, a witness reproduced on part of defendant, being duly sworn, on his oath says:

Question—You have said that John W. Stout was to pay you $10,000 for your interest; what was included in that amount? (The attention of witness is directed to question No. 1564, and his answer thereto.)

I meant that Mr. Stout agreed to pay $10,000 for the real estate to the other members of the firm, and not for my individual interest, and was included in that item of real estate, not only the real estate, but all tanks, tubs, piping, belting and fixtures, that was then on the premises, and that was included in the account of real estate and fixtures upon the ledger at the office, and is the first item on page 48 of Exhibit D 5.

Question—What did Mr. Whitaker say in your presence, in relation to making an estimate, as to the cost of the five tomato catsup tanks?

(Objected to on part of complainant.)

He said he could not tell what they cost, as Mr. Fithian furnished the lumber for them, and he did not know what the lumber was worth.

And being cross-examined:

Question—State to what members of the firm Mr. Stout was to pay the $10,000, and what proportion of this sum was to be paid to each.

(Objected to on part of defendant.)

It was to be paid to Mr. Dyer, Wicks and myself; I think Mr. Stout assumed the payment of the mortgage in question in this suit.

Question—Was the $10,000 to be paid by Mr. Stout, by his assuming the payment of Mr Fithian's mortgage to that amount, which he held against the property at that time?

(Objected to on part of defendant.)

Yes, sir; and at the same time there was some writings or agreement entered into in reference to this suit, which I am unable to explain.

Question—State as nearly as you can, the substance of that agreement or writing, and who holds it.

(Objected to on part of defendant.)

The writing, I think, is in the store at New York; I cannot explain it; I never saw it but once.

Question—Can you not state more definitely than you have, the purport of it, and if so, do so?

(Objected to on part of defendant.)

I don't really know enough about it to give any explanation of it.

Question—If Mr. Stout should not be compelled to pay the full amount of Mr. Fithian's mortgage, was Mr. Wicks, Mr. Dyer, or yourself to be benefited by any rebate of the amount?

(Objected to on part of defendant.)

I think that was the purport of it; that each member of the firm should receive their proportion of any amount he should recover, and that they should pay their proportion of the expenses of the suit.

Question—Do you know that Mr. Whitaker made an estimate of the cost of the five tanks?

(Objected to on part of defendent.)

I do, and the statement he made to me, was made before he had made the estimate.

And being again examined in chief:

Question—Was this remark of Whitaker after he had measured the tanks?

It was made before his making any measurement of the tanks.

Question—Have you any interest, or do you expect any benefit from the agreement you have spoken of, alluding to the $10,000?

No, sir; neither.

Question—Was the $10,000 assumed to be paid by Stout absolutely or conditionally?

It was to be paid absolutely.

Question—Did Mr. Stout assume or agree to pay Mr. Fithian's morgage absolutely?

He did not.

And being again cross-examined:

Question—Please explain why you have no interest in this suit?

Because I had sold out my interest in the firm, previous to its dissolution, to J. W. Stout, H. B. Dyer and L. J. Wicks.

Question—In selling your interest to the three persons named, did you include the interest which you had in the event of Mr. Stout's getting any reduction on Fithian's mortgage?

I did; I have no interest in that whatever.

R. M. SEELEY.

Sworn and subscribed before me, September 10th, 1867.

C. E. ELMER,
Master in Chancery, N. J.

JAMES J. REEVES, being reproduced on the part of complainant, and being duly sworn:

Question—So far as you remember, please state when the papers drawn by you for Messrs. Fithian and Stout, upon his sale in March, 1855, to the West Jersey Canning & Pickling Co., were drawn?

My impression is that they were all drawn on the day and evening of the day upon which the West Jersey Canning & Pickling Co. was organized; the deed and mortgage, I think, were drawn in the afternoon; the balance of the papers were drawn in the evening of the same day, as the parties were at my office until very late in the evening.

I went up to the canning factory in the afternoon, after dinner, and assisted in organizing the corporation.

Question—When did you first hear that Mr. Fithian's deed was to be made to the corporation?

(Objected to on part of defendant.)

Some time that day: I had not, to my knowledge, before that day, prepared any papers transferring this property from Fithian to Mr. Stout and associates; I did not on that day or any other, state to Mr. Fithian that it was legal for him to make a deed for the property to a corporation, but not to individuals.

Question—State, if you know, for what purpose that corporation was organized?

I suppose it was for the purpose of carrying on the business under the name of the corporation; I mean, I have heard since the commencement of this suit that Mr. Stout did not want the business to be managed under the name of the West Jersey Canning & Pickling Company, and therefore made the remark, that there was no objection made by him, or any of the purchasing party to organize the Company at that time.

I stated at that time that the corporation should be organized before a deed could be made to it.

JAMES J. REEVES.

Sworn and subscribed before me, September 10th, 1867.

CHARLES E. ELMER,
Master in Chancery, N. J.

CHARLES S. FITHIAN reproduced on the part of complainant.

Question—Did you state to Mr. Stout in the presence of Mr. Wicks, on the 14th day of March, 1865, that you thought, and that Mr. Reeves, your counsel, had told you, that you

could make a deed to a corporation and not to individuals?

No sir.

CHAS. S. FITHIAN.

Sworn and subscribed before me, September 10th, 1867.

CHARLES E. ELMER,
Master in Chancery of N. J.

JOHN W. STOUT being reproduced, on part of defendant.

Question—How was the $10,000 spoken of by Robert M. Seeley to be paid by you, and to whom? Explain the arrangement between you and the other parties.

I gave Stout, Dyer & Wicks for the factory, all the tools, machinery and fixtures, and everything connected with the manufacture of canned goods, which stood inventoried on their books at $20,511.93, $10,000, and was paid by Dyer, charging me, on the books of the firm, with $10,000. The article of agreement, which Mr. Seeley speaks of, was the transfer of the claims which the firm had against Mr. Fithian; was transferred by Dyer, Wicks & Seeley to me, and all the moneys which I recovered from Mr. Fithian, after deducting the expenses, was to be divided amongst the firm according to their several interests.

Question—Was R. M. Seeley to have any interest or benefit by that arrangement, in the event of any suit in reference to the mortgage in question?

(Objected to on part of complainant.)

He has not now to have any interest or benefit; for since then, in March last, myself, H. B. Dyer and L. J. Wicks, have bought his entire interest in all claims of the firm.

Question—In the arrangement of your purchase of the property from R. M. Seeley, H. B. Dyer and L. J. Wicks, did you assume or agree to pay any part of the mortgage in question?

I think not, although by our papers of dissolution I am bound to pay all debts of the firm.

Question—Have you in any of your arrangements with them agreed to pay this mortgage in particular?

No sir.

And being cross-examined, says:

Question—Please state where the agreement is, to which you have just referred in your examination in chief?

I think it is in the safe of the firm at 91 Barclay street, New York.

(The solicitor for complainant objects to all the testimony of this witness connected with the said agreement, without the production of the original).

And being again examined in chief:

Question—Does the written agreement referred to by R. M. Seeley, bind you to pay or assume any part of the mortgage in question?

(Objected to on part of complainant, without the production of the original.)

10 It does not so far as I can recollect.

JOHN W. STOUT.

Sworn and subscribed before me, this tenth day of September, A. D., 1867.

CHARLES E. ELMER,
Master in Chancery of N. J.

Certified as a true copy of examination had in the above cause, September 10, 1867, before me

CHARLES E. ELMER, *Master.*

Cumberland Circuit Court.

IN EQUITY.

—:o:—

Between

CHARLES S. FITHIAN, *Complainant*,

and

JOHN W. STOUT, *Defendant.*

Interlocutory Decree.

This cause coming on to be heard before the Judge of the Circuit Court of the County of Cumberland, upon bill, answer, replication, and proofs, in the presence of John T. Nixon, of counsel with the complainant, and of Robert Allen, Jr., and Cortlandt Parker, of counsel with the defendant, and the pleadings and proofs having been read and the arguments of counsel heard and considered, and the said Judge having taken until this day, and being now of the opinion, that the said complainant is entitled to the relief prayed for in his said bill of complaint—

It is, therefore, on this fourth day of November, A. D. eighteen hundred and sixty-seven, ordered, adjudged and decreed, that it be referred to Charles E. Elmer, Esq., one of the Masters of the Court of Chancery of the State of New Jersey, to ascertain and report the amount due to the said complainant for principal and interest upon the mortgage held by him upon the premises mentioned and described in the said bill of complaint, and whether the whole or a part, and what part of said mortgaged premises, should be sold for the payment and satisfaction of the claim of the said complainant to the end that such further decree be made as the said Judge 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 the Master's report.

L. Q. C. ELMER,
Judge of Circuit Court.

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } *ss:*

I, Theo. G. Compton, Clerk of the Circuit Court of the County of Cumberland, the same being a Court of Record, do hereby certify that the foregoing is a true and correct copy of the interlocutory decree in the case of Charles S. Fithian, complainant, and John W. Stout, defendant, as filed in this office November 4th, 1867. In testimony whereof, I have hereto set my hand and affixed the seal of said Court this twelfth day of March, A. D. 1868.

THEO. G. COMPTON, *Clerk.*

Cumberland Circuit Court.

IN EQUITY — *Before* ELMER, *Judge.*

——:o:——

Between

CHARLES S. FITHIAN, *Complainant,*

and

JOHN W. STOUT, *Defendant.*

} *On Bill, Answer, Replication and Proofs.*

OPINION.—The bill in this case is the ordinary bill for the sale and foreclosure of certain mortgaged premises situate in the city of Bridgeton, to make the amount of principal and interest due on a bond and mortgage executed by the West Jersey Canning and Pickling Company to the complainant, March 14th, 1865, conditioned for the payment of ten thousand dollars in one year after the date with interest.

John W. Stout, who has become the sole owner of the property, has filed his answer, which, with much prolixity and with many irrevelant and unnecessary statements in substance, set up the defence, that he, together with Henry B. Dyer, then partners in the firm of Stout, Dyer & Co., and doing business in the city of New York, in the manufacture and sale of canned fruits and other articles, bargained to purchase a canning establishment, including the stock on hand owned by the complainant who was engaged in a similar business at Bridgeton in the name of C. S. Fithian & Co., for the cost price, and that by the fraudulent misrepresentations of complainant, they had been induced to give the sum of $50,900 for the property, of which the bond and mortgage sought to be enforced was a part, and all of which sum had been paid, except the amount contained in said bond and mortgage, and that the complainant had already fraudulently received several thousand dollars more than all said property was worth, and had received at least $5,000 in money more than the said cost of said property at the time of the negotiations and sale thereof.

At the commencement of the argument, it was suggested by the complainant's counsel, that he was entitled to a decree upon the bill and answer above, without going into the proof, and I incline to the opinion that in this he was correct, for two reasons; first, on the ground that where a defendant is desirous of impeaching a deed on which the complainant's case depends, he must file a cross bill, and cannot raise the defence by answer—*Adams Eq. 3d Am. Edn.* 858 *Note*—citing the case of *Eddleston & Collins*, 3 *Degar Ma. & Gox* 1; and if this be so, I do not think the case is one in which it will be proper, as suggested by counsel for defendant, to retain the case until such a bill can be filed; and, secondly, because the defendant retains the property and has never offered to restore it or to enter with any account of the profits he may have made by the sale of it. Had he filed a bill to set aside this bond and mortgage as fraudulent and void, this would probably have been considered indispensable; such an offer was made in the case of *Torrey & Buck*, 1 *Green*, 6 *R.* 366, referred to by the counsel of defendant, as holding the familiar doctrine that frauds consist in a suppression of the truth as well as in a suggestion of falsehood; but the cause was mainly discussed upon the case made by the proofs, and I therefore content myself with merely referring to the questions above stated, without meaning to be understood as having carefully considered them or as giving any decided opinion upon them.

The counsel for defendant stated the defence to be that the bond and mortgage in question was part of a larger transaction, wherein the defendants or those whom he now represents, became the purchasers of a tract of land with the improvements and all the stock of the complainant's necessary and useful for carrying on the establishment, and that the complainant committed a fraud, and such a fraud as that the defendant has already paid all and more than he was entitled to receive, whereby it follows that the remaining bond and mortgage are not due.

The burden of proving this defence is on the defendant; has he satisfactorily established it? The undisputed, or, at all events, well established facts, seem to be that the complainant, in company with his co-partner, Lorin J. Wicks, met the defendant and his co-partner, Henry Ballard Dyer, at Philadelphia, for the purpose of entering into a contract for the manufacture by C. S. Fithian & Co. at their establishment in Bridgeton, for the firm of Stout, Dyer & Co., of a large amount of canned goods, on the 7th of March, 1865. Mr. Fithian did not suggest to them on that occasion, nor to Wicks, that he was desirous of selling, but Mr. Wicks seems to have been desirous that Stout, Dyer & Co., should purchase the concern in which he was interested, and take him as a partner in their business, and mentioned to one of them

that Fithian would sell. The proposition to purchase came from Stout, and Mr. Fithian stated that he would sell. At his suggestion, Stout and Dyer went to Bridgeton the next day and saw the property, and upon that occasion the book Exhibit D 1 of defendant, was shown to and examined by them, they agreed to purchase, and Fithian agreed to sell, but no definite price was agreed upon, although it was understood, that if a sale took place, certain payments should be made. The parties agreed to meet again on the 14th of March, at the establishment in Bridgeton, to close the bargain, and did so meet.

In the meantime Mr. Fithian had, in conjunction with Mr. Wicks, gone over and made an inventory of the property, and caused the same to be written down in the book produced and marked Exhibit D 5 of defendant.

This book was shown to Stout and Dyer, and examined by them, and they agreed to take the property therein enumerated at the price, $50,900. Mr. Wicks, who was entitled to receive $12,000 of that price as his share of the net profits of the firm of C. S. Fithian & Co., in pursuance of his agreement with Fithian, Exhibit No. 7 of complainant, to be one of the purchasers, at that price, to be paid for by his said interest, and Robert M. Seeley to be another purchaser to the amount of $5,000, for which he was individually to pay or satisfy Mr. Fithian.

Mr. Fithian had obtained an act incorporating the "West Jersey Canning and Pickling Company," approved February 5th, 1865, (Sup. act, page 5,) and at his suggestion it was concluded to organize the same, which was done—John W. Stout, Henry B. Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley becoming the corporators. To this corporation the complainant executes a deed for the real estate, which recites that the consideration was $6,000, and which contains covenants against all claims or incumbrances through or under the grantor, (Exhibit D 16 of defendant,) and a bill of sale under his seal of all his right and title in the canning factory, and all other articles as per inventory, referring thereby as defendant states in his answer, to the inventory in Exhibit D 5 of defendant, covenanting that he was the true and lawful owner of said goods and had full power to sell and dispose of the same, the consideration in which is expressed to be $28,000, Exhibit D 17 of defendant; he also executed another agreement, not to carry on the same business, and to this there was added a stipulation that the Company should use the name of Fithian and Pogue and C. S. Fithian & Co. in the prosecution and management of their business, Exhibit D 14 of defendant; the corporation then executed and delivered to complainant the bond and mortgage now in question, and a chattel mortgage to secure the payment of $23,900, that is to say, the sum of

$10,000 securing by the mortgage on the real estate, and the remaining $13,900 at short periods, the last being on the 1st day of April, 1866—all of which, except the $10,000 mortgage, has been paid. This sum of $13,900, the sum of $12,000 due to Wicks, $5,000 for which Robt. M. Seeley gave his obligations to the complainant, the sum of $5,000 paid in cash, and a note for $5,000, which was paid at maturity, and the $10,000 mortgage, made the sum of $50,900 agreed to be paid for the whole property.

After these transactions, the purchasers appear to have concluded to abandon the incorporation, no other step respecting the same having been taken, except to obtain a supplement to change the name to the "American Canning and Pickling Company," approved March 23d, 1865. Sep. act 550. Thus formed, the Company of Stout, Dyer & Wicks, proceeded to carry on the business in that name, at Bridgeton, and in New York, on the 28th of April, 1865, the corporation executed a deed for the canning factory, to John W. Stout, Henry Ballard Dyer, William W. Stout, Lorin J. Wicks and Robert M. Seeley, the co-partners in the said firm of Stout, Dyer & Wicks, (Exhibit D 15 of defendant,) and at the same time these persons executed an agreement, under their seals, whereby they agreed with him to assume the debts and obligations held by the said Charles S. Fithian, each becoming jointly and severally responsible to him for the payment of the same. Exhibit No. 4 of complainant.

It does not appear that this change was in any way suggested by Mr. Fithian, although the last mentioned agreement was delivered to him and is properly made a part of his case in his bill.

We come now to the charge of fraud, and the question to be decided is, has fraud been satisfactorily proved?

The main stress of the argument was necessarily laid on the alleged concealment at the interview between the parties at Bridgeton on the 14th of March of the book now marked Exhibit D 1, containing the inventory purporting to have been made December 21st, 1864, which was shown to the witness, Chittenden, which is said to have been spoken of on the 7th of March, in Philadelphia, and which was, no doubt, shown to Stout and Dyer, at Bridgeton, on the 8th, and the substitution thereof of the book marked Exhibit D 5.

