New Jersey Court of Errors and Appeals.

Between LEHMAN MOORE, Appellant, and ROBERT B. S. DIAMENT, et als, Respondents.	APPEAL FROM CHANCERY.

This is a case of alleged secret partnership, wherein the appellant, the alleged secret partner, permitted Hammell, the ostensible partner, to carry on the business of drayman in his individual name of Horace Hammell, hold forth the goods and property in dispute as his individual property, procure thereby a large fictitious and false credit upon representations of such ownership, induce the respondents to advance large sums of money, which were not paid, and when judgments were secured therefor and executions issued to, and levies made by, the Sheriff upon such goods and property, the secret partner first appears to the world, and under a petition to the Court of Chancery actually procures an order of that Court restraining the Sheriff from making sale under said executions, and procures a further order of the same Court authorizing him to take out of this State,

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and from the jurisdiction of said Court, the goods, consisting of horses, wagons, harness, &c., all perishable property, use the same in his business, upon the appellant first furnishing a bond "conditioned to return said goods and property when thereto ordered by the Court, in the same condition they then were, loss by unavoidable accident alone excepted." Under this order the said goods were taken by the appellant in January, 1881, and used by him in his business continuously up to June,
10 1885, when part only were returned under a subsequent order of the Chancellor and sold by the Sheriff of Camden county.

The bill in Chancery was filed December 28, 1881. It alleges that appellant entered into a verbal agreement of partnership with Hammell about January 1, 1879; that articles of partnership were not prepared and signed until December 6, A. D. 1881; that he became owner of one-half part of said goods as partner at that time, and that Hammell executed a bill of sale of the other half at the time of signing said articles (which was just prior
20 to Hammell's failure.)

The bill does not pray an answer under oath, but prays that an account may be taken; that the partnership property may be decreed to be the goods of the appellant; that he may have possession of said property to use in his business; that the Sheriff may be restrained from selling the same, and that a Receiver may be appointed.

The answers each deny any knowledge of the alleged partnership. They allege that said defendants had known Hammell for many years; that he always represented the goods and property to be his own individual
30 property; that the credit which he procured from them was based to a great extent upon the goods in question, which he always controlled and used as his own, and that they would not have loaned the moneys for which

their judgments were received had they known or suspected that the appellant claimed to be in partnership with Hammell, and owned, or pretended to own, the whole or any part of said goods.

The decree of the Court was in favor of the repondents, and is dated November 1, 1884.

Under the case of Williamson vs. N. J. Southern R. R. Co., 2 Stew., 311 and 322, the Vice Chancellor advised and the Chancellor decreed, that the appellant should pay to the Sheriff (who had been named Receiver,) the sum of $4,683.50, with interest from January, 1881, the time when the goods were delivered to him, and directed said Sheriff how to appropriate said money. 10

This sum is taken from the appellant's own testimony of the value of the goods taken by him (see Exhibit No. 111 of complainant's; see testimony, p. 190, l. 30,) and was the value fixed by the appraisers chosen by the Sheriff prior to the filing of the appellant's bill.

The said Court made a subsequent order June 23, 1885, directing the appellant to return the goods to said Sheriff and Receiver that the same might be sold. 20

It is from said decree and order that this appeal is brought (the third appeal brought by the appellant *up to this time* in this cause.)

The first ground of appeal, as stated in the petition, is "That the decree should have been in favor of the appellant and against the respondent."

The appellant bases his claim solely on the ground of being a partner, and he admits that the partnership was kept secret and the business conducted under the name of Horace Hammell, (p. 22, l. 25; p. 91, l. 7; p. 45, l. 17.) 30

Hammell had been in business before 1879.

Same billheads were used, (p. 91, l. 10.)

Same name over place of business, (91, l. 14.)

Same name on wagons, (91, l. 10.)

In a silent or dormant partnership the silent or dormant partner is responsible for debts of the firm.

Parsons on Part., 30, 31.

Story on Part., s 80, &c.

The rule of responsibility in a secret partnership is that the property held out to the world by the ostensible partner is subject without distinction to the payment of individual or partnership debts; neither has priority over the other.

10 Cammack vs. Johnson, 1 Gr. Ch., 163.

French vs. Chase, 6 Greenleaf, 166.

If the ostensible partner borrow in his own name, representing it for use of business, dormant partner will be liable.

Story on Part., 105, cases cited.

Ethridge vs. Binney, 9 Pick., 272.

Col. on Part., 384.

Dealings of a partner in any way legitimate to the business binds the partnership.