There was much effort in the answer, and the evidence, and upon the argument to show that a verbal contract was entered into between the parties, if not in Philadelphia on the 7th, yet, certainly, at Bridgeton on the 8th of March, which only requires to be put into writing to be binding. Notwithstanding the strong assertions of Stout and Dyer when examined as witnesses to this effect, it is very plain that, although certain matters in regard to the payments

that were to be made were arranged, no definite price for the property had been agreed on, and it was perfectly competent for either party to require new and different terms from any that had been spoken of, before a final bargain was consummated. The defendant and Dyer insist they were to have the property for from $33,000 to $35,000, which, they say, included the amount due to Wicks; but they both admit what the writings conclusively prove, that on the 14th they agreed to give the sum of $50,900 for it, and that they bought the articles enumerated in the book now marked Exhibit D 5. Their great complaint is, that when this book was shown to them, they supposed it to be the same book they had seen on the 8th, and that it contained the same inventory.

A simple examination of these two books, makes it perfectly plain, that when they swear that, when they were shown the book D 5, on the 14th of March, they supposed it to be the same book they had seen and examined on the 8th, six days before, they cannot be believed; they are both intelligent men of business, more or less acquainted with books and inventories of stock. The inventory they saw on the 8th, is nearly at the end of a book containing accounts and inventories of two or three years, whereas the inventory shown to them and put into their hands for examination on the 14th, is at the commencement of a new book, and so materially varies from that shown on the 8th, that it was barely possible to mistake the one for the other; but what is perfectly decisive on this point is, that the inventory shown on the 8th must, of course, have been made before that day, and it purports on its face to have been taken December 21st, 1864. That shown them on 14th was conspicuously headed "Act. Stock C. S. F. & Co., March 10th, 1865."

However unpleasant such a statement may be, it is the duty of the Court to declare, that not only is such testimony as these parties have given on this subject incredible, but it deprives them of all right to be trusted in regard to any other matters respecting which they testify, unless they are corroborated by other and more reliable evidence. It is altogether probable that Mr. Stout, who is said to be a respectable man, when his attention was particularly directed in December, 1866, to the fact that there were two different inventories contained in different books, did not then remember that he had ever known that the inventory shown to him on the 14th of March, 1865, was not the same as that he saw on the 8th, but when he undertakes now to say that he did not know on the 14th what the book itself shows, he could not help knowing it proves how dangerous it is to rely on the testimony of a party in a cause. The statute law of the State has declared that no person shall be disqualified as a witness by reason of his interest as a party or otherwise,

but it leaves the fact of such interest to effect his credit to be judged of by the tribunal whose duty it is to decide on it. In the case of *Muir, appellant, and the Newark Savings Institution and Burltes, respondent*, reported without the opinion delivered in the case, 2 *M. Carter*, 502, it was the unanimous opinion of the Court of Appeals that the unsupported evidence of the party ought not to be allowed to induce the Court to declare a bond void for usury.

It was urged by defendant's counsel that it was Mr. Fithian's duty to inform them that it was a different inventory from that he had shown them on the 8th, and that his omitting to do so, was a suppression of the truth, amounting to fraud. But it is an entirely satisfactory answer to this suggestion, that he had no more occasion to tell them it was different, than he would if they had entered into a negotiation on the 8th to buy a black horse, and he had on the 14th shown them a white one. Courts must assume that men use their eye-sight, and have such memory as is common to men in general. If it be true, as perhaps it is, and as counsel for the defendant remarked, that men engaged in active business in a great city like New York often do their business in a very careless off-hand manner, without much precaution or vigilance, the Court can only say, that where they do so, and by their own negligence produced the evil of which they complain, they must bear it with as much patience as they can; the law will afford them no relief. 2 *Pars. Con.* 773, *5th edit., Note Bond Cases*

The point of his case counsel urged for defendant was that he and his associates bought the property at cost, and by the fraudulent acts of the complainant were induced to pay, or contract to pay, a great deal more than the cost price, but the proof of this allegation rests upon the statements of Stout and Dyer.

I cannot believe that at the time they themselves so understood the bargain. There is no doubt that during the negotiations in Philadelphia and Bridgeton on the 7th and 8th, and at Bridgeton on the 14th of March, the cost of the property was spoken of and canvassed, as almost always happens in such cases. Chitty in his works on contracts, p. 528, remarks on the one hand, Courts of Justice have endeavored to repress dishonesty; on the other hand, they have required and expected that each party shall be vigilant and exercise a due degree of caution, *vigilantibus et non documentibus succus and Jura.* It is difficult to imagine that a general misrepresentation as to value, &c., the truth of which a party has an opportunity of ascertaining, or the concealment of a matter which an individual possessed of ordinary sense, vigilance or skill, might discover, can in law constitute fraud. There can be no fraud if the bargain be merely a fair contest on trial of judgment. In all contracts each party naturally and

fairly attempt to obtain advantage. As in a contract of sale the vender endeavors to extoll the article, the vendee to depreciate, each exercises his own judgment, and neither party can be said to be guilty of a fraud in making bare assertions, upon which the other party probably places no reliance, and which he does not embody in his contract.

But Stout and Dyer say they bought the property for $33,000, or, at the most, $35,000; and insist that the inventory in D 1, represented the cost, and Mr. Chittenden is introduced to prove that he so understood. They say they were told that to the cost as stated in D 1, was to be added an additional stock of cans, tin, &c., purchased after it was made and estimated at about $8 000. A statement is furnished marked Exhibit D 27, of defendant, showing the difference in the prices as set down in D 1, and D 5, and the stock in D 5, that was not contained in D 1. Upon examining this, it appears that the whole cost of the property they were to take as set down in D 1, was less than $25,000, and that the addition to the price and the articles contained in D 5, and not in D 1, excluding the insurance account, amounts to about $12,000, making the whole cost about $37,000.

And yet, on the 14th, they agreed to pay $50,900 for the property, an excess of $13,900 above what they say they had been told on the 8th was the cost, and an excess of $15,900 of what they say the bargain was. A difference so large could not have been forgotten in six days; and the fact that they deliberately agreed to give it, seems to me strong evidence that at the time they perfectly well knew they were giving a much larger price than what they understood the cost to be. Mr. Wicks says they manifested surprise at the advance in the price of the real estate and personal property, and manifested a wish to look it over, but Mr. Fithian said it was not necessary to do so; and both Mr. Wicks and Mr. Seeley testify that they looked over the entire inventory in D 5, and that the cost of some of the articles was canvassed. No inquiry was made of either Wicks or Seeley, who had full knowledge of the cost of the manufactured article, as to what that cost was. The haste in bringing the negotiations to a conclusion, and having the writings executed on the night of the 14th, was not at the instance of Mr. Fithian, but to suit their convenience, or because they were afraid that they should not get the property even at the advanced price asked for.

As soon as the sale was consummated, the new firm of Stout, Dyer & Wicks, took possession of the property, and Mr. Fithian no longer interfered with it. The manufactured articles were forwarded to the store of the firm in New York for sale, with a statement of the cost. No attempt was made, so far as appears, to compare this cost with the price that has been allowed for more than a year afterwards,

and no complaint was made of any error or misrepresentation. It appears by the book D 5, that the firm made a new account of stock April 1st, 1866, which is not a copy of the inventory made March 12th, 1865, but the articles are differently arranged, and, in some instances, different prices are affixed, but no complaint was made to Mr. Fithian that there had been any misunderstanding or deception in regard to the price. It appears that a correspondence by letters was kept up between Mr. Fithian and the firm of Stout, Dyer & Wicks, for more than a year, and the interest paid on the bond and mortgage now in question March 20th, 1866, and it was not until in June, 1866, that anything was said about the goods having been purchased at cost, and then the complaint seems to have been confined to the price of the walnut juice, it having been discovered that there had been a mistake as to the quantity of Cumberland sauce, which on being made known to Mr. Fithian, he immediately rectified by allowing a credit of $266 on that account. That all the articles contained in the inventory made March 10th, 1865, were received, or might have been received, by the purchasers, except the difference in the quantity of Cumberland sauce, does not seem to be disputed. Whether they were useful or not to the defendant and his associates, or were worth the prices set down, is of no importance, if they agreed to buy them at those prices, as it is clear they did.

The real and personal estate sold and bought were conveyed to the purchasers by a deed and bill of sale referring to an inventory in which the price of each article is distinctly stated. In the language of *Green l. Ev.*, *Sec.* 275: "When parties have deliberately put their engagements into writing, in such terms as impart a legal obligation without any uncertainty as to the object or extent or such engagement, it is conclusively presumed that the whole engagement of the parties, and the extent and manner of their undertaking was reduced to writing, and all oral testimony of a previous colloquim (negotiation) between the parties, or of conversations, or declarations at the time when it was completed or afterwards, as it would tend in many instances to substitute a new and different contract for the one which was really agreed upon, to the prejudice possibly of one of the parties, is rejected, or, in other words, as the rule is now more briefly expressed, parol contemporaneous evidence is inadmissable to contradict or vary the terms of a valid written instrument." The parol evidence has been carefully considered, so far as it is reliable, and has a fair bearing upon the question of fraud, but for any other purpose it is entirely inadmissable. Mr. Seeley does not support the allegation that the purchasers supposed they were buying at the cost price; he certainly did not so understand his own share of the bargain. Mr. Wicks testifies that Mr. Fithian offered

the property in Philadelphia at about cost, but the true question is, what was the understanding of the parties on the 14th of March?

Mr. Stout makes the allegation in his answer in substance that he agreed to give more for the property as a whole than it was worth, but he has made no such proof. Neither Wicks nor Seeley were of that opinion, nor have they complained of the bargain. I think it is not to be doubted that Mr. Fithian advised Mr. Seeley to become one of the purchasers at the price fixed, out of regard for him, and because he believed it would be for his interest, and there is no evidence that he has been a loser; indeed, it would seem that he has disposed of his interest for the same price he agreed to give. It is highly probable that well known public events had much to do with the sale and purchase of this property and with the unfortunate controversy. The counsel on both sides have very naturally adverted to these events, and it may be true as suggested by the counsel of defendant that Mr. Fithian saw that the rebellion was soon to end, and the great demand for canned provisions, created by our immense army and navy likely soon to cease, and acted accordingly; but this was purely a question of individual judgment; his sources of information were the same as those of Stout & Dyer, and if his foresight was better than theirs, he is fairly entitled to the advantage it gave him, if he gained any; for aught that appears, the property taken together, was worth all the purchasers gave for it. The counsel of the defendant were not understood to insist that even if it was true that some of the canned or other goods were not of merchantable quality, a deduction from the amount due on the bond and mortgage can be made on that account in this proceeding. The bond and mortgage must be enforced as they stand, unless void for fraud; and the defendant, if entitled to damage on account of the bad quality of any of the articles purchased, I suppose must obtain them by means of the suit at law which it seems he has commenced, or in some other independent proceedings. But, however this may be, the evidence produced in this case, does not satisfactorily prove the allegation that at the time of the sale there was any defect in the quality of the goods; and if there was, it was the duty of the defendant to ascertain the fact in a reasonable time, and make it known to the complainant, which was not done.

After a careful review of the whole case, I am very clearly of opinion that the fraud charged has not been satisfactorily proven, and that complainant is entitled to a decree prayed for.

STATE OF NEW JERSEY, }
CUMBERLAND COUNTY, } *ss:*

I, Theo. G. Compton, Clerk of the Circuit Court of the County aforesaid, the same being a Court of Record, do hereby certify that the foregoing is a true, correct, and full copy of the opinion of L. Q. C. Elmer, in the case of Charles S. Fithian, complainant, and John W. Stout, defendant, delivered in the Court House, at Bridgeton, November 4th, 1867. In testimony whereof, I have hereto set my hand and affixed the seal of said Court, this eleventh day of November, eighteen hundred and sixty-seven.

THEO. G. COMPTON, *Clerk.*

Court of Errors and Appeals,

IN THE LAST RESORT IN ALL CAUSES OF LAW AND EQUITY.

Between

CHARLES S. FITHIAN, *Appellant*,

and

JOHN W. STOUT, *Appellee*.

On Bill, Etc., Petition of Appeals.

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

The humble petition of John W. Stout, the appellant, respectfully shows that your petitioner finds himself agrieved by an interlocutory decree made in the Circuit Court, in and for the County of Cumberland, by the honorable Lucius Q. C. Elmer, one of the judges of said court, bearing date the —— day of ————, one thousand eight hundred and sixty-seven, in a certain cause therein pending, upon a bill of complaint of the said Charles S. Fithian, filed against the said John W. Stout for the foreclosure of certain morgaged premises in said bill of complaint, set forth, in this respect, that the said decree adjudges that a certain mortgage therein mentioned and set forth was and is an existing incumbrance upon the mortgaged premises in the pleading in said cause mentioned, and in respect that the said decree declares that said complainant is entitled to the relief prayed by him in his said bill of complaint.

Your petitioner therefore prays that the said decree of the said Circuit Court may be, in the particulars aforesaid, reversed, set aside and for nothing holden.

And that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

Dated November 11, A. D. 1867.

ROBERT ALLEN, JR.,
Solicitor of Appellant.

CORTLANDT PARKER,
Of Counsel with Appellant.

New Jersey Court of Appeals.

Between

JOHN W. STOUT,

Appellant.

and

CHARLES S. FITHIAN,

Appellee.

On appeal to Circuit Court of Cumberland County.

This respondent, not confessing all or any of the matters to be true, as in and by the said petition of appeal are mentioned and set forth for answer thereunto, says: that such decree as is complained of was made by the Court of Chancery, but as to the date subsequent and extent thereof, this respondent humbly begs leave to refer thereto when the same shall be produced, and this respondent humbly conceives, and is advised that the said decree is agreeable to equity and justice, and therefore humbly prays that the same may be affirmed, and that this appeal may be dismissed in this honorable court with costs.

Dated November 14, 1867.

JOHN T. NIXON,

Solicitor and of Counsel with Charles S. Fithian, Appellee.

EXHIBITS

ADMITTED IN EVIDENCE,

AND REFERRED TO IN

PRECEDING EXAMINATIONS.

Exhibits on Part of Complainant.

———:o:———

EXHIBIT No. 1.

THIS INDENTURE, made the fourteenth day of March, in the year of our Lord one thousand eight hundred and sixty-five, between "The West Jersey Canning and Pickling Company," of the first part, and Charles S. Fithian, of Bridgeton, New Jersey, of the second part; whereas, the said The West Jersey Canning and Pickling Company, in and by their certain obligation or writing obligatory, under the hand and seal of their president, duly executed, and bearing even date herewith, stand bound unto the said party of the second part, in the sum of twenty thousand dollars, conditioned for the payment of ten thousand dollars, in one year from date, with interest thereon payable annually, without any fraud or further delay, as in and by the said recited obligation and condition thereof, relation to the same being had, may more fully and at large appear.

Stamped $10.00.

Now this indenture witnesseth, that the said party of the first part, as well for and in consideration of the aforesaid debt or sum of ten thousand dollars, and for the better securing the the payment thereof, unto the said party of the second part, his executors, administrators and assigns, in discharge of the said obligation above recited, as for and in consideration of the further sum of one dollar, in specie, well and truly paid to the said party of the first part, by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm, unto the said party of the second part, his heirs and assigns, all that certain lot of land, situate in Bridgeton, aforesaid, and bounded as follows:—Beginning at a stone for a corner, on the south side of Irving street, and is a corner of William Harris' lot; thence along Irving street, north eighty-nine and one quarter degrees east ninety-three and a half feet to a

stone for a corner, corner also of Wm. Hammond's lot; thence bounding thereon, south twenty-eight degrees west forty feet to another corner of said Hammond's lot; thence north eighty-nine and a quarter degrees east one hundred feet to a stone for a corner in the line of Bank street; thence along said Bank street, south twenty-eight degrees west one hundred and sixty-six feet to a stone for a corner, being also a corner to the Baptist Burial Ground; thence bounding thereon south eighty-eight and three-quarters degrees west one hundred and sixteen and a half feet to a stone for a corner, corner also of Eunice Garrison's lot; thence north two degrees twenty minutes west eighty-one feet to a stone for a corner, corner also of Charles B. Fithian's lot, and in a line of Wm. Harris'; thence north eighty-eight and three-quarters degrees, east twenty-six feet and four inches to a corner; thence bounding on said Harris' land, north two degrees west one hundred and one feet to the place of beginning, containing $(\frac{55}{100})$ fifty-five one hundredths of an acre, more or less. Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof: to have and to hold the said hereditaments and premises above granted, or intended so to be, with the appurtenances, unto the said party of the second part, his heirs and assigns forever. Provided always, nevertheless, that if the said The West Jersey Canning and Pickling Company, their successors or assigns, do and shall well and truly pay, or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the aforesaid debt or sum of ten thousand dollars, on the day and time herein before mentioned and appointed for the payment thereof, together with lawful interest for the same, in like money, in way and manner herein before specified therefor, without any fraud or further delay, and without any deduction, defalcation or abatement to be made for, or in respect of any taxes, charges or assessments whatsoever; that then, and from thenceforth, as well this present indenture, and the estate hereby granted, as the said obligation above recited, shall cease, determine and become absolutely null and void, to all intents and purposes; anything herein before contained to the contrary thereof in any wise notwithstanding.

In witness whereof, the said party of the first part have hereunto set the hand and seal of its president and secretary the day and year first above written.

LORIN J. WICKS, *President.* [L. S.]

Attest, H. BALLARD DYER, *Secretary.*

Signed, sealed and delivered in presence of James J. Reeves.

State of New Jersey, Cumberland County, ss.:

Be it remembered, that on this fourteenth day of March, in the year of our Lord one thousand eight hundred and sixty-five, before me, one of the masters of the Court of Chancery of New Jersey, personally appeared Lorin J. Wicks, President of The West Jersey Canning and Pickling Company, who, I am satisfied, is the grantor mentioned in the above deed or conveyance, and I having first made known to him the contents thereof, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

JAMES J. REEVES,
Master in Chancery.

EXHIBIT NO. 2.

KNOW ALL MEN BY THESE PRESENTS, that we, "The West Jersey Canning and Pickling Company," held and firmly bound unto Charles S. Fithian, of Bridgeton, Cumberland County, New Jersey, in the sum of twenty thousand dollars, lawful money of the United States of America, to be paid to the said Charles S. Fithian, his certain attorney, executors, administrators or assigns, to which payment, well and truly to be made, we do hereby bind ourselves and our successors, jointly and severally, firmly by these presents.

(Morgage accompanying this bond duly acknowledged and stamped.)

Sealed with our seal, dated the fourteenth day of March, in the year of our Lord one thousand eight hundred and sixty-five.

The condition of this obligation is such, that if the above bounden The West Jersey Canning and Pickling Company, or their successors, or any of them, shall and do well and truly pay, or cause to be paid unto the above-named Charles S. Fithian, his certain attorney, executors, administrators or assigns, the just sum of ten thousand dollars, in one year from date, with interest thereon, payable annually, without any fraud or further delay; then the above obligation to be void, or else to be and remain in full force and virtue.

LORIN J. WICKS, *President.* [L. S.]

Attest, H. BALLARD DYER. *Secretary.*

Sealed and delivered in the presence of James J. Reeves.

To James J. Reeves, Esq., or any other attorney of any court of law in New Jersey, or elsewhere.

This is to authorize you to appear for us and our legal representatives in any court of competent jurisdiction, in case

of the breach of the condition of the above bond, and confess judgment for the penalty therein contained, as of the last or any subsequent term, with costs of suit and release of errors; and this shall be your sufficient warrant.

Witness, our hand and seal, this fourteenth day of March, Anno Domini, one thousand eight hundred and sixty-five.

LORIN J. WICKS, *President.* [L. S.]

Sealed and delivered in the presence of James J. Reeves.

EXHIBIT NO. 3.

KNOW ALL MEN BY THESE PRESENTS, that we, "The West Jersey Canning and Pickling Company," for the sum of twenty-three thousand and nine hundred dollars, in hand paid, or secured, to be paid by Charles S. Fithian, of Bridgeton, New Jersey, have, and by these presents do bargain and sell unto the said Charles S. Fithian, his executors, administrators and assigns, the goods following, to wit.: Three boilers, one steam-engine, piping and fixtures, glass-ware, tinware and tin materials for making solder, buildings for the manufactory of solder, juices for jellies, materials for Cumberland sauce, boxes, and all lumber on the premises; also all lumber on the wharf, near the steam saw-mill, labels, corks, glass-moulds, dies for metallic caps and all their stock of fruits, vegetables, meats and sauces, and all other articles not herein enumerated, and now owned and hereafter to be owned by the said The West Jersey Canning and Pickling Company, and of use in the business carried on by said company, to have and to hold to the said Charles S. Fithian, his executors, administrators and assigns forever. *Provided*, that if the said The West Jersey Canning and Pickling Company, or their successors, shall pay or cause to be paid unto the said Charles S. Fithian, his executors, administrators or assigns, the sum of twenty-three thousand nine hundred dollars, secured as follows: ten thousand dollars, secured by mortgage on the real estate of the said The West Jersey Canning and Pickling Company, bearing even date herewith with the interest due thereon, in one year from date, four thousand six hundred and thirty-three dollars, secured by a bond bearing even date herewith, and due with interest thereon, on the first day of December, Anno Domini, eighteen hundred and sixty-five, four thousand six hundred and thirty-three dollars, secured by a bond bearing even date herewith, and due with interest thereon the first day of February, Anno Domini, eighteen hundred and sixty-six, and four thousand six hundred and thirty-four dollars, secured by a bond bearing even date herewith, and due with interest thereon on the

(The bond accompanying this within mortmage duly stamped.)

first day of April, Anno Domini, eighteen hundred and sixty-six, then these presents to cease and be void, otherwise to remain in force.

Witness, our hands and seals, by the hand of our president of our corporation, this fourteenth day of March, Anno Domini, eighteen hundred and sixty-five.

LORIN J. WICKS, *President.* [L. S.]

Attest, H. BALLARD DYER, *Secretary.*

Sealed and delivered in presence of James J. Reeves.

State of New Jersey, Cumberland County, ss:

Be it known that, on this fourteenth day of March, eighteen hundred and sixty-five, personally appeared before me the subscriber, one of the masters of the Court of Chancery of New Jersey, Lorin J. Wicks, President, who, the contents of the within deed being made known to him, did thereupon acknowledge that he signed the same and affixed the seal of the said company as the act and deed of the said corporation for the uses and purposes therein expressed.

JAMES J. REEVES,
Master in Chancery.

EXHIBIT, No. 4.

THIS INDENTURE, made this twenty-eighth day of April, in the year of our Lord one thousand eight hundred sixty-five, between John W. Stout, of the city of Red Bank, Monmouth county, New Jersey, Henry Ballard Dyer, of the City and State of New York, William W. Stout, of Hoboken City, Hudson county, New Jersey, and Lorin J. Wicks and Robert M. Seeley, of Bridgeton, New Jersey, of the first part, and Charles S. Fithian, of Bridgeton aforesaid, of the second part, WITNESSETH, Whereas the West Jersey Canning and Pickling Company, through Lorin J. Wicks, their President, has this day conveyed unto the said John W. Stout, Henry Ballard Dyer, Lorin J. Wicks, William W. W. Stout and Robert M. Seeley, their heirs and assigns, all the interest of the said "the West Jersey Canning and Pickling Company," in the canning factory, and the lot whereon it is located, situate at the southwest corner of Bank and Irving streets of the city of Bridgeton; and whereas, there exists at this date, certain obligations in writing, held by the said Charles S. Fithian against the said "The West Jersey Canning and Pickling Company;" and whereas, it is the desire of the said John W. Stout, Henry Ballard Dyer, Lorin J. Wicks, William W. Stout and Robert M. Seeley to assume the said debts and obligations, so as aforesaid held by the said Charles S. Fithian, and become responsible both

Five cent Stamp.

collectively and individually, for the payment of the same; Therefore, know all men by these presents, that we, the said John W. Stout, Henry Ballard Dyer, Lorin J. Wicks, William W. Stout and Robert M. Seeley, for ourselves and our legal representatives, each and all of us and them, agree to assume and do hereby assume the debts and obligations held by the said Charles S. Fithian as aforesaid, and become jointly and severally responsible to the said Charles S. Fithian for the payment of the same; and we do hereby further agree, that we will indemnify and save harmless the said Charles S. Fithian against any loss he may sustain in the premises by reason of any default on the part of the said "The West Jersey Canning and Pickling Company," to pay the same or otherwise.

In witness whereof, the said John W. Stout, Henry Ballard Dyer, Lorin J. Wicks, William W. Stout, and Robert M. Seeley, have hereto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of

JOHN W. STOUT, [L. S.]
H. BALLARD DYER, [L. S.]
LORIN J. WICKS, [L. S.]
WILLIAM W. STOUT, [L. S.]
ROBERT M. SEELEY, [L. S.]

Witness present,
WILLIAM H. CRAMER.

EXHIBIT No. 6.

NEW YORK, June 10, 1865.

C. S. Fithian, Esq.:

DEAR SIR—Yours of the 8th, enclosing check for $84.55 was received. We are much obliged to you for the same. We will meet your views in regard to insurance.

We thank you for your kind wishes.

Truly yours,
STOUT, DYER & WICKS.

NEW YORK, July 28, 1865.

C. S. Fithian, Esq.:

DEAR SIR—Our Mr. J. W. Stout has just returned from Bridgeton, and says you had some conversation about your peaches, and that you had a considerable quantity of them yet on hand. We think we could dispose of a considerable part of them, if not the whole, in the next three months or sooner, to our customers coming in town, and those we have in the city. We will sell them for you on Commission, giving you the benefit of the largest price we get, or sell them for you—you to name the lowest they must net you here;

and if in the latter manner, you know you must name a price to allow us to sell as low as they have been offered here, and leave us some margin. We will guarantee all the sales we make in either case, and make all remittances for each sale in 30 days from date of sale. Should you think best to accept of our proposition, we should want a stock of them on hand of not less than 200 cases, and should prefer the smallest size cans. Should you ship, we should want them to come by the Raritan & D. B. R. R. Please let us hear from you.

Respectfully yours, &c.,
STOUT, DYER & WICKS.

P. S.—Our Mr. J. W. S. says you offered them 3.20 for 2½ lb.

NEW YORK, Aug. 31, 1865.

C. S. Fithian, Esq.:

DEAR SIR—Having just returned home, Mr. Stout informs me that you have authorized him to sell your peaches at any price that we can get; that is, that you wish this house to sell them as if they were their own, doing the best they can as to price, and that you would pay 7½ per cent. for selling them. Also all expenses incurred in removing them from any given point to the N. Y. store, or place of shipment to the purchaser, would be borne by you. Had such instructions been given to me when West, I could probably have sold them all at from $2.50 to $2.75 per doz.

If they can now be sold at these rates, do you authorize the sale? if yes, please reply by return mail, if convenient.

Yours, &c.,
STOUT, DYER & WICKS,
per CHITTENDEN.

NEW YORK, Sept. 21, 1865.

Mr. C. S. Fithian:

DEAR SIR—Can you furnish 2 or 300 cases 2½ lb. peaches, in case we can close a sale for that quantity at 2.75 per doz. and ship them from Philadelphia, allowing us our commission of 7½ per cent? If you still have 2 lb. peaches, how low shall we sell them, you allowing us our commission?

Please reply by telegraph, as the party is waiting our answer before leaving for Baltimore, if you are willing to sell as above, 2.75 for 2½ lb. and 2.50 for 2 lb.

Telegraph as follows: "Sell at prices you have quoted," (and name the quantity we may offer.)

For STOUT, DYER & WICKS,
CHITTENDEN.

NEW YORK, Sept. 25, 1865.

Mr. C. S. Fithian, Esq.:

DEAR SIR—Yours of the 25th, enclosing letter of Kemp, Day & Co., was received. We thank you for it. In regard to your peaches, would say, had you telegraphed us as requested, we could sold nearly all you have left; it is now too late. We have shipped Messrs. DeForest & Stewart's goods yesterday afternoon, all but the 3 lb peaches. As we had none of 3 lb. we wrote them *you* would ship them. Do so, if you think best, taking the risk that they will suit them *yourself*. We think them good.

Yours truly,

STOUT, DYER & WICKS.

NEW YORK, Oct. 20, 1865.

Mr. C. S. Fithian:

DEAR SIR—Mr. Dyer has been ill for several days, and is now confined to his house. As soon as he gets out and is able to attend to making out your account, he will do so. We hope he will be able to give his attention to it in a short time.

Very respectfully,

For STOUT, DYER & WICKS,

CHITTENDEN.

NEW YORK, Oct. 28, 1865.

Mr. C. S. Fithian:

DEAR SIR—Enclosed please find statement of account. The writer regrets that it has been delayed, but sickness prevented its being sent before. Shall we deduct the Cumberland sauce that was short at the factory from this amt.? Please answer, and we will remit as promised by Mr. Stout when you were here last.

Yours truly,

STOUT, DYER & WICKS.

NEW YORK, Nov. 3, 1865.

Mr. C. S. Fithian:

DEAR SIR—Enclosed please find our check for $787.12 in full. Please return receipt and oblige,

Respt'y yours, &c.,

STOUT, DYER & WICKS.

NEW YORK, Dec. 13.

Mr. Charles S. Fithian:

DEAR SIR—Yours of the eleventh is at hand. Do not draw on us as stated in yours. We have written to Mr. Seeley, and he will arrange it with you.

Yours respectfully,

STOUT, DYER & WICKS.

NEW YORK, March 13, 1866.

Mr. C. S. Fithian:

DEAR SIR—Yours of the 8th was duly received, but by press of business has been neglected.

Merrill & Shute have not sent us any money on your account; all they have sent us is on our own account; they are now owing us, and we shall be glad if we ever get it. Should they send us any money, we will gladly remit it to you.

Respectfully yours, &c.,
STOUT, DYER & WICKS.

NEW YORK, March 20, 1866.

C. S. Fithian, Esq.:

We were under the impression that the interest on the mortgage came due April 1st. We got the impression from the date of the bonds, which all came due the first of each month. We should have looked in our books, and now regret we did not, as we intended to be Jack on the Green.

Enclosed please find check for six hundred dollars for one year's interest on mortgage, for which please return receipt.

Please accept our apologies for our neglect, while we remain

Respectfully yours, &c.
STOUT, DYER & WICKS,

NEW YORK, April 11, 1866.

Mr. C. S. Fithian:

DEAR SIR—In answer to yours of the 6th we herewith inclose interest on bond, due April 1st, for $4,633.33, 1 yr. and 17 days. Please return receipt by mail.

Mr. Stout expects to be in Bridgeton the last of next week, and will endeavor to arrange the notes to your satisfaction.

Respectfully yours, &c.,
STOUT, DYER & WICKS.

EXHIBIT No. 7.

This agreement, made this twentieth day of January, anno Domini one thousand, eight hundred sixty-three, between Charles S. Fithian and William Pogue, trading as Fithian & Pogue, of Bridgeton, New Jersey, of the one part, and Lorin J. Wicks, of the same place, of the second part.

[Stamp 5 cents.]

WHEREAS, the said Charles S. Fithian and William Pogue, being engaged in the canning of fruits, vegetables, meats, &c., in Bridgeton, New Jersey, and whereas the said Charles and William are desirous of pro-

curing the care, supervision and attention of the said Lorin J. Wicks in the properly preparing and canning of such fruits, vegetables, meats, &c., as they may desire to can and put up for sale.

Now, the said Charles S. Fithian and William Pogue, in consideration of the care and supervision of the said Lorin J. Wicks, in and about their said business, do covenant and agree to and with the said Lorin J. Wicks, that they, the said Charles and William, will pay to him, the said Lorin, one-third part of all the net profits accrueing from said business, first deducting from said one-third of the net profits, so agreed to be paid to the said Lorin J. Wicks, two per cent. on all the capital invested by the said Charles S. Fithian and William Pogue, in all buildings now erected and used for the carrying on of said business, or which may hereafter be erected for that purpose, in all land, machinery, and materials of every kind and description which may appertain to, or be used in and about said premises.

And the said Charles S. Fithian, William Pogue and Lorin J. Wicks, each doth covenant and agree, the one with the other, that neither he, the said Charles, William nor Lorin, will draw out of any profits, which may accrue to either of them in said business, an amount to exceed eight hundred dollars in any one year during the continuance of this agreement.

This being an agreement between Charles S. Fithian and William Pogue, trading as Fithian & Pogue, and the said Lorin J. Wicks, for the purpose of giving to the said Lorin, in consideration of his care and supervision as aforesaid, an interest in the profits of said business, with the qualifications hereinbefore expressed, and not a co-partnership; the said Charles S. Fithian and William Pogue are to have the sole control of the financial concerns of the said business, and they only are authorized to use and sign the name of said firm, and to bind the same by any contract or agreement.

This agreement, the said parties do agree, shall continue for the space of three years from the first day of January, 1863.

In witness whereof, the said parties have hereto interchangeably set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of
JOHN S. MITCHELL.

CHAS. S. FITHIAN, [L. S.]
WILLIAM POGUE, [L. S.]
LORIN J. WICKS, [L. S.]

Exhibits on Part of Defendant.

———:o:———

EXHIBIT D 1.

Real estate, boiler, engine, belting, piping, benches, tables, kettles, pump, shafting, &c.,	$7,000 40

Exhibit D 1, Page 1.

Exhibit D 1 *Continued.*

Account of Stock, taken December 21, 1864.

Tin Can Acct.

	3000 New asparagus cans,	*a*16	$480 00
	8017 2½ lb. cans,	*a*10	801 70
	4 Sets sponges,	*a*10	40
	2 do. Files,	*a*50 & 60	1 10
	2 Burring machines,	*a*$9 & $6	15 00
	1 Punch,		1 25
10	1 Sht. copper,		3 00
	Lot sponge,		25
	2 Formers,	*a*$1 50	3 00
	1 Pr. compass,		40
	1 Rivet hammer,		50
	1 p. awl & plyers,		35
	1 Rivet head,		75
	2 Punches,		1 25
	2 Gimlets,		10
	3 Cold chisel, *a*37, 1 do. 25		1 37
20	1 Hollow punch,		1 50
	1 Rasp,		50
	2 Stake, *a*$2 50, 3 do., *a*1 25		8 75
	Lot tacks & rings,		25
			$1,321 42

Exhibit D 1, Page 2.