20 Johnson vs. Bernheim, 7 N. Car., 139.

Gow on Part., 37.

Le Roy, et al., vs. Johnson, 2 Peter's U. S., 186.

Hope vs. Cust cited, 1 East., 53.

The act of a partner on his own private account, contrary to private arrangement, binds all.

3 Kent's Com., 41, 10 Ed.

Swan vs. Steele, 7 East., 210.

1 Bank vs. Binney, 5 Mason, 187.

30 Sandilands vs. Marsh, 2 Barn. & Ald., 673.

Girard vs. Basse, 1 Dallas, 119.

Gow on Part., 37.

Judgment against ostensible partner binds stock in trade and goods held out to the world as his.

Lord vs. Baldwin, 6 Pick., 348.

Cammach vs. Johnson, 1 Gr. Ch., 163.

One partner has power to bind his partner as entirely as himself.

Winship vs. Bank, 5 Peters, 561.

Statements made by an alleged partner at the time loan made part of *res gestae* and bind firm. 10

Smith vs. Collins, 115 Mass., 388.

Lucas vs. De La Cour, 1 M. & S., 249.

Story on Part., 107.

He who takes the bond of an ostensible partner may enforce collection from firm goods.

9 Gratt., 466.

Promissory notes discounted at a bank in usual course of business and money misapplied, dormant partner held. 20

Winship, et al., vs. Bank, 5 Peters, 529.

The answers are under oath, have probative force, are not denied and alleged that money was loaned to Hammell on credit of goods in dispute, and for the purposes of his business as drayman.

Answ., p. 7, l. 4; p. 16, l. 1.

Printed Book, p. 204, l. 19.

The whole theory of the appellant's claim is based upon this secret partnership. If there was no partnership, then, according to his own testimony, he has no claim. 30

See Printed Book, p. 97, l, 1, &c.

There is no evidence of this partnership except the statement of Moore, the appellant, and the admissions made by Hammell to Brown and to Mrs. Hammell.

If Hammell's admissions of partnership are admitted as evidence his frequent denials should, nay must, be admitted.

Hammell claimed to be sole owner of the disputed goods.

Depuy, Printed Book, p. 205, l. 5.

10 Merritt, p. 216, l. 12; Read, p. 225, l. 38.

Hammell said the only reason he kept Moore was because he was a good collector.

Diament's Answer, p. 14, l. 1.

Coles, Printed Book, p. 223, l. 26; Benners, p. 230, l. 8.

Calahan, p. 233, l. 18.

Nothing about the office or plan of business or manner of doing business to indicate a partnership.

Brown, a brother-in-law, and frequently at the place, p. 14, l. 6.

20 Merritt in place several times a week, p. 216, l. 24.

Benners an intimate friend, p. 228, l. 28.

Calahan been in office quite considerable, p. 233, l. 10.

Coles very intimate with Hammell. p. 223, l. 13 and 20.

Appellant had been Hammell's bookkeeper prior to alleged partnership; continued to do same work afterwards.

No notice of partnership published or given to business world.

30 Appellant, Printed Book, p. 22, l. 7; p. 91, l. 17.

Appellant states in his direct examination that partnership name was to be Horace Hammell; that the matter was discussed.

Printed Book, p. 22, l. 25.

In cross-examination he says the matter of a firm name was not mentioned.

Printed Book, p. 91, l. 7.

Moore swears name was Horace Hammell and brings to prove it papers directed to Hammell & Moore, p. 45, l. 17.

Hammell had been in business prior to 1879, was the owner of everything, had paid all bills, fixed all prices, received all moneys; after 1879 same methods pursued. Hammell fixed the prices, receipted the bills and took all moneys—p. 54, l. 15. 10

Hammell looked after the financial department—p. 89, l. 30.

Moore, the appellant, made out the bills but did not fix the prices and was not known to the employes as an owner or partner—p. 89, l. 31. Martin, 196, l. 10.

Same billheads used as before—p. 91, l. 13.

Same name on place of business—p. 91, l. 14.

Same name on wagons—p. 91, l. 10.

New wagon made, same name. Appellant swears Hammell intended to have this name changed, but got to shop too late.—p. 91, l. 10. 20

The name on wagon was Horace Hammell; that this was the firm name but failed to tell which they intended to have painted on the wagon.

The appellant swears they secured from $20,000 to $30,000 per year, but had no books of account and no firm bank account.—p. 94, l. 30.