		$1,321 42	
1 Square can machine,		30 00	
1 Set block fastenings,		75	
2 Gro. Japan rings,		2 00	
2 Doz. sol. I handles,	@1 00	2 00	
10 Sol. blocks & fixtures,	@1 25	12 50	
9 " "	@15	1 35	
15 Old files,	@10	1 50	
20 New sol. knives,	@12½	2 50	10
2 Solder cutters,	@$9 & $15	24 00	
95 lb. Solder,	@40	38 00	
5 Iron plates,	@20	1 00	
1 Marble "		1 50	
1 Vise for sqr. cans,		5 00	
1 Mandril,		4 00	
240 lbs. lead,	@18½	44 40	
1 Vise,		4 50	
1 Set rollers & table,		10 00	
1 Pr. shears,		5 00	20
1 Press,		50 00	
12 Sets round dies,	@$8	96 00	
2 " square,	@$25	50 00	
1 Pr. square shears,	@$25	25 00	
3 " solid irons, complete,	@2 50	7 50	
		$1,739 92	

Exhibit D 1, Page 3.

			$1,739 92
	1 Straight edge,		3 00
	Lot spelter,		1 00
	61 Old sol. irons	*a*25	15 25
	40 good " "	*a*1 00	40 00
	1 Aligator,		15 00
	50 lbs. hoop iron,	*a*11	5 50
	2 Sh. gol. iron,	*a*25	6 25
	10 " sheet " (120 lbs.,)	*a*14	26 80
10	100 lbs. wire,	*a*18	18 00
	Anvil & hammer,		2 50
	500 lbs tin clippings,	*a*3	15 00
	2 Boxes coke tin,	*a*$15	30 00
	½ " sqr. "		10 00
	Rosin grinder,		1 00
	½ bbl. rosin,		20 00
	1 Pr. snips,		2 50
	500 Old tin cans,	*a*6	30 00
	3 Fire pots,	*a*$1	3 00
20	150 B. C. Coal,	*a*15	22 50
	4 14-in. files and 2 rasps,	*a*1 25	7 50
	1 solder mould, *a*$12, 1 do. *a*$2		14 00
	145 lbs. solder,	*a*40	58 00
			$2,179 97

[Page 4, of original copy, is blank.]

Exhibit D 1, Page 5.

R. Est. & Fixtures.

9 Sieves,	@1 25	11	25	
4 " new,	@2 50	10	00	
15 5-gall. cans, (new)	@1 00	15	00	
732 5-gall. cans, old,	@25	183	00	
1 Wooden rack,		3	00	
960 ½ g. glass bottles,	@1 00 pr. doz.	80	00	
10 Tomato rubbers,	@25	2	50	
60 Nets,		8	00	
3 Show racks,	@75	2	25	10
11 Jelly bags,	@30	3	30	
15 Doz. glass jars,	@75 pr. doz.	11	25	
1 Coal scuttle,	@25		25	
229 Baskets,	@25	57	25	
60 do. scalding,	@50	30	00	
107 Tin pans,	@25	26	75	
33 Tin cups,	@10	3	30	
1000 Ea. 4, 6 & 8 lb. rivets,		1	50	
250 3-lb. "			15	
50 Pr. ears. bucket,	@2		25	20
80 Gall. buckets,	@50	40	00	
8 Fire pots,	@50	4	00	
Coal pan,			50	
Water pot & can,		1	40	
		$494	90	

Exhibit D 1, Page 6.

			$494 90
	5 Lamps,	@1 50	7 50
	2 Dust brushes,		40
	1 Stove & scuttle,		5 00
	1 Clock, (tin shop)		2 00
	20 Stools,	@50	10 00
	10 Mallets,	@8	80
	Lot Stove pipe, up stairs,		13 25
	1 Basket,		1 00
	1 Bench,		2 00
10	Lot stencil plates,		83 00
	4 Awls,	@10	40
	Hatchet & Hammer, @1 00 @75		1 75
	Marking brush & cup,		50
	14 Dippers & skimmers,	@25	3 50
	Cases for labels,		
	2 Pr. shears,		1 00
	30 Qrs. Manilla paper,	@10	3 00
	2 Label chisels and mallet,		2 00
	Stand for cutting labels,		12 00
20	1 Mortar & pestle,		1 00
	12 Tables, 2 @$2, 7 @$5, 2 @$6, 1 @$10,		61 00
			$706 00

			$706 00	
12 Yankee buckets,		a20	2 40	
5 " " iron hoop,		a40	2 00	
9 Ea. crocks,		a12	1 08	
2 6-gall pails, a50, 3 do. a75			3 25	
2 Iron pumps,			15 00	
2 Tomato tanks,		a$50	100 00	
2 Iron tomato scalders,		a$5	10 00	
12 Cooking tanks,		a$12	144 00	
1 Gal. iron tray,			1 50	10
1 Horse, $125, & harness, $5,			130 00	
21 Tubs,		a80	16 80	
2 Gal. iron trays,		a4 00	8 00	
1 Tin measure, 2 gall.,			75	
2 Arm chair, 1 revolv. do.,			4 00	
Stove & pipe, (front room,)			10 00	
2 Lamps, $1, 1 lamp, a25			1 25	
3 Paste brushes,		a15	45	
2 Lanterns,	a2 50	a1 25	3 75	
6 M. M. choppers,		a50	3 00	20
2 Clocks,		a5 00	10 00	
4 " faces,			3 00	
1 Bath R. R. tank,			125 00	
1 Pot beam,			4 00	
Stove pipe, down stairs,			3 00	
			$1308 23	

Exhibit D 1, Page 8.

			$1308 23
	1 Iron furnace,		2 25
	1 Drip pan,		50
	½ Bush. measure,		50
	4 Gal. measures,	a40	1 60
	2 6-gal. kettles, a1 50. 2 3-gal. do., a75		4 50
	8 Sieves,	a50	4 00
	112 Wooden trays,	a20	22 40
	1 Large gal. tray,		8 00
10	1 Blanch Screen,		10 00
	2 cap fillers, a75, wash basin, 40,		1 90
	1 Can & oil,		50
	2 Tin strainer & measure,	a50	1 00
	Lot Glass bottles,		2 00
	1 Corn wheel,		5 00
	1 Scoop, 1 25, 1 saw, 50		1 75
	Apple cutter,		5 00
	3 Cop. dipper, a50, 3 large, do., a1 25,		5 25
	4 Tea scales, a75, 2 funnel & dip. a25		3 50
20	2 Ropes, tackle, 1 25, & blocks, 50,		1 75
	2 Nets & frames,	a1 00	2 00
	1 Can tongs, 50, 3 iron hooks, a50,		2 00
	Thermometer,		50
	85 ft. gal. hose,	a20	17 00
			$1,411 13

		$1,411 13	
1 Grad'g glass,		1 50	
Tins in closet,		8 00	
2 Dark lanterns,	@1 25	2 50	
6 Cop. skimmers & measures,	@1 25	7 50	
5 Knives, @15, 10 jelly tins, @10,		1 75	
18 Mallets,	@12	2 25	
100 Gal. iron trays,	@1 75	175 00	
1 Corking machine,		30 00	
1 Sealing wax dish		1 00	10
1 Coal scuttle,		50	
1 Monkey Wrench, $1, screw-driver & hammer, $1,		2 00	
1 Boiler, engine, &c.,		125 00	
2 Double iron kettles,	@20	40 00	
6 " Copper, "	@25	150 00	
2 Large stoves,		16 00	
Steel-yards & funnel,		75	
4 Tin rims for jelly,	@1 00	4 00	
1 Platform scales,		22 50	
1 Sugar bin & bar.		5 50	20
Asparagus Blancher,		10 00	
1 Corn cutter,		35 00	
2 Candle moulds,		18 00	
1 Sausage cutter,		5 00	
5 Shields for fire pots	@1 00	5 00	
		$2,078 38	

Exhibit D 1, Page 10.

			$2,078 38
	3 Brooms, 25, 1 plane, 1 50,		1 75
	5 Tomato catsup tanks,	*a*$100	500 00
	Farmer's boiler,		4 00
	2 Bu. baskets, 75, ½ bu. measure, 50,		1 25
	1 Tin pump, 1 50, 2 wheel-barrows, *a*4 00,		9 50
	Lot glass sash, 110,	*a*1 25,	137 50
	" muslin sash, ½ price,		75 00
	8 Oyster stands,	*a*1 00	1 00
	H. Saw, 1 00, rope, 3 00,		4 00
10	2 Water tanks, one $65, one $35,		100 00
	1 Rope & tackle,		1 25
	Lamp shades, twine, knives, &c.,		2 35
	8 Pad locks, *a*25, 5 lb. sh. load, *a*20,		3 00
	3 Doz. H. Scrubs, *a*1 50, 1½ doz. blacking, *a*50,		5 25
	Hatchet & bucket,		70
	8 Dies in hand, Hilgert,	*a*3 00	24 00
	Printing plates, engr'd,		152 50
	Bottle moulds,		110 00
	1 Barn,		50 00
20	Office fixtures,		200 00
	Buildings, boilers, piping, &c., as marked in last stock acct.		6,000 00
			$9,468 43

Exhibit D 1, Page 11.

MDZE.

48 Bbls.,		@25	12 00	
23 Doz. qt. jars,		@1 00	23 00	
50 Gal. wine,		@1 00	50 00	
44 Bot. peach brandy,	per gall.	@1 50	33 00	
1 Gall. apple jack,			2 00	
10 lb. candles,		@18	1 80	
203 Empty bbls.,		@1 50	305	
7 R'ms paper,		@35	2 45	
1 Doz. pt. bottles,			1 25	10
5 Jars, "		@20	1 00	
13 Ground stop bottles,		@12	1 68	
20½ Gall. alcohol,		@3 00	61 50	
Lot bottles, (jelly room,)			4 00	
Stove & scuttle, "			5 50	
Tumbler cap machine,			6 00	
350 Hav. Sugar,		@18	63 00	
50 lbs. nails,			4 50	
20 Hhds.,		@75	15 00	
1,000 lbs. glass,		@½	5 00	20
2 S. F. salt,		@5 25	10 50	
Coal dust,			10 00	
4 Tons coal,		@$11	44 00	
			$662 12	

Exhibit D 1, Page 12.

		$662 12
2½ Bundles hoop iron, 125 lbs., *a* 11 cts.,		13 75
Loose boards,		5 00
44 Pks. envelopes,	*a*10	4 40
Corks,		
Value of spices,		263 80
		$949 07
51,048 Meat labels,	*a*4 50	229 71
		$1,178 78

JELLY.

173 g. juice in glass,		*a*50	86 50	
1¼ Bbl. plaster,		*a*3 75	4 69	
Bill tumblers, sheets & duffer,			228 00	
3 lbs. C. Tartar, *a*95, 3 Tar. Acid, *a*1 65,			7 80	
1,000 Tumbler caps,	gro.	*a*1 60	11 20	
16 Muslin,		*a*33	5 28	
375 Wh. Sugar,		*a*28½	31 87	
108 Cans apple juice,		*a*30	162	
349 " peach "		*a*30	523 50	10
6 " quince "		*a*30	9 00	
Value of corks on hand,			65 00	
" " glass, "			549 55	
" " oils "			13 91	
8½ Doz. 8 oz.,			18 41	
1¼ " 6 oz.,			2 53	
Labels,			80	
			$1,799 24	

Exhibit D 1, Page 14.

CUMB. SAUCE.

168 Bot. garlic,	*a*30		50 40
4½ Gall. brandy,	*a*4 00		18 00
20 Gro. ½ pt. C. sauce stoppers,	*a*2 50		50
250 Gall, Eng. catsup,	*a*2 00		500
82 Bbls. (40 g. e.) walnut juice,	*a*50		1640 00
2 " " syrup,	*a*1 25		100
17 " " W. catsup,	*a*1 38		938 40
4 " " Cumb. sauce, (complete)	*a*1 25		200 00
6 " " " " (short, $23 ea)	*a*1 25		162
53 " " " " (" $28 ea.,)	*a*8		1166
10 lbs. assofeit.	*a*85		8 50
2 Bbl. mucilage, 60 v., 10 gum,			25 40
50 Gro. corks,			22 50
Value of glassware,			235 96
" " spices,			230 90
433 Doz. pts. A. & R., *a*4 50, less 50 pr. ct.,			974 25
2,158 " ½ pt., *a* 2 50 " " "			2,697 50
Show cards, A. & R.,			125 00
			$9,144 81
280 lb. Acetic acid, 922321	*a*28		78 40
Labels,			82 50
Sold by A & R, not paid, less 7½,			379 49
			$9,685 20
Less $900, Griffin & Porch, 50 pr. ct. off, $450			
" $312, M. & Shute, " " " $156			606 00
			$9,079 20

Corks.

50 Gro.	½ pt. C. sauce,	*a*45	22	50	
55 "	jelly corks,	*a*50	27	50	
10 "	vial "	*a*25	2	50	
55 "	vial corks,	*a*25	18	75	
60½ "	jelly do.	*a*50	30	25	
6 "	flat 2 in.	*a*75	4	50	
22 "	doub. thick,	*a*1 50	33	00	
14½ "	flat, 1½ in.,	*a*50	7	25	
7½ "	Bogle's,	*a*30	2	25	10
51⅓ "	jelly corks,	*a*50	25	87	
26¼ Vial cork lg.,		*a*30	7	95	

Exhibit D 1, Page 16.

GLASS.

8	Doz. jelly bottles, 8 oz.,	@5 50	3 65
4½	" " old,	@50	2 25
38 $\frac{8}{12}$	Gro. 8 oz., C. oils,	@6 60	255 75
12	" 12 oz. tumblers,	@10 50	126 00
36	" ½ pt. jelly,	@5 50	16 50
36	" 6 oz. "	@4 75	14 25
8	" 8 oz. "	@5 50	3 65
80	Gro. pt. ovals,	@$5	400 00
38	Doz. qt. b. fruits,	@90 cts.	34 20
33	Gro. ½ pt. C. sauce,	@4 12	135 96
40	" " " stoppers,	@2 50	100 00
9	Hex. pep. sauce,	@6 00	54 00
36	Gro. ½ pt. jelly,	@5 50	198 00
39	" 6 oz. "	@4 75	185 25
			$1,529 40

Spices.

80 lbs. cinnamon,	@95	76	00
80 " ginger,	@70	56	00
25 " pepper, (white)	@50	12	50
15 " gro. mace,	@1 70	25	50
2 oz. oil mustard,	@3 50	7	00
29 " " cloves, $6 per lb.,	@60	10	87
7 " " lemon,	@$1 pr. oz.	7	00
2 " " pear,	@4 50 pr. lb.		56
2 " " almond,	@1 75 pr. oz.	3	50
13 " ess. p. apple & s. berry,	@3 50 pr. lb.	2	85
½ lb. ether,	@$4	2	00
23 " coriander seed,	@25	5	75
200 bbl. cayenne,	@75	150	00
50 Mace, (1.70)	@$1	50	00
2 lbs. allspice,	@45		90
25 " gum tragicum,	@35	8	75
31 " s. margerum,	@40	12	40
33 " s. savory,	@40	13	20
22 " ginger root,	@50	11	00
17 " thyme,	@40	6	80
29 " mustard,	@50	14	50
6 " sweet basle,	@40	2	40
		$479	48

Exhibit D 1, Page 18.

			$479 48
75	lbs. whole pepper,	@40	30 00
20	" " allspice,	@40	8 00
2	" " cloves,	@50	1 00
45	" gr. pepper, blk,	@50	22 50
68	" " n'megs,	@1 25	85 00
40	" mustard seed,	@20	8 00
1	bbl. sage,		12 50
20	gr. coriander,	@25	5 00
45	" cummin,	@42	18 90
47	" lovage,	@82	38 54
½	lb. oil allspice,	$16	8 00
			$716 92

Boxes.

10,000 ft. boards,	*a*$40	400	00
1,800 " plank,	*a*$45	81	00
2,951 empty boxes,	*a*20	590	20
20,000 ft. boards,	*a*32	640	00
10,000 " plank, at Meder's,	*a*34	340	00
		$2,051	20

Exhibit D 1, Page 20.

Tomato Catsup.

Value of corks,			$23 50
" " glass,			655 75
" " spices,			194 62
" " labels			5 25
" " 62 pt., A. & R., less 35,		a1 75	70 53
110 qt. "		a2 75	196 53
1,378 doz. pt., C. S. F.,			1,567 48
408 " qt. "			729 30
6 gro. caps,		a90	5 40
1,500 gal. pulp,		a45	675 00
			$4,123 36
Tomatoes—			
3 lb. 574 doz.	a3 75, less 35 pr. ct.,		1,390 94
2½ " 136 "	a3 50, " " "		310 40
2 " 226 "	a3 25, " " "		477 43
Labels,			45 09
			$2,223 77

R. Estate & Fixtures, Cont.

Office furniture, &c.,	$200 00
R. est.,	6,000 00

[Page 22, of original copy, is blank.]

Exhibit D 1, Page 23.

LABELS.

	Cran. sauce,			$21 37
	Zea mays,			24 66
	Salad cream,			25 00
	Apples,			51 17
	Quinces,			96
	Plums,			13 00
	Okra,			3 08
	Mdze., 51,048 meat labels,		a4 50	229 71
10	C. Sauce—			
	38,000 red, a1 50, $57; 23,000 white, a50, $11 50; 20,000 strips, a70, $14 00,			82 50
	Corn,	42,000,	a$5	210
	Lima beans,	11,000,	a$5	55
	Succotash,	2,000,	a$5	10
	Peaches,	12,000,	a$5	60
	Asparagus,	2,200,	a$5	11
	Quinces,	3,900,	a$5	19 50
	B. berries,	2,500,	a$5	12 50
20	W. berries,	1,700,	a$5	8 50
	S. berries,	3,500,	a$5	17 50
	Tomato catsup	3,500,	a1 50	5 25
	Jelly,	40,000,	a2 00	80 00
	Cherries,	4,500,	a22 50	
	Tomatoes,	9,000,	$5	45 00
				$984 80

Exhibit D 1, Page 24.

Tin can acct.,		$2,119 97	
R. est. & fixtures,		9,468 43	
Mdze,		949 07	
Meat labels,		229 71	
Cumb. sauce,		9,079 20	
Labels,			
Tomatoes,	$2,223 77		
Tomato catsup,	4,128 36		
	6,347 13		
Peaches, 2 lb. 358 doz., 4¼,	$989		10
2½ lb., 2,591 doz., 4½,	7,578 68		
3 lb., 2,646 " 4¾,	8,169 53		
550 Crates	275 00		
Labels,	60		
	17,072 21		
Oysters, 103 doz., *a*2 50		171 67	
Cran. sauce, 4 9/12 doz., *a*4 00,	$12 67		
Labels,	21 37		
	34 04		
Zea mays, 6/12 doz., *a*$3	$1 00		20
2 bbls. hominy,	14 00		
Labels,	24 66		
	39 66		
Oyster catsup, 9 doz.,	13 50		
	13 50		
Salad cream, 72 doz., *a*3 00	142 00		
Mustard,	14 50		
Labels,	25 00		
	181 50		
Asparagus, 65 doz., *a*4 50,	190 13		30
Labels,	11 00		
	201 13		
String beans, 2 doz.,		5 20	
Lima beans, labels,		55 00	
		$45,967 42	

Exhibit D 1, Page 25.

			$45,967 42
Apples, jam, 31 $\frac{2}{12}$ 2 lb., 14 $\frac{10}{12}$ 3 lb.,		$81 61	
" Marmalade, 6 doz.,		10	
Labels,		51 17	
			142 78
Brandy trts., Peaches, 2 doz.,		6 00	
B. berry, 12½, @$5,		40 63	
Corks,		37 50	
Glass,		34 20	
			118 33
Pepper sauce, 46 doz., @3 00		89 70	
" " 116 " @3 50		263 90	
			353 60
Honey, 4¼ doz.,		11 83	
Glass,		54 00	
			65 83
Plums, labels,			13 00
Okra, labels,			3 08
Corn, do.			210 00
Succotash, do.			10 00
Quince, do.			19 50
B. berries. do.			12 50
Wh. berries, do.			8 50
Str. berries, do.			17 50
Boxes,			2,051 20
Jellies,			1,799 24
Cherries, do.	$5 00		22 50
			$50,704 98
Pear, do.	2,000		10 00

EXHIBIT D 5.

Account Stock C. S. F. & Co., March 10, 1865.

Buildings, sheds, office, lot, ground, engine house, gas pipes & fixtures, boilers, steam pump, belting & shafting,		$12,000	00
12 Cooking tanks,	*a*$15	180	00
1 R. R. tank,		125	00
2 Double iron kettles,	*a*$20	40	00
6 " copper "	*a*$50	300	00
5 Tomato catsup tanks,	*a*$100	500	00 10
2 Water tanks,	*a*$65 and $35	100	00
Office fixtures,		200	00
1 Aspargus blancher,		10	00
1 Corn machine,		35	00
1 Sausage cutter,		5	00
5 Fire pot shields,		5	00
2 Sets candle moulds,	*a*$9	18	00
35 Yankee buckets,	*a*20	7	00
10 Cedar buckets,	*a*50	5	00
1 Meat cut box,		3	00 20
1 10-gal. keg,		3	00
1 Fall & tackle,		6	00
2 gal. iron pans,	*a*3	6	00
		$13,548	00

Exhibit D 5, Page 2.

			$13,548	00
	1 Large rope,		2	00
	Lot flagging,		3	00
	Lot boards,		2	00
	2 Iron bolts,	@$1	2	00
	Lot boards & crane,		2	00
	1 Door frame,		2	00
	1 Stove,		2	00
	1 Stand & filterer,		5	00
10	2 Hand saws,		1	50
	1 Wooden bather,		10	00
	3 Iron bands & screw bolts,		3	00
	Steam pipe valves not in use,		10	00
	Tinman's cupboard,		6	00
	Engineer's "		2	00
	Pokers, hooks, &c.,		6	00
	2 Large boxes,		1	50
	Boards for divisions,		20	00
	Work benches, &c., in tin shop,		100	00
20	1 Large box, iron bound,		4	00
	Flag staff & hallyards,		10	00
	1 Awning iron & cranes,		6	00
	15 Candle stands,	@20	3	00
	1 Iron glass Bather,		10	00
			$13,761	00

				$13,761	00
Lot iron rods & hoops,				5	00
9 Seives,		@$1	25	11	25
4 "		@2	50	10	00
155 gal. Cans, (new)		@1	00	15	00
732 " "	(25 cents.)	@50		366	00
1 Wooden rack,				3	00
1,016 ½ g. Glass bottles,	($1 per doz.)	@$30	gro.	211	66
10 Tomato rubbers,				2	50
60 Nets & frames,				8	00
3 Show racks,				2	25
11 Jelly bags,		@30		3	30
15 doz. Jars,		@75		11	25
1 Coal scuttle,					25
246 Truck baskets,		@25		61	50
60 Scalding "		@50		30	00
107 Tin pans,		@25		26	75
33 " cups,		@10		3	30
Lot rivets,				1	65
50 pr. Bucket ears,					25
80 gal. Iron buckets,		@50		40	00
8 Fire pots,		@50		4	00
1 Coal pan,				1	50
Water pot & can,				1	40
				$14,580	81

Exhibit D 5, Page 4.

				$14,580 81
	5 Lamps,			7 50
	2 Dust brushes,			40
	Stove & scuttle,			5 00
	Clock,			2 00
	20 Stools,	(50 cts.)	a$1	20 00
	10 Mallets,			80
	Stove pipe,			18 25
	Basket and bench,			3 00
10	Lot stencil plates,			83 00
	4 Awls,			40
	3 Hatchets & hammers,			3 00
	Marking brush & cup,			50
	14 Dip. & skimmers,			3 50
	3 pr. Shears,			2 25
	Label chisels & mallet,			3 00
	Label stand,			12 00
	Mortar & pestle,			1 00
	12 Tables,	2 a$2, 7 a$5, 2 a$6, 1 a$10		61 00
				1 08
20	9 E. crocks,			3 25
	5 6-gal. Tin pails,		2 a50, 3 a75	15 00
	2 Iron pumps,			100 00
	2 Tomato tanks,			10 00
	2 " scalders,			
				$14,936 74

Exhibit D 5, Page 5.

		$14,936	74	
1 Gal. tray,		1	50	
21 Tubs,	a80	16	80	
2 Gals. Trays,		8	00	
1 2-Gal. measure,			75	
3 Arm chairs,		4	00	
Stove & pipe, (front room)		10	00	
3 Lamps.		1	25	
3 P. brushes,			45	
2 Lanterns,		3	75	10
6 M. M. knives,	a50	3	00	
2 Clocks,	a$5	10	00	
4 " faces,		3	00	
1 Pot beam,		4	00	
Stove pipe,		3	00	
Iron furnace,		2	25	
Dripping pan,			50	
½ Bu. measure,			50	
4-Gal. measure,		1	60	
4 Kettles,		4	50	20
8 Seives,	a50	4	00	
112 Wooden trays,	a30	33	60	
1 Large gal. "		8	00	
Blanch screen,		10	00	
		$15,071	19	

Exhibit D 5, Page 6.

			$15,071	19
	2 Fillers & basin,		1	90
	Oil can,			50
	2 Strainers & measures,		1	00
	Lot glass ware,		2	00
	Corn wheel,		5	00
	1 Scoop,		1	00
	1 Apple cutter,		5	00
	6 Copper dippers,		5	25
10	4 pr. Tea scales,		3	00
	2 Funnells,			50
	1 Sm. rope & tackle,		1	75
	2 Nets & frame,		2	00
	Tongs & hook,		2	00
	Thermometer,			50
	85 Ft. gal. hose,	@20	17	00
	1 Grad. glass,		1	50
	Tins in closet,		8	00
	2 Dark lanterns,		2	50
20	6 Copper dippers,		7	50
	5 Knives & tins,		1	75
	18 Mallets,		2	25
	100 Galv. iron trays,		225	00
	Corking machine,		30	00
			$15,398	09

Exhibit D 5, Page 7.

	$15,398	09	
Coal scuttle & dish,	1	50	
Monkey wrench & screw driver,	2	00	
2 Large stoves,	16	00	
Steel yards & funnel,		75	
4 Iron jelly rims,	4	00	
1 Platform scales,	22	50	
Sugar bin & bar,	5	50	
3 Brooms,		75	
1 Plane,	1	50	10
Farmer's boiler,	4	00	
1 Axe,	1	25	
2 Bu. baskets,	1	50	
½ Bu. measure,		50	
1 Tin pump,	1	50	
2 Wheel-barrows,	8	00	
Lot glass sash,	137	50	
" muslin do.,	75	00	
" hot-bed boards,	25	00	
8 Oyster stands,	8	00	20
10 " knockers,	5	00	
Sm. rope & tackle,	1	25	
Lamp shades, knives, &c.,	2	35	
Pad locks & chains,	3	00	
	$15,726	44	

Exhibit D 5, Page 8.

				$15,726 44
	3 Doz. hand scrubs,			4 50
	1½ " blacking,			75
	1 Bucket,			50
	8 Dies, (J. Hilgert,)			24 00
	Printing plates,			152 50
	Bottle moulds,			110 00
	1 Glass case,			25 00
	1 Case & drawers,			35 00
10	2 Label cases,	$40 & $25		65 00
	1 Steam pump,			23 00
	2 Meat hooks & steel,			1 00
	1 Fruit press,			10 00
	12 Fixed benches,	*a*$1		12 00
	7 " "	*a*$1	50	10 50
	1 Cork squeezer,			75
	1 10-Gal. Keg, $3, 2 5-gal keg, $2,			7 00
	1 Five gal. demijohn,			1 00
	1 Grind stone,			5 00
20	1 Large coal Seive,			5 00
	550 Peach crates,			550 00
	100 lb. Wrought nails,			9 50
				$16,778 44

Exhibit D 5, Page 9.

		$16,778	44	
4,000 Asparagus cans,	@16	640	00	
55,717 2-lb. N. Y. cans,	@11	6,128	87	
4 Sponges & files,		1	50	
2 Burring machines,		15	00	
1 Punch,		1	25	
6 S. Copper,		3	00	
2 Formers,		3	00	
Sponges & compass,			65	
1 Rivet hammer,			50	10
Awl & plyers,			35	
Punches, gimlets, &c.,		2	10	
4 Cold chisels,		1	37	
1 Punch & rasp,		2	00	
5 Stakes,		8	75	
Tacks & Rings,			25	
Square can machine,		30	00	
Block fastenings,			75	
Japan rings & handles,		4	00	
2 Doz. sol. I. handles,		2	00	20
19 " blocks & fix.,		13	85	
15 Files,		1	50	
20 New sol. knives,		2	50	
2 Sol. cutters,		24	00	
		$23,665	63	

Exhibit D 5, Page 10.

			$23,665	63
	5 Iron plates,		1	00
	1 Marble plate,		1	50
	1 Vise for sq. cans,		5	00
	1 Mandrill,		4	00
	1 Vise,		4	50
	Set rollers & table,		10	00
	2 pr. Shears,		8	00
	1 Press,		70	00
10	12 Sets round dies,	a$20	240	00
	2 " " "		45	00
	2 " square "		50	00
	3 " sol. irons,		7	50
	1 S. edge,		3	00
	61 Old sol. irons	a25	15	25
	40 Good "	a$1	40	00
	1 Alligator,		15	00
	50 lb. Hoop iron,		5	50
	25 " galv. "	a25	6	25
20	120 " sheet "		26	80
	100 " sheet "		18	00
	Anvil & hammer,		2	50
	1 Iron boiler for solder,		5	00
			$24,249	43

Exhibit D 5, Page 11.

		$24,249	43	
58 bbls. Sugar,	@25	14	50	
23 Doz. jars,	@$1	23	50	
50 Gal. wine,	@$1	50	00	
25 " peach brandy,	@$2 50	62	50	
1 " Apple jack		2	00	
10 " Candls,		2	00	
203 Bbls,	@$2 50	507	50	
11 Rms. straw paper,	@60	6	60	
1 Doz. pt. bottles,		1	25	10
5 " jars,		1	00	
13 " bottles,		1	62	
20 " alcohol,		60	00	
Lot bottles, &c., $4, stove & scuttle, $5	50	9	50	
Tumbler cap machine,		6	00	
350 Havana sugar,	@18	63	00	
1½ S. salt,		7	87	
Bone Dust		10	00	
1½ Ton coal	@$11	16	50	
125 lb. Hoop iron,	@11	13	75	20
Lot boards,		5	00	
200 lb. Cayenne,	@80	160	00	
2 " Gr. allspice,	@50	1	00	
50 " Mace,	@$1 70	85	00	
		$25,359	02	

Exhibit D 5, Page 12.

			$25,359	02
	15 lb.	Gr. allspice,	@45	6 75
	53 "	Gum,	@40	21 20
	9 "	S. savory,	@45	4 05
	6 "	S. margerum,	@45	2 70
	30 "	Gr. mustard,	@55	16 50
	14 "	Afr. Ginger,	@60	8 40
	2 "	Spices,		1 00
	17½ "	Grain allspice,	@45	7 87
10	31 "	Pulv. Thyme,	@45	13 95
	53 "	Sum. savory,	@45	14 85
	8 "	Sweet basle,	@45	3 60
	10 "	Jam. ginger root,	@70	7 00
	52 "	Pulv. lovage seed,	@$1 25	65 00
	46½ "	" cummin,	@50	23 25
	1 Bbl.	sage,		12 50
	24	Pulv. coriander,	@25	6 00
	40	Wh. mustard seed,	@25	10 00
	65	Gr. nutmegs,	@$1 50	97 50
20	33 "	pepper,	@50	16 50
	2 lb.	Whole cloves,	@85	1 70
	100	White pepper,	@45	45 00
	239 lb.	Acetic acid,	@35	83 65
	4	Carboys,	@$2	8 00
				$25,835 99

			$25,835 99	
1.765 Gal. jelly juices,		a50	882 50	
2 Bbls. hominy,		a$7	14 00	
40 Bu. charcoal,		a18	7 20	
28 Gro. 8-oz. jelly bottles,		a$5 50	154 00	
50 " Pt. ovals "		a8 00	400 00	
15⅓ " Qt. brandy frt.		a17 50	268 33	
5 5/12 " " " peach,		a14 62	79 19	
10½ " Pt. hexagon,		a6 60	63 00	
9¾ " 12-oz. tumblers,		a10 50	102 37	10
16½ " 6-oz. jelly,		a4 75	78 37	
10 " 10-oz. "		a5 50	55 00	
2 " 8-oz. C. oils,		a6 50	13 00	
9¼ " 8-oz. tumblers,		a4 80	44 40	
17 " " "		a4 80	81 60	
¾ Bbl. plaster,		a3 75	2 81	
10 lb. gr. coriander,		a25	2 50	
763 Gal. tomato pulp,		a20	152 60	
30 Qrs. paper,		a10	3 00	
145 Gal. juice in bottles,		a$1	145 00	20
Labels,			945 00	
50 Gro. ½-pt. C. S. corks,		a45	22 50	
6 " flat 2-in "		a75	4 50	
22 " doub. thick "		a1 50	33 00	
14½ " 1½-in "		a50	7 25	
51⅓ " jelly "		a50	25 68	
			$29,422 79	

Exhibit D 5, Page 14.

				$29,422 79
	26¼ Gro. vial corks,		a30	7 88
	20,393 Ft. boards,		a$32 62	665 22
	15,878 " plank,		a34 50	547 79
	21 Gro. tumbler caps,		a90	18 90
	10 Yds. muslin,		a37½	3 75
	1 Qt. alcohol,			75
	5 Gro. bottle caps,		a1 25	6 25
	¼ lb. Tin foil,			15
10	3½ " Tar. acid,		a1 55	5 43
	1¾ " Flav. extract,		a3 50	6 12
	1 " Pear extract,			4 25
	6 oz. Oil lemon,			6 00
	2 oz. Ess. oil mustard,		a3 50	7 00
	½ lb. Oil cloves,		a6	3 00
	¼ " " pimento,		a19	4 75
	90 " Sugar,		a28	25 20
	20 " "		a26	5 20
	6 Paste brushes,			1 25
20	Postage stamps & stationery,			6 00
	211 Cab. sauce boxes,		a24	50 64
				$30,798 32

		$30,798	32	
Rosin ground,		1	00	
1 Pr. snips,		2	50	
1 " shears,		25	00	
3 Fire pots,		3	00	
6 Files & rasps,		7	50	
2 Sol. moulds,		14	00	
69 Boxes, C. W. tin,	@17 12	1,181	62	
80 " coke "	@16 62	1,330	00	
18 lbs. tallow,	@18	3	24	10
1,000 Cans, part made,		10	00	
570 lbs. solder,	@40	228	00	
1,296 " lead,	@13 $\frac{3}{10}$	178	20	
660 lbs. strip tin,	@57	376	20	
1 Carboy,		2	00	
Lot spelter & acid,		2	00	
19 lbs. bar copper,	@71	13	49	
3 " cream tartar,	@95	2	85	
Awl & lock,			35	
Fruit pickers & nails,			35	20
1 Ball candle wick,			10	
4 Balls Sea Island cotton,		1	60	
Screws, wicks, thread, &c.,			62	
Venice turpentine,			25	
4 lbs. sealing wax,		2	00	
		$34,184	19	

Exhibit D 5, Page 16.