Hammell took all the money of the firm, did what he chose with it and he, the appellant, made no inquiry as to its disposition.—p. 95, l. 5. 30

The appellant says that he became the half owner of all the disputed goods in 1879, and then introduces in his bill and makes an exhibit in his testimony of a paper dated December 6, 1881, in which Hammell covenants

that he was at that time the true and lawful owner of the goods and had full power to sell and dispose of the same.

Printed bill, p. 7, l. 34, Exhibit No. 101.

This, I suppose, was to avoid the case of

Owen vs. Arvis, 2 Dutch, p. 22.

Moore knew it was necessary to give notice of partnership if one existed.—p. 22, l. 22.

Yet no notice was ever given by him when a claim
10 was made on the firm ; in 1881 the appellant denied any interest in the business and the partnership—(Spencer,) p. 219, l. 24 ; p. 202, l. 9. Appellant complained that Hammell would give him no authority over the men.

Coles, p. 222, l. 29 ; Diament, p. 209, l. 2.

Benners, p. 229, l. 13.

If there was a secret partnership the decree of the Court is in line with all the cases on the subject and could only have been for the respondents. If no partnership then the appellant admits that there was no con-
20 sideration, and as against a judgment creditor the decree must have been for the respondents.

The appellant can have no claim under the bill of sale that was not delivered until after the goods were in the custody of the law ; it was a legal if not an actual fraud under the rule in Owen vs. Arvis, 2 Dutch, 22.

Printed Book, p. 198, l. 32 ; p. 201, l. 17.

The second ground in the petition of appeal is, that the Court granted affirmative relief and should simply have dismissed the bill and dissolved the injunction.

The Court had placed the respondents in such a posi-
30 tion, under the application of the appellant, and the prayer of his bill that manifest injustice would have been done to him by such decree. The property in dispute had been wasted, much of it destroyed and gone,

and the respondents were prevented from acting by the interposition of the Court.

The appellant had testified that he had parted with some of the goods—See testimony, p. 134, l. 19. He had thus broken the condition of the bond and by his own act made himself and sureties liable for the penalty.

The Court thereupon, under the appellant's own testimony as to the breach of the bond and the value of the goods, made the decree appealed from. The breach of the bond is sworn to by the appellant and the value of 10 the goods taken by him is proved by his own witness.

See testimony, p. 134, l. 19, and p. 190, l. 30, and Ex. No. 111.

The appellant in a subsequent petition filed in this cause admits the loss of other goods—Petition, p. 31, l. 17.

The Court having, at the request of the appellant, placed the respondents in the position of being injured, under the familiar rule refused to allow the appellant to 20 profit by such injury.

The decree is drawn in conformity to the practice established by this Court in Williamson vs. N. J. Southerrn R. R. Co., 2 Stew., 311.

The bond in that case was in replevin, and contained almost exactly the same active words as the bond in this matter.

The Court having allowed the appellant to use the goods as his own, they cannot now be returned in their impaired condition in discharge of the bond which was 30 given in place of the goods. The decree must be for damages in the value of the goods, and simple interest on that amount for their detention.

Williamson vs. N. J. Southern R. R., 2 Stew., 322.

Field vs. Post, 9 Vroom, 346.

Frazier vs. Fredericks, 4 Zab., 170.

This relief can be granted without a cross bill.
3 C. E. Gr., 301.
Scott vs. Laler's Executors.
2 Daniel Ch. Prac., 1551 (4 Am. Ed.)

The objection made by the appellant that the Court could not grant affirmative relief on the answer is merely to the form unwarranted by the practice against the justice of the cause and the veriest technicality, and if thought advisable could be amended at this time by this Court by changing the form of the answer to a cross bill.

For the Court to permit the appellant to profit by his action in this cause would be to establish a precedent diametrically opposed to all business principles, would open the door to the grossest frauds, to deception the most easy of practice and difficult of detection, which would eventually ruin and destroy the whole credit system of the State against public morality and the policy of the law for the last century.

P. V. VOORHEES,
Solicitor for and of Counsel with Robt. B. Diament.

[CASE NO. 19.—March Term, 1886.]

COURT OF APPEALS.

MOORE, Appellant, and DIAMENT, ET AL., Appellees.	POINTS OF APPELLANT.

FIRST POINT.

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The decree, red page 402, as modified by order on red page 415, and as still further modified by order on black page 353, gives to the appellees affirmative relief, grounded upon facts, which are not embraced in, discussed or treated of in the pleadings, the arguments of counsel, or the opinion of the Court.

1. This error is fully set forth in the petition of the appellant, printed on red page 406, and further appears by the order of the Court of January, 1882, printed on 20 page 378.