				$34,184 19
	6 lbs. tomato seed,		@$2	12 00
	5 " " "		@$1	5 00
	11 New jelly bags,		@50	5 50
	Sheet lead,			1 00
	25 lbs. white lead,			5 50
	Tinct. Cochineal,			50
	2 Sackerometers,			2 00
	20 Doz. fruits, in case,		@3 00	60 00
10	2 lbs. B. ether,			2 00
	5,392 boxes,	@24,	$1,294 08	
	Less 3¼ cts. for 1,000,		32 50	
				1,261 58
	½ Side leather,			2 50
	1 Long augur,			1 00
	11 lbs. Sol. droppings,		@30	3 30
	30 Gal. Vinegar,		@30	9 00
	3 Books,			4 25
20				$35,559 32

Exhibit D 5, Page 17.

		$35,559	32
168 Bot. garlic,	*a*30	50	40
4½ Gal. brandy,	*a*$4	18	00
60 Gro. C. S. stoppers,	*a*2 75	165	00
250 Gal. Eng. catsup,	*a*$2	500	00
3,280 " Walnut juice,	*a*75	2,460	00
80 " " "	*a*75	60	00
680 " " catsup,	*a*1 38	938	40
4 Bbls. sauce, complete,	*a*1 25	200	00
6 " " short, $23 e.,	*a*1 25	162	00
53 " " " $28 "		1,166	00
10 " Assofeit,	*a*85	8	50
2 " Mucilage, 60 vin., 10 lb. gum,		25	40
34½ Gro. C. S. bottles,	*a*4 12½	142	31
Show cards,		125	00
		$41,580	33

10

Exhibit D 5, Page 18.

					$41,580 33
Tumblers, 21 doz., 12 oz., Jelly			a$5 50,	$115 50	
43 " 8 oz., "			2 35,	101 05	
65 " 10 oz., "			2 90,	188 50	
67½ " 8 oz., "			3 00,	202 50	
70½ " 6 oz., "			2 43,	171 31	
				778 86	
Less 5 pr. ct. com.,				38 94	
					739 92
27 doz. salad cream,		a3 00,		81 00	
1 1/12 " oyster catsup,		a2 00,		1 83	
35 " apple jam,		a2 50,		87 50	
12 1/12 " brandy b. berry,		a4 00,		48 33	
Jelly, hands A. & R.,				48 53	
15 lb. old jelly,		a25,		3 75	
3 Rms. paper,		a60,		1 80	
75 doz. oval catsup,		a2 00,		150 00	
1,888 pt. tom. catsup,		a1 25,		2,360 00	
504 qt. " "		a2 00,		1,008 00	
					3,790 74
396 doz. pt. C. sauce,		a54,		1,782 00	
1,534 " ½ pt. "		a30,		5,125 00	
516 " " "				312 00	
Chicago shipment,				7,219 00	
Less 40 pr. ct.,				2,887 60	
					4,331 40
					$50,442 39

U. H. Dudley, $58 08.

Exhibit D 5, Page 19.

$50,442 39

In Hand U. H. Dudley.

1 Doz. salad cream,			3 00
20 " zea mays,	a$2		40 00

Insurance Account, March 14, 1865.

$5,000	Royal,	7 mo.,	a2 per cent.	$59	50	
6,000	L. & London	8 "	a2 "	80	00	
5,000	N. American,	8 "	a2 "	68	00	
2,500	Albany City,	24 da.	a1 3/4 "	3	37	
2,500	Adriatic.,	do	a1 3/4 "	3	37	10
2,500	Irvin,	do	a1 3/4 "	3	37	
2,500	Commercial,	do	a1 3/4 "	3	37	
2,500	Hope,	9 mo.	a1 3/4 "	32	81	
6,600	Jersey City,	6 "	a1 1/4 "	41	25	
5,000	Morris,	9 "	a1 3/4 "	65	62	
2,500	Hoffman,	9 "	a1 3/4 "	32	81	
2,500	Baltic,	9 "	a1 3/4 "	32	81	
3,200	Cumberland,	6 yrs.	2/12	24	66	
1,800	do	7 "	5/12	16	69	
3,000	do	7 "	6/12	16	87	20
						484 50
$53,100						
4 Doz. 6 oz. jelley,			a$2 43, less 5 per cent.,			9 24
						$50,979 13
						$50,900 00

Exhibit D 5, Page 20.

	Amt. Bro. Forward,		$50,900 00
	Lorin J. Wicks' capital,		12,000 00
			$38,900 00
	Robert M. Seeley's capital,		5,000 00
			$33,900 00
	Chattel mortgage,	$10,000 00	
	Cash, March 14, (pd.) bank, April, 1867.	5,000 00	at Cumberland
	Note, at 21 days from Mch. 14, (pd.)	5,000 00	
10	Bond, due Dec. 1, 1865, (pd.)	4,633 33	
	do " Feb. 1, 1866,	4,633 33	
	do do April 1, 1866,	4,633 34	
		$33,900 00	

Exhibit D 5, Page 21.

Real estate & fix.,	$17,388	46	
Expense,	507	00	
Tin can acct.,	10,692	97	
Jelly acct.,	2,466	02	
Cumb. sauce,	10,632	76	
Catsup,	3,792	50	
Boxes,	2,525	23	
Mdze.,	2,890	19	
Salad cream,	84	00	
	$50,979	13	10

39

Exhibit D 5, Page 22.

ACCT. LABELS ON HAND.

	51,048	Meat labels,	*a*4 50	229 71
	4,750	Cran. "	*a*4 50	21 37
	5,482	Zea mays,	*a*4 50	24 66
	7,166	Salad cream,	*a*3 50	25 08
	4,175	Apples, fresh.		
	2,885	" jam,		
	547	" good,		
	4,115	" marm.,		52 74
10	11,722		*a*4 50	
	339	Plums,		
	2,716	" gage,		
	977	" damsons,		
	4,032		*a*4 50	13 77
	685	Okra,	*a*4 50	3 08
	38,000	Cumb. sauce, red,	*a*1 50	57 00
	23,000	" " white,	*a*50	11 50
	20,000	" " strips,	*a*70	14 00
	42,000	Corn,	*a*$5	210 00
20	11,000	Lima beans,	*a*$5	55 00
	2,000	Succotash,	*a*$5	10 00
	12,000	Peaches,	*a*$5	60 00
	2,200	Asparagus,		11 00
	3,900	Quince,		19 50
	2,500	B. berry,		12 50
	1,700	Wh. berries,		8 50
	3,500	Strawberries,		17 50
	9,000	Tomatoes,		45 00
	300	" catsup,		45
30	7,300	Jelly strips,	*a*50	3 45
	19,509	"	*a*$2	39 00
				$945 01

Exhibit D 5, Page 23.

INVENTORY OF GOODS REC'D FROM N. Y. HOUSE, TO BECOME PERMANENT FIXTURES.

1 Box scraper,	$1	50	
1 pr. Circular shears,	45	50	
½ Bbl. (with jelly)	1	25	
1 Fruit press,	25	00	
Platform shears,	55	00	
Solder cutter,	15	00	
4 Sol. irons,	6	00	
Hammer, forging,	1	50	10
2 pr. Can tongs,	1	00	
1 Lever press,	100	00	
1 Solder mould,	20	00	
1 " ladle,		50	
2 Set can dies,	100	00	
1 Monkey wrench,	1	25	
2 Fire pots,	6	00	
2 " " stands,	2	00	
1 Plumber's furnace,	15	00	
6 Fire pots,	15	00	20
Horse radish machine,	118	00	
Round bath tub,	16	00	
Square bath tub,	40	00	

Exhibit D 5, Page 24.

1	Die (catsup) J. Hilgert,		2 25
1	X catsup mould, F. & J. Boden,		30 00
2	Copper kettles,	$57	114 00
2	8-oz tumbler mould,		78 00
2	10-oz. " "		78 00
1	Brandy peach, "		28 00
	Drop press & dies for jelly caps,		100 00
	50 Baskets,	a60	30 00
1	Pie frt. mould, new,		36 00
1	12-oz. Tumbler mould,		60 00

(Page 25 of the original copy is blank.)

Labels, April 1, 1866.

Tomatoes, 3-lb.,	6,000	*a*$10	$60	00
" 2-lb.,	14,000	"	140	00
Peaches, white,	4,500		45	00
" yellow,	5,000		50	00
Lima beans,	800		8	00
Peas, 2-lb.,	1,200		12	00
Strawberries,	800		8	00
Pine apple,	2,000		20	00
Blackberries,	800		8	00 10
Gage plums,	1,800		18	00
Green corn, 2½-lb.,	4,500		45	00
do 2-lb.,	2,000		20	00
Cherries,	2,000		20	00
Whortleberries,	2,400		24	00
Succotash,	4,200		42	00
Pears,	2,000		20	00
Okra,	200		2	00
Quinces,	600		6	00
Asparagus,	4,000		40	00 20
			$588	00

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ACCOUNT OF STOCK, S., D. & W., APRIL 1ST, 1866.

	Real estate, buildings, boilers, engine, piping, pumps, &c.,		$14,000 00
	12 Cooking tanks,	*a*$15	180 00
	1 R. R. tank,		125 00
	2 Iron kettles,	*a*20	40 00
	8 Copper, do., 6 *a*$50, 2 *a*$57,		414 00
	5 Catsup tanks,	$100	500 00
	2 Water "	*a*$65 & $35	100 00
10	Office fixtures,		200 00
	2 Tomato tanks,		100 00
	2 Iron scalders,		10 00
	4 Cooking tanks, (jelly room,)		100 00
	Work benches, &c., in tin shop,		100 00
	1,000 ½ gal. Ex. bottles,	$30 pr. gro.	208 33
	Engineer's & tinman's cupboards,		8 00
	60 Nets & frames,		8 00
	20 Stools,	*a*$1	20 00
	Lot Stencil plates,		83 00
20	Label chisels & mallet,		3 00
	Label stand,		12 00
	3 Arm chairs,		4 00
			$16,215 33

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		$16,215	33	
Stove & pipe, (front room,)		10	00	
2 Lanterns,		3	75	
6 M. M. knives,	*a*50	3	00	
2 Clocks,		10	00	
4 " faces,		3	00	
1 Pot beam,		4	00	
1 Iron furnace,		2	25	
1 Corn wheel,		5	00	
1 Apple cutter,		10	00	10
100 Gal. Iron trays,		225	00	
1 Corking machine,		30	00	
2 Large stoves,		20	00	
Platform scales,		22	50	
Sugar bin & bar,		5	50	
2 Wheelbarrows,		8	00	
1 Glass case,		25	00	
1 Case & Drawers,		35	00	
2 Label cases,	*a*$40 & $25	65	00	
1 Grindstone,		5	00	20
1 Large Coal Seive,		5	00	
Square can machine,		30	00	
3 Solder cutters, 2 *a*$12, 1 *a*$15		39	00	
2 Sets rollers & table,		20	00	
		$16,801	33	

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				$16,801 33
	2 Lever presses,		a$100 & $70	170 00
	2 Sets can dies, (N. Y.)			100 00
	12 " round dies,		a$20	240 00
	2 " " "			45 00
	2 " square "			50 00
	1 Iron solder boiler,			5 00
	2 Solder moulds,		a$20 & $14	34 00
	1 pr. Circular shears,			45 50
10	2 pr. Platform shears,		a$55 & $25	80 00
	1 Fruit press,			25 00
	1 Solder furnace,			15 00
	Horse radish machine,			118 00
	Drop press & dies for jellies			100 00
	Tumbler cap machine,			6 00
	1 6-oz. W. M. pres. mould,			12 00
	2 8-oz. " " "			24 00
	1 12-oz. " " "			15 00
	1 ½-pt. Jelly "			12 00
20	1 Gordon tumbler "			16 00
	1 pt. Oval "			20 00
	1 pt. Cumb. sauce "			25 00
	3 ½-pt. " " "			54 00
	1 Brandy frt. "	S., D. & W.,		30 00
				$18,042 83

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		$18,042	83	
1 Catsup mould, S., D. & W.,		30	00	
1 Pie fruit " "		36	00	
2 8.oz. & 10-oz. tumbler mould, S., D. &. W.,		150	00	
1 12-oz. " "		65	00	
1 Die, (J. Hilgert,)		2	25	
1 Pea sheller, bands & wheels,		150	00	
1 Cutting box,		10	00	
1 Asparagus blancher,		10	00	
1 Sausage cutter,		8	00	10
2 Sets candle moulds,		18	00	
1 Block & tackle,		6	00	
1 Smaller do.		5	00	
2 " "		1	50	
1 Blanch screen,		15	00	
2 Dark lanterns,		2	50	
2 Bu. baskets,		1	50	
550 Peach crates,	@$1	550	00	
1 Large iron sink,		20	00	
1 Small " "		7	00	20
Stove & pipe, jelly room,		20	00	
" " tin shop,		10	00	
Flag & hallyards,		5	00	
Stove pipe in use,		25	00	
		$19,190	58	

Exhibit D 5, Page 31.

			$19,190 58
	156 Scalding baskets,	@50	78 00
	103 Blk. "	@25	25 75
	152 Tin pans,	@25	38 00
	77 Galv. iron pails,	@50	38 50
	22 Tubs,	@80	17 60
	27 Yankee pails,	@20	5 40
	9 Cedar "	@50	4 50
	7 Tables,	@$5	35 00
	1 Box scraper,		1 50
	4 Hammers & hatchet,		2 50
	80 Wooden trays,	@30	24 00
	1 Jack plane,		1 50
	2 Finishing do.,	@$1 75	3 50
	2 Hand saws,		2 50
	1 Trowel,		1 00
	Old show racks,		2 25
	1 Large tin dipper,		75
	8 Brass seives, old,	@$1	8 00
	4 " " good,	@$2 50	10 00
	10 Tomato rubbers,	@20	2 00
	Gutta percha hose,		17 00
	Square can holder,		5 00
	15 Jelly bags,	@50	7 50
			$19,522 33

		$19,522	33	
10 Candle stands,	a20	2	00	
2 Short benches,		1	00	
39 Ea. pots. for preserves,	a50	19	50	
20 Boxes, (carrying cans,)	a25	5	00	
12 Stone pots,	a$1 25	15	00	
2 Tables,	a$2	4	00	
1 Wide table,		6	00	
1 " " jelly room,		10	00	
4 Tea scales,	a50	2	00	10
Shelving in jelly room,		20	00	
7 New tin fillers,	a30	2	10	
Tins for filling gal. cans,		2	50	
1 demijohn, 2 gal.,		1	00	
9 6-gal. pails,	a75	6	75	
10 3 " "	a60	6	00	
4 Gal. measure,	a40	1	60	
2 Copper measures,		2	50	
4 " skimmers,	a75	3	00	
3 " fillers,	a75	2	25	20
6 Tin skimmers,	a25	1	50	
2 " dippers,			25	
4 Funnels,		1	00	
1 "			50	
		$19,637	78	

Exhibit D 5, Page 33.

			$19,637 78
	3 Jelly fillers,		1 00
	9 Gal. iron dippers,	@50	4 50
	3 Iron cullenders, (peaches)		10 00
	1 Iron boiler or steamer,		15 00
	1 Shovel,		50
	1 Set grates small boiler,		3 00
	1 Iron vise, (engineer's)		1 50
	3 Brass valves,	@$5	15 00
10	Iron bolts & pipe,		6 00
	Jelly racks,		5 00
	3 Monkey wrenches,		4 00
	3 Oil cans,		1 50
	1 5-gal. Oil can,		1 50
	Chaffing dish,		1 50
	2 Coal scuttles,		1 50
	1 Hair seive,		2 00
	13 Dippers,	@25	3 25
	Egg beater,		1 00
20	Rope,		50
	1 Grad. glass,		1 50
	1 " "		50
	2 Sackerometers,		2 00
	2 Gal. iron tables,		25 00
			$19,744 53

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		$19,744	53	
2 Seives,	a25		50	
5 Sash & lights,	a75	3	75	
1 Water pot,			50	
Dripping pan,			50	
1 Axe,		1	50	
1 Corn machine,				
Marking brush & cup,			75	
3 pr. Shears,		2	00	
Mortar & pestle,		1	00	10
2 ½-Bu. measures,		1	00	
1 scoop,		1	25	
2 Thermometers,		1	00	
Steelyards,			50	
Farmer's boiler,		4	00	
1 Tin pump,		1	50	
2 Meat hooks,		1	00	
20 Mallets,	a10	2	00	
6 Brooms,	a30	1	80	
Wash basin,			25	20
6 Tin pans,	a25	1	50	
3 " skimmers, new,		1	00	
3 Iron dippers, "		1	50	
		$19,773	33	

Exhibit D 5, Page 35.

			$19,773	33
	1 10-gal. keg, $3; 2 5-gal. kegs, $2,		7	00
	2 Casks,		2	00
	6 Tin fillers,	a25	1	50
	Covers to C. S. bbls.,		5	00
	15 Iron bound casks,	a$2 50	37	50
	11 Wooden " "	a$1 50	16	50
	174 Bbls.,	a$1 25	217	50
	1 Zinc pan,		3	00
10	1 " tank, (jelly table)		2	50
	1 Coal shovel & rake & seive,		1	25
	1 Fruit press,		10	00
	Lot benches & boards, for do.,		10	00
	1 Pitch fork, curry comb & brush,		2	00
	1 Horse,		125	00
	1 Cart & harness.		50	00
	Oyster stands, &c.,		10	00
	Hot-bed sash,		50	00
	1 Door frame,		2	00
20	Awning iron & crane,		3	00
	1 Stand & filterer,		5	00
	1 Tin plate stove,		1	50
	1 10-gal. keg,		2	00
	1 Ladder,			75
			$20,337	33

		$20,337	33	
5 Fire pot shields,	a$1	5	00	
30 Spice cans,	a50	15	00	
1 Water pot			20	
Coal scuttle,			50	
Meat saw,		1	00	
7 Packing scoops,	a25	1	75	
5 Lamps, hanging,	a$1 50	7	50	
1 Small plane,		1	00	
2 Window sash & lights,		1	50	10
1 Coal barrow,		9	00	
Pokers & Hooks,		6	00	
1 Large rope,		2	00	
10 New files & rasps,	a75	7	50	
9 " sol. irons,	a$2 50	22	50	
30 Good "	a$1 00	30	00	
3 Files, round,		1	50	
1 Augur, ½in.,			35	
Sheet copper,		2	00	
25 Sol. knives,	a$⅛	3	12	20
33 Blocks & fixtures,	a50	16	50	
Japan rings,		1	50	
Rosin,		12	00	
2 Large baskets,		20	00	
		$20,504	75	

Exhibit D 5, Page 37.

			$20,504	75
	1 Clay cylinder,			75
	Anvil & hammer,		2	50
	1 Iron bound box,		4	00
	2 Large boxes,		1	00
	40 lb. Sh. iron,	@18	7	20
	2 Bund wire,		10	00
	2 pr. Shears,		8	00
	Forging hammer,		1	50
10	2 Sol. ladles,			75
	12 Fire pots,	@$2 50	30	00
	1 Vise,		3	00
	1 Mandrill,		4	00
	2 Burring machines,		15	00
	3 Stakes,	@$3	9	00
	2 Monkey wrenches,		2	50
	2 Large "		1	50
	1 Aligator,		15	00
	1 pr. Snips,		2	50
20	1 Rivet hammer,			50
	1 Square,		1	50
	Punches, plyers, &c.,		2	00
	Sponges & cups,		1	50
	4 Cold chisels,		1	50
			$20,629	95

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		$20,629	95	
1 Square basket,			50	
5 Iron plates,	a20	1	00	
1 Marble "		1	50	
1 Punch,		1	25	
2 Groovers,		3	00	
6 Small stakes,	a30	1	80	
4 Fire pot stands,	a50	2	00	
1 Water can,			50	
1 Coal pan,		1	50	10
Sheet Zinc,		2	50	
Slab spelter,		2	50	
2½ Boxes X tin,	a$16	40	00	
14 " tin for large cans.		220	00	
40 " Talbot tin,	a$13 50	540	00	
3½ " Tiefi "	a$12	42	00	
132 lbs. Block tin,	a$40	52	80	
640 " lead,	a$11	70	40	
670 " solder,	a$30	201	00	
Tops & bottoms & bodies cut out,		253	00	20
1 lb. cans from N. Y.,		120	74	
3,000 Asparagus cans,	a16	480	00	
103,200 2, 2½ & 3 lb. cans,	a7½	7,740	00	
		$30,407	94	

Exhibit D 5, Page 39.

			$30,407 94
	194 Doz. 2 lb. peas,	*a*3 12	605 28
	86 " " cranberry,	*a*3 50	301 00
	3 " Peaches,	*a*3 50	10 50
	3 " 2½ corn,	*a*3 50	10 50
	20 " Pt. catsup,	*a*1 25	25 00
	2 " Salad cream,	*a*2 50	5 00
	2½ " ½ gal. tomatoes,	*a*3 50	8 75
	64 " 6 oz. jelly,	*a*2 00	128 00
10	68 " 8 oz. "	*a*2 30	156 40
	23 " 10 oz. "	*a*2 50	57 50
	74 " 8 oz. tumb. currant,	*a*2 50	185 00
	13 " 10 oz. " "	*a*3 00	39 00
	35 qt. pots, "	*a*80	28 00
	2 Doz. Cumb. Sauce,	*a*1 75	3 50
	92 " Tomatoes,	*a*2 10	193 20
	¼ " ½ gal. jelly,	*a*21 00	5 25
	Old jelly, from N. Y.,		229 67
	Bill preserves,		64 68
20	3,500 Gall. tomato pulp,	*a*12	420 00
			$32,884 17

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			$32,884	17
2,648 Boxes,		a24	635	52
164 " old,		a10	16	40
5,000 ft. 1½ in. plank,		a35 00	175	00
2,000 " "		a30 00	60	00
29 Gro. pt. C. S. bottles,		a7 00	203	00
52 $\frac{52}{144}$ ½ pt. do		a5 00	261	80
26 $\frac{116}{144}$ qt. catsup,		a11 50	308	26
C. S. stoppers, pr. bill Wh. & Tatuno,			413	40
25¾ Gro. qt. fruit bottles,		a12 00	309	00 10
160½ doz. 12 oz. tumblers,		a1 00	160	50
2 Gro. lemon syrup,		a9 00	18	00
20 Gro. S. C. S. stopper,		a2 25	45	00
17 " 6 oz. jelly,		a4 50	76	50
8 " 10 " "		a6 00	48	00
15 " ½ pt. "		a5 00	75	00
10 " Pie fr't bottles,		a12 00	120	00
1¼ " Lyman jars,		a26 00	32	50
2 " 8 oz. C. oil,		a6 50	13	00
½ " Qt. cork jars,		a12 00	6	00 20
43 " Pt. ovals,		a8 00	344	00
20 Doz. Walnut catsup,		a70	14	00
			$36,219	05

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				$36,219 05
	Pine ap. jam bottles,			25 00
	Plain jars & old bottles,			25 00
	19 Gro. $1\frac{3}{4}$ flat corks,		@75	14 25
	4 " $1\frac{7}{8}$ " thick,		@1 50	6 00
	6 " $\frac{7}{8}$ vial,		@25	1 50
	15 " $1\frac{1}{8}$ jelly,		@40	6 00
	18 " pie fruit,		@1 75	31 50
	2 " 2 in. flat,		@1 00	2 00
10	6 " 1 " do.		@25	1 50
	13 " $1\frac{3}{8}$ " jelly,		@45	5 85
	$3\frac{1}{2}$ " $2\frac{5}{8}$ flat,		@1 25	4 38
	8 " $2\frac{1}{2}$ "		@1 25	10 00
	25 " catsup & salad cream,		@50	12 50
	90 " C. sauce,		@45	40 50
	25 " "		@55	18 75
	2 " long corks,		@1 00	2 00
				$36,425 78

			$36,425 78	
6 lb.	gr. allspice,	a30	1 80	
40 "	s. savory,	a45	18 00	
16 "	s. margerum,	a45	7 20	
35 "	gr. ginger,	a50	17 50	
10 "	" root,	a50	5 00	
30 "	thyme,	a45	13 50	
8 "	s. basle,	a45	3 60	
41 "	lovage,	a1 25	51 25	
38 "	cummin,	a50	19 00	10
15 "	coriander,	a30	4 50	
40 "	mustard seed,	a15	6 00	
65	Gr. nutmegs,	a1 50	97 50	
30	" pepper,	a40	12 00	
75	Whole "	a35	26 25	
5	Cinnamon,	a95	4 75	
64	Mustard,	a60	38 40	
4	"	a60	2 40	
20	Gr. cloves,	a50	10 00	
15	" mace,	a1 50	22 50	20
60	Cayenne,	a50	30 00	
Ven. red,			50	
25 lb.	cayenne,	a50	12 50	
			$36,829 93	

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				$36,829 93
	30,000 Jelly labels,	a$1	25	37 50
	30,000 Cumb. sauce, red,	a1	50	45 00
	30,000 " " white,	a60		18 00
	10,000 " " strips,	a60		6 00
	2,500 Peach & preserve,	a$5		12 50
	5,000 Catsup,	a$7		35 00
	3,000 Salad cream,	a3	50	10 50
	640 C. S. cards,	a8		51 20
10	18,000 " wrappers,	a$1	25	22 50
	57,800 Can labels,	a10	00	578 00
	28 Gro. 8 oz. tumb. caps,	1	25	35 00
	15 " 10 " " "	1	50	22 50
	2 Rms. Manilla paper,	a$3		6 00
	75 lb. Nails,	a8½		6 37
	Muriatic acid,			2 00
	27½ Doz. ½-gal. ea. pots,	a2	10	57 75
	6½ " ¼ " " "	a1	25	8 13
	20 Kegs Hal. herrings,	a1	40	28 00
20	1 Bbl. plaster,			3 50
	129 Gal. vinegar,	a38		49 02
	1 Bbl. Mushroom,			54 80
				$37,929 20

			$37,929	20
Lot planed boards,			8	00
1¼ lb. Es. raspberry,	a$3	50	4	37
1¼ " " strawberry,	a3	50	4	38
1 " " p. apple,	a3	50	3	50
1 " " pear,	a4	50	4	50
¼ " " bit. almonds,			7	00
5 oz. Oil lemon,	a$1		5	00
1 lb. Oil pepper,			1	50
⅜ " " cloves,	a$5		1	87 10
¼ " " pimento,	a18		4	50
3½ lb. Tar acid,	a1	35	4	73
3 " Cr. tartar,		50	1	50
65 Gal. B. berry juice,	a50		32	50
160 " elberberry "	a50		80	00
110 " currant "	a$1		110	00
73 Cans quince, "	a50		182	50
75 " peach,	a50		187	50
228 " apple,	a50		570	00
5 " cranberry,	a50		12	50 20
3 " grape,	a50		7	50
28 Bot. garlic,	a30		8	40
50 Gal. wine,	a$1		50	00
40 " ex. spirits,	a2	50	100	00
			$39,320	95

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			$39,320 95
	80 Gal. ex. spirits,	@1 00	80 00
	15 Bbls. Cumb. sauce, complete, 600 gal.,	@1 50	900 00
	2 Bbls. mucilage,		40 00
	250 Gal. mushroom,	@2 00	500 00
	3,360 " walnut juice,	@75	2,520 00
	600 " " catsup,	@1 38	828 00
	Bill 5 carboys acetic acid,		225 00
10	30 Doz. eggs,	@21	6 30
	100 Bu. charcoal,		16 00
	1,600 lbs. tin strips,	@3 cts.	48 00
	400 " " clips,	@1½	6 00
	400 " Pulv. sugar,	@18	72 00
	6 Gro. brandy peach caps,	@1 50	9 00
	Dictionary & books,		15 00
	¾ Doz. red twine,	@4 50	3 38
	Paper, stamps & envelopes,		5 50
	Paste brushes & knives,		4 50
20	Tinct. cochineal,		50
	New jelly bags,		5 00
	2 Tons coal,	$10	20 00
	4 Doz. H. Scrubs,		4 00
			$44,629 13

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		$44,629	13	
13 Rms. straw paper,	a35	4	55	
39 " " "	a55	21	45	
320 Empty bbls.,	a20	64	00	
3 " carboys,	a3	9	00	
10 lb. gelatine,	a1	10	00	
1 S. salt,		4	00	
Lot leather,		1	00	
494 lbs. A. sugar,	a17	84	28	
576 " C. "	a16	92	16	10
Keg wh. zinc,		5	00	
12 gal. peach brandy,	a2 50	30	00	
Lot old iron,		5	00	
Lot boards and plank,		8	00	
Bone dust,		10	00	
Saw dust,		10	00	
125 lbs. hoop iron,	a11	13	75	
10 gal. alcohol,	a$3	30	00	
400 Havana sugar,	a14	56	00	
Old labels, F. & P.,		450	00	20
15 doz. glass jars,	a75	11	25	
Lot " bottles,		2	00	
1 doz. blacking,			75	
		$45,551	32	

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			$45,551 32
1 Doz. brandy b. berries,			4 00
20 " fruits in case	@$3		60 00
1½ " " " " glass,	@$5		7 50
2 lb. B. ether,			2 00
Sheet lead,			1 00
2 lb. Sealing wax,			1 00
Locks, twine, &c.,			1 50
B. rope,			1 00
			$45,629 32

Exhibit D 5, Page 48.

Real estate & fix.,			$20,511 93	
Tin can act.,			9,959 81	
Mdze act.,			1,585 17	
Expense—Paper & envelopes, &c.,	$5 50			
2 ton coal,	20 00			
H. scrubs,	4 00			
Keg zinc,	5 00			
Sawdust	10 00			
Blacking,	75			
				10
	4 50			
			49 75	
Green peas,	605 28			
Labels,	12 00			
			617 28	
Cranberry,	301 00			
Sugar,	56 00			
			357 00	
Peaches,	10 50			
Jars brandy,	309 00			20
" Lyman,	32 50			
Corks.	14 38			
Spirits,	180 00			
Caps,	9 00			
Labels,	95 00			
			650 38	
Corn,	10 50			
Labels, corn,	65 00			
" succotosh,	42 00			
			117 50	30
Catsup,	25 00			
Pulp,	420 00			
Bottles,	308 26			
Corks,	12 50			
Spices,	26 75			
Labels,	35 00			
Vinegar,	49 02			
Oils,	6 37			
			882 90	
			$34,731 72	40

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	Amt. up,		$34,731 72
	Salad cream,	5 00	
	Bottles,	344 00	
	Mustard,	40 80	
	Eggs,	6 30	
	Labels,	10 50	
			406 60
	Tomatoes, ½ gal.,	8 75	
10	do 3-lb.,	193 20	
	Labels,	200 00	
			401 95
	Jelly,	593 90	
	do.	5 25	
	do.	229 67	
	Tumblers,	160 50	
	Bottles,	199 50	
	Corks,	11 85	
	Labels,	37 50	
30	Caps,	57 50	
	Pots,	65 88	
	Plaster,	3 50	
	Extracts,	28 75	
	Juices,	1,190 90	
	Sugar,	72 00	
	Bags,	5 50	
			2,662 20
	Cherry preserves,	30 00	
	Labels,	20 00	
40			50 00
	Strawberry preserves,	34 68	
	Labels,	8 00	
			42 68
	Beans, labels,		8 00
	P. apple, do.,		20 00
	B. berries, do.,		8 00
	Plums, do.		18 00
	Whortle berry, do.,		24 00
			$38,373 15

	Amt. up,		$38,373	15
Cumb. sauce,		3 50		
Bottles,		464 80		
Stoppers,		458 40		
Corks,		59 25		
Spices,		125 05		
Labels,		69 00		
Cards,		51 20		
Wrappers,		22 50		
Fish,		28 00		10
Mushroom,		54 80		
Oil,		1 50		
Sauce,		900 00		
Catsups,		3,888 00		
Twine,		3 38		
Paper,		6 00	6,135	38
Pears, lables,			20	00
Okra, do.			2	00
Quinces, do.			6	00
Asparagus, do.			40	00 20
Pie fruit bottles,		120 00		
corks,		31 50		
			151	50
Boxes,		651 92		
Lumber,		235 00		
Nails,		6 37		
Boards,		8 00		
			901	29
			$45,629	32

BRIDGETON, April 1, 1866.

EXHIBIT D 6.

To CHARLES S. FITHIAN, ESQ.,

Demand is made of you that you surrender to John W. Stout, successor of Stout, Dyer & Wicks, and of the West Jersey Canning & Pickling Company, a certain mortgage, dated March 14, 1865, executed by the West Jersey Canning and Pickling Company to you; principal sum therein named, ten thousand dollars, on real estate therein described; and also another mortgage, dated March 14, 1865, executed by said Company to you on personal property; principal sum therein named, $23,900.00, and also all bonds, notes or other vouchers accompanying said mortgages or either of them.

That all the same are improperly held by you.

That you have received heretofore all moneys thereon that you were or are fairly or rightfully entitled to receive or have thereon.

That there is not any money now due you thereon.

And that the same be surrendered to said John W. Stout within ten days from the date hereof, to be canceled of record, or in default thereof, proceedings will be instituted in Chancery for a decree to have said mortgages and papers canceled, and all moneys overpaid to you refunded by you, and for such other remedy as may be proposed, to correct all wrongs occasioned by you to the proper parties connected with said papers and the property therein referred to.

R. ALLEN, Jr.,
Jan. 21, '67. Attorney of Stout & Co.

EXHIBIT D 14.