2. Under this order the appellees could not hold the appellant as owner for the value of these goods, when the possession of them is secured to the Sheriff as Receiver in the cause.

3. This order was agreed to by the appellees, has stood unmodified to the present, and any relief the appellees are entitled to under it, or by virtue of the use of the goods by the appellant, the appellant is entitled to be heard upon, in a subsequent proceeding, in which subsequent proceeding the appellant is entitled not only to explain any sale or disposition by him of any part of this property in controversy, for the benefit or better protection of it, but also to defend himself against claims
10 for the depreciation of the property while in use by him, and to claim allowance for improvements made upon it by him.

SECOND POINT.

The intimation of the Court below, in the introductory part of the opinion, at red pages 385–7, that the appellant never paid to Hammell the consideration of the partnership, is unwarranted, and the appellant's statement of it on cross-examination, at pages 71, et seq., is
20 perfectly reasonable and credible.

1. No question is raised about the credibility of the appellant.

2. Hammell is not called to contradict him.

THIRD POINT.

Any intimation in the opinion that the partnership between Hammell and Moore did not exist is unwar-
30 ranted, because, while there is not any proof of the non-existence of the partnership, there are a multitude of facts in the case inconsistent with any theory other than of its existence, besides the direct proof of its existence.

See Brief appended, p. 14, l. 15; p. 17.

FOURTH POINT.

If the partnership was formed January 1, 1879, and continued up to November, 1881, as the facts show, money owing from Hammell to Moore under it is as good a foundation for a voluntary conveyance as any of the pre-existing debts of the appellees are for their voluntary conveyances, none of them being debts of the partnership.

1. That is to say, money owing to a dormant partner is as good and valuable a consideration for a confessed judgment against, or a bill of sale by, the other partner, as any other pre-existing debt not a partnership debt. 10

2. The appellant claims under a bill of sale, covering no more property in value than was owing to him under and by virtue of the dormant partnership; the appellees claim under confessed judgments having no relation to the partnership.

Brief, p. 12, l. 30.

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It is a question of priority of conveyance.

Brief, p. 9, l. 30.

Did the conveyance take effect before the levies of the appellees were made? It did.

Brief, p. 11.

FIFTH POINT.

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The bill of sale performed a double office:

a. To convey the one-half interest of the appellant in these chattels, by virtue of the partnership, which Hammell had never formally conveyed to the appellant.

b. To convey to the appellant Hammell's one-half

interest in the same chattels, in payment of Hammell's debt to Moore arising out of the partnership.

1. This explains Hammell's recital or guarantee in his bill of sale, that the title of these chattels was in Hammell, and that he had a right to sell.

Opinion, red page 399.

2. This guarantee was in a deed poll, was accepted by the appellant without the advice of counsel, and was at most no more than an inconsiderate following of an old form.

SIXTH POINT.

There is nothing to show that, as stated in the opinion, Moore knew of Hammell's embarrassed condition at the time of the bill of sale:

1. Moore denies it.
2. The evidence points the other way.
3. If Moore knew it, he was right in securing his own.

SEVENTH POINT.

There is no contention about the *mala fides* of Hammell; but any *mala fides* on the part of Moore, the appellant, or any collusion of the appellant with Hammell, is distinctly denied, and, as contended by the appellant, without foundation in fact.

1. Whatever Hammell's design was, there was a manifest disinclination on his part to secure or protect Moore.

2. Moore certainly would never have resorted to a bill of sale and a partnership agreement of the character of those in evidence to cover up a fraud: he trusted, in the

draft of these instruments in writing, entirely to Hammell and Hammell's counsel, and was without guidance himself.

EIGHTH POINT.

But Moore was not, as stated in the opinion, entirely under Hammell's control.

1. This statement in the opinion is inconsistent with the prior statement therein, that Moore knew of Hammell's financial embarrassment and was pressing for his claim. 10

2. It is also inconsistent with Moore's conduct, for he omitted no importunity in seeking from Hammell his rights, in getting the bill of sale and partnership agreement executed and delivered, and in announcing to Hammell's friends and creditors the fact of it, and that "the teams" were his.

Brief, pp. 20–1; Test., p. 299.

Respectfully submitted,

HERBERT A. DRAKE,
Of Counsel with Appellant.

IN CHANCERY OF NEW JERSEY.

Between LEHMAN MOORE, Appellant, and ROBERT B. S. DIAMENT, ET AL., Appellees.	BRIEF OF APPELLANT.

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INTRODUCTORY.