AGREEMENT made this fourteenth day of March, Anno Domini, eighteen hundred and sixty-five, between Charles S. Fithian, of Bridgeton, New Jersey, of the one part, and "The West Jersey Canning and Pickling Company" of the second part, witnesseth, that whereas the said party of the first part, for a valuable consideration, has this day sold all of his interest and property in the canning factory, located at the corner of Bank and Irving streets, in Bridgeton, aforesaid, to the said parties of the second part; therefore, in consideration of the premises, I, the said Charles S. Fithian, for myself and my legal representatives, do hereby covenant and agree with the said "The West Jersey Canning and Pickling Company," that I will not enter into or engage in directly or indirectly any branch of the business of the canning, preserving or pickling fruit, vegetables or sauces, or in any branch of the business that is now or has been carried on by me; and, further, that I will not give my consent that William Pogue (late of the firm of Fithian

Five cent stamp.

& Pogue) shall enter into any branch of said business, without the consent of the said The West Jersey Canning and Pickling Company, under the penalty of five thousand dollars. Provided, nevertheless, that the said The West Jersey Canning and Pickling Company shall pay and satisfy the obligations held against them by the said Charles S. Fithian as they become due, otherwise this covenant and agreement to be void and of no effect.

And we, the said The West Jersey Canning and Pickling Company, for ourselves, our successors and assigns, do hereby covenant and agree with the said Charles S. Fithian, his heirs and assigns, that we will pay all taxes that may be assessed, in any way, upon the said business or property, and that, in case of loss or damage by fire, the said Charles S. Fithian shall receive his proportion of insurance on property belonging to the said Charles S. Fithian, so lost or destroyed.

In witness whereof, the parties hereto have interchangeably set their hands and affixed their seals, this —— day of March, Anno Domini, eighteen hundred and sixty-five.

CHARLES S. FITHIAN. [L. S.]
LORIN J. WICKS. [L. S]
President of the West Jersey Canning and Pickling Co.

Sealed and delivered in the presence of James J. Reeves.

It is hereby mutually agreed between the parties that The West Jersey Canning and Pickling Company shall use the names of Fithian & Pogue and C. S. Fithian & Co., in the prosecution and management of their business.

CHARLES S. FITHIAN. [L. S.]
LORIN J. WILKS, *President.* [L. S.]

Attest, H. BALLARD DYER, *Secretary.*

Dated March fourteenth, eighteen hundred and sixty-five.
Witness present James J. Reeves.

EXHIBIT D 16.

CHARLES S. FITHIAN	Deed March, 14, 1865.
AND WIFE,	Consideration $6,000.
vs.	Stamp $6.
THE WEST JERSEY	Acknowledged, 14th March,
CANNING AND PICK-	1865.
LING COMPANY.	Recorded, March 16, 1865.

For real property in question.

EHHIBIT D. 17.

KNOW ALL MEN BY THESE PRESENTS, that I, Charles S. Fithian, of Bridgeton, Cumberland County, New Jersey, for the consideration of twenty-eight five thousand dollars, to me paid by "The West Jersey Canning and Pickling Company," the re- cent ceipt whereof is hereby acknowledged, have, and by these presents do give, grant, sell, release and stamp. and convey unto the said "The West Jersey Can- ning and Pickling Company," their successors and assigns, all of my right, title, interest and property, to and in the canning factory, located at the corner of Bank and Irving streets, in Bridgeton, including therewith all of the boilers, engine, piping and fixtures, glass-ware, tin-ware and tin materials, for making solder, buildings for the manufacturing of solder, juices for jellies, materials for Cumberland sauce, boxes, all lumber on the premises, also all lumber on the wharf, near the steam saw mill, labels, corks, glass moulds, dies for metallic caps, and all other articles, as per inventory, not herein enumerated, now owned by the said Charles S. Fithian, and of use in the business, excepting therefrom all the canned peaches upon the premises, to the use of the said "The West Jersey Canning and Pickling Company," their successors and assigns, forever. And I, the said Charles S. Fithian, do hereby covenant and agree with the said "The West Jersey Canning and Pickling Company," that I am the true and lawful owner of the said goods, and have full power to sell and dispose of the same.

Witness my hand and seal, this 14th day of March, in the year of our Lord, one thousand eight hundred and sixty-five.

CHARLES S. FITHIAN.

Sealed and delivered in the presence of
JAMES J. REEVES.

EXHIBIT D 27.

ALTERATIONS IN PRICES FROM D 1 TO D 5.

			D 1.	D 5.	Difference.
Real estate, Fixtures, &c.,			$6,000 00	$12,000 00	$6,000 00
12 Cooking tanks,	$12 00	$15 00	144 00	180 00	36 00
6 Copper Kettles,	25 00	50 00	150 00	300 00	150 00
735 Five-gallon Cans,	25	50	183 00	366 00	183 00
1,016 ½ gal. Ex. Bottles, per dozen,	1 00	2 50	84 66	211 66	127 00
20 Stools,	50	1 00	10 00	20 00	10 00

Alterations in prices from D 1 to D 5—*Continued.*

			D 1.	D 5.	Difference.	
112 Wooden Trays,	20	30	22 40	33 60	11 20	
100 Galv. Iron Trays,	1 75	2 25	175 00	225 00	50 00	
55,717 2 lbs. N. Y. Cans,	10	11	5,571 70	6,128 87	557 17	
1 Press,	50 00	70 00	50 00	70 00	20 00	
12 sets Round Dies	8 00	20 00	96 00	240 00	144 00	
25 gals. Peach Brandy,	1 50	2 50	37 50	62 50	25 00	
10 lbs. Candles,	18	20	1 80	2 00	20	
203 Barrels, empty,	1 50	2 50	304 50	507 50	203 00	
11 reams Straw Paper,	35	60	3 85	6 60	2 75	10
200 lbs. Cayenne,	75	80	150 00	160 00	10 00	
2 lbs. G. Allspice,	45	50	90	1 00	10	
50 lbs. Gr. Mace,	1 00	1 70	50 00	85 00	35 00	
53 lbs. Gum Tragacarth,	35	40	18 55	21 20	2 65	
9 lbs. Sum. Savory,	40	45	3 60	4 05	45	
6 lbs. Sweet Margerum,	40	45	2 40	2 70	30	
30 lbs Ground Mustard,	50	55	15 00	16 50	1 50	
14 lbs. Afr. Ginger,	50	60	7 00	8 40	1 40	
17½ lbs. Gr. Allspice,	40	45	7 00	7 87	87	
31 lbs. Pulv. Thyme,	40	45	12 40	13 95	1 55	20
33 lbs. Sum. Savory,	40	45	13 20	14 85	1 65	
8 lbs. Sweet Basle,	40	45	3 20	3 60	40	
10 lbs. Jam. Ginger Root,	50	70	5 00	7 00	2 00	
52 lbs Pulv. Lovage Seed,	82	1 25	42 64	65 00	22 36	
46½ lbs. Pulv. Cummin,	42	50	19 53	23 25	3 72	
40 lbs. Wh. Mustard Seed,	20	25	8 00	10 00	2 00	
65 lbs. Gr. Nutmegs,	1 25	1 50	81 25	97 50	16 25	
2 lbs. Whole Cloves,	50	85	1 00	1 70	70	
239 lbs. Acetic Acid,	28	35	66 92	83 65	16 73	30
1,765 gals. Jelly Juices,	30	50	529 50	882 50	353 00	
40 bu. Charcoal,	15	18	6 00	7 20	1 20	
50 gro. Pt. Oval Bottles, per gross,	5 00	8 00	250 00	400 00	150 00	
15⅓ gro. Qt. Brandy Frt., per gross Bottles,	10 80	17 50	165 60	268 33	102 73	
145 gals. Juice in bottles,	50	1 00	72 50	145 00	72 50	
211 Cab. Sauce Boxes,	20	24	42 20	50 64	8 44	
5,392 Boxes,	20	24	1,078 40	1,294 08	215 68	
	Less 3¼ cents on 1,000.					40
60 gro. C. Sauce Stop'rs,	2 50	2 75	150 00	165 00	15 00	
3,280 gals. Walnut Juice,	50	75	1640 00	2460 00	820 00	
80 gals. Walnut Juice,	50	75	40 00	60 00	20 00	
1,888 dozen Pt. Tomato Catsup,	1 14	1 25	2152 32	2360 00	207 68	
504 dozen Qt. Tomato Catsup,	1 79	2 00	902 16	1008 00	105 84	
396 dozen Pt. C. Sauce, per gross,	54 00	1,782 00				
2,050 dozen ½ Pt. C. Sauce, per gross,	30 00	5,125 00				50
Chicago Shipment,		312 00				
		$7,219 00	3,609 50	4,331 40	721 90	
					$10,432 92	
40 per cent deducted on D 5, and 50 per cent. on D 1.						
550 Peach Crates,	50	1 00	275 00	550 00	275 00	
					$10,707 92	

ARTICLES IN D 5 AND NOT IN D 1.

	23 Yankee Buckets,	20	$4 60
	5 Cedar Buckets,	50	2 50
	1 Meat Cut Box,		3 00
	1 ten gallon Keg,		3 00
	2 Galv. Iron Pans,	3 00	6 00
	Lot Flagging,		3 00
	Lot Boards,		2 00
	2 Iron Bolts,		2 00
10	Lot Boards and Crane,		2 00
	1 Door Frame,		2 00
	1 Stove,		2 00
	1 Stand and Filterer,		5 00
	1 Wooden Bather,		10 00
	3 Iron Bands and Screw Bolt,		3 00
	Steam Pipe and Valves, not in use,		10 00
	1 Tinman's Cupboard,		6 00
	1 Engineer's Cupboard,		2 00
	Pokers, Hooks, &c., (Engineer's,)		6 00
20	2 Large Boxes,		1 50
	Boards for Divisions,		20 00
	Work Benches in Tin Shop,		100 00
	1 Large Box, iron bound,		4 00
	Flag Staff and Hallyards,		10 00
	Awning Iron and Cranes,		6 00
	15 Candle Stands,	20	3 00
	1 Iron Glass Bather,		10 00
	Lot Iron Rods and Hoops,		5 00
	17 Truck Baskets,	25	4 25
30	30 quires Manilla Paper,	10	3 00
	1 Axe,		1 25
	10 Oyster Knockers,	50	5 00
	1 Hatchet,		20
	1 Glass Case,		25 00
	1 Case and Drawers,		35 00
	2 Label Cases, one $40, and one $25,		65 00
	1 Steam Pump,		23 00
	2 Meat Hooks and Steel,		1 00
	1 Fruit Press,		10 00
40	12 Fixed Benches,	1 00	12 00
	7 Fixed Benches,	1 50	10 50
	1 pair Cork Squeezers,		75
	1 ten gallon Keg, 3 00; 2 five gallon Kegs, 2 00		5 00
	1 five gallon Demijohn,		1 00
	1 Grind Stone,		5 00
	1 Large Coal Seive,		5 00
	100 lbs. Wrought Nails,		9 50
	1,000 Aspargus Cans, (old,)	16	160 00
	47,700 two lbs. N. Y. Cans,	11	5,247 00
50	1 pair Shears,		3 00
	2 sets Round Dies,		45 00
	1 Iron Boiler, for solder,		5 00
	10 Sugar barrel,	25	2 50
	3 reams Paper,	60	1 80
	28 lbs. Gum Tragacarth,	40	11 20
	9 lbs. Sum. Savory,	40	3 60
	7 lbs. Pulv. Lovage Seed,	1 25	8 75
	1½ lbs. Cummin Seed,	50	75
	1¼ lbs. Coriander do.	25	3 50
60	4 Carboys,	2 00	8 00

Articles in D 5 and not in D 1—*Continued.*

2 barrels Hominy,		7 00	14 00
12 gro. quart Brandy Fruit Bottles,		17 50	210 00
5 5-12 gro. qt.Brandy Peach Bottles,		14 62	79 19
1½ gro. Pt. Hexagon,		6 00	9 00
9¼ gro. 8 oz. Tumblers,		4 80	44 40
17 gro. 8 oz. Tumblers,		4 80	81 60
30 quires Paper,		10	3 00
393 feet Boards,		32 62	12 81
5,878 feet Plank,		34 50	202 79 10
5 gro. Bottle Caps.		1 25	6 25
¼ lb Tin Foil,			15
3½ lbs. Tar. Acid,		1 55	5 43
6 Paste Brushes,			1 25
Post Stamps and Stationery,			1 20
Rosin, ground,			1 00
69 Boxes C. W. Tin,		17 12	1,181 62
80 Boxes Coke Tin,		1662	1,330 00
18 lbs. Tallow,		18	3 24
1,000 Cans, part made,			10 00 20
425 lbs. Solder,		40	170 00
1,056 lbs. Lead,		13 3-10	145 20
660 lbs. Strip Tin,		57	376 20
1 Carboy,			2 00
19 lbs. Bar Copper,		71	13 49
1 Awl and Lock,			35
Fruit Pickers and Nails,			35
1 Ball Candle Wick,			10
4 Balls Sea Island Cotton,			1 60
Screws, Wicks and Thread, &c.,			62 30
Venice Turpentine,			25
4 lbs. Sealing Wax,			2 00
6 lbs. Tomato Seed, *a*2 00, 12 00,		5 lbs. do. $1, $5 00	17 00
11 New Jelly Bags,		50	5 50
Tinct. Cochineal.			50
2 lbs. B. Ether,			2 00
2,652 Empty Boxes,		24	636 48
½ Hide Leather,			2 50
1 Long Augur,			1 00
11 lbs. Solder Droppings,		30	3 30 40
30 gals. Vinegar,		30	9 00
3 Books,			4 25
80 gals. Walnut Juice,		75	60 00
1½ gro. C. S. Bottles,		4 12	6 18
21 doz. 12 oz. Jelly,	5 50	115 50	
Tumblers, 43 doz. 8 oz. Jelly,	2 35	101 05	
65 doz. 10 oz. Jelly,	2 90	188 50	
67½ doz. 8 oz. Jelly,	3 00	202 50	
70½ doz. 6 oz. Jelly,	2 43	171 31	
		$778 86	
Less 5 per cent.,		38 94	50
75 doz. Oval Catsup,		2 00	739 92
448 doz. Pt. Catsup,		1 25	150 00
20 doz. Zea Mays,		2 00	560 00
Insurance account,			40 00
4 doz. 6 oz. Jelly,	2 43, less 5 per cent.,		484 50
			9 24
			$12,595 61

ARTICLES IN D 1 AND NOT IN D 5.

	500 lbs. Tin Clippings,	$0 03		$15 00
	Lot Spelter,			1 00
	2 Boxes Coke Tin,	15 00		30 00
	½ Box Square Tin,			10 00
	1 Horse and Harness,			130 00
	1 Boiler, Engine, &c.,			125 00
	1 Barn,			50 00
	50 lbs. Nails,	9		4 50
10	20 Hhds,	75		15 00
	1,000 lbs. Glass,	½		5 00
	½ lb. S. Salt,			2 62
	2½ Ton Coals,	11 00		27 50
	Bill Tumblers, Sheets & Duffee,			228 00
	80 gals. Syrup,	1 25		100 00
	37 doz. Pt. C. Sauce, 4 50 less 50 per cent.,			83 25
	108 doz. ½ Pt. C. Sauce, 2 50 less 50 per cent.,			135 00
	Cumb. Sauce sold by A. & R., not paid,			379 49
	Cumb. Sauce in hands Griffin & Porch,			450 00
20	55 gro. Jelly Corks,	50		27 50
	10 gro. Vial Corks,	25		2 50
	Vial Corks,			18 75
	Jelly Corks,			30 25
	Bogles, Corks,			2 25
	36 8-12 gro. 8 oz. C. Oils,	6 60		242 00
	2¼ doz. 12 oz. Tumblers,	10 50	per gro.	1 97
	11 gro. ½ Pt. Jelly Bottles,	5 50	" "	60 50
	25½ gro. 6 oz. Jelly Bottles,	4 75	" "	121 12
	30 gro. Pt. Oval Bottles,	5 00		150 00
30	80 lbs. Cinnamon,	95		76 00
	80 lbs. Ginger,	70		56 00
	Oil Cloves,			7 87
	1 oz. Oil Lemon,			1 00
	1 lb. Ess. Pear,			4 50
	2 oz. Oil Almond,			3 50
	23 lbs. Coriander Seed,	25		5 75
	10,000 feet Boards,	40 00		400 00
	1,800 feet Plank,	45 00		81 00
	14 doz. Qt. Catsup, 2 75 less 35 per cent.,			25 03
40	6 gro. Caps,	90		5 40
	737 gals. Tomato Pulp,	45		331 65
	Value of Tomatoes,			2,178 77
	Value of Peaches,			16,737 21
	103 doz. Oysters,	2 50		171 67
	4 9-12 Cran. Sauce,			12 67
	Value of Oyster Catsup,			11 63
	Value of Salad Cream,			75 50
	65 doz. Asparagus,	4 50		190 13
	2 doz. String Beans,			5 00
50	Apple Jam,			4 11
	Pepper Sauce, 46 doz.	*a* 3 00		89 70
	Pepper Sauce, 116 doz.	*a* 3 50		263 90
	4¼ doz. Honey,			11 83
				$2[illegible],198 02