On the sixth day of December, 1881, the complainant and the defendant, on a settlement of their partnership business, then in existence nearly three years, found that there was due the complainant $2,958.47 (the complainant's one-half part of unpaid profits) over and above partnership debts; in consideration of which Hammell conveyed to the complainant, by bill of sale of the same 20 date, all the partnership property, as well that theretofore belonging to the complainant, (because there had been no formal conveyance of it,) as the other half in satisfaction of Hammell's debt to Moore. Owing to some disaffection or dissatisfaction on Hammell's part, the papers were delayed by Hammell in the hands of the at-

torney who drew them, and before whom they were executed, until the 21st of the same month, (December, 1881,) when they were handed to the complainant. On the 20th of December, however, Hammell confessed judgment to Nathan D. Marshall (bill, page 10,) for $2,000 real debt, upon which Marshall immediately entered judgment and caused an execution to be issued and levy made, seizing and including in that levy a large part of the partnership property conveyed by the bill of sale to complainant. Other judgments subsequently confessed by Hammell, and on bonds contemporary with the judgments, with warrants of attorney attached, followed in rapid succession; on the same day, the 20th, one in favor of John Smith, Jr.; on the 21st, three in favor of Diament, Benner and the Bank, respectively; on the 22d, two in favor of Wood and Marshall's executors respectively; on the 27th, two in favor of Warner & Merritt and Coles & Co., respectively; and on the 29th, one in favor of The National Bank of the Republic, of Philadelphia.

These judgments were for large amounts, viz:

Marshall's	$2,000 00	real debt.
John Smith, Jr.	1,000 00	" "
Diament	3,400 00	" "
Benner	1,470 00	" "
First National Bank,	2,534 00	" "
T. B. Wood	1,684 00	" "
Marshall's executors	1,150 00	" "
Warner & Merritt	1,525 00	" "
Coles	1,150 00	" "
Bank of Republic	2,375 00	" "
	$18,288 00	

(Vide bill and amendment, p. 10 and 11, p. 24.

Besides these judgments, every one of which was entered on bond and warrant of attorney, and in every case, I

think, on the very day of the giving of the bond, Hammell was otherwise indebted to John J. Atkinson, in..... $3,663 00
To Ewan B. Brown in..... 1,000 00
To the father and brother of Diament, the defendant, in..... 440 00
The complainant, (Bill, p. 5; Exhibits 101, 102)..... 2,958 00

amounting to..... $8,061 00
and others (so that when this bubble burst, Hammell, 10
the Ferdinand Ward of Camden, was indebted between twenty-five and thirty thousand dollars, over twenty thousand dollars of which must remain unpaid, except as out of the goods in controversy.

The Marshall and Smith executions were delivered to the Sheriff on the 20th of December. The Diament execution was delivered to the Sheriff at 9.25 A. M. of December 21, 1881.

First National Bank, 1.08 P. M., December 21, 1881, and Benner's later in the same day, December 21, 1881.

Diament's judgment was on bond and warrant. 20
Bank's, also (vid. p. 200, Ex's. A and B of defendants, Diament and the Bank.)

Benner's, also (Test. 231 and 234.)

On the 28th of December, 1881, the complainant filed his bill in this Court for relief, and on his application an injunction order was issued, directing the Sheriff to refrain from selling the partnership goods and chattels of the complainant, and it is for the possession of these that the several parties, the complainant on one side and 30
Diament, the Bank and Benner on the other side, are now contending; because the Sheriff proceeded with his sale of Hammell's property, under the Marshall and subsequent executions, and realized sufficient to pay

Marshall	$2,004 00
Smith	1,004 00
Diament	742 82
	$3,750 82
Besides his costs, which would make altogether about	$4,000 00
From ascertained debts above stated of	18,288 00
And	8,061 00
	$26,349 00
Deduct whole amount realized out of Hammell's estate, (Vid. p. 202 of testimony.)	3,751 00
	$22,598 00

The property, goods and chattels in controversy will not pay over $4,400 of this, so that creditors to the amount of nearly $20,000 must suffer and go unpaid.

STATEMENT OF CASE TO BE DECIDED.

Hammell's case then stands: Debts existing December 20, 1881, for a great part of which, during the next ten or fifteen days, and principally within the next five days, bonds due at once, with warrants of attorney annexed, were given and judgments thereon entered, amounting, (inclusive of balance due complainant), as above stated, to	$26,349 00
Amount realized on execution and sale out of Hammell's personal or individual estate	3,751 00
Balance now unpaid	$22,598 00
Goods in controversy worth about	4,448 00
Unpaid balance owing by Hammell	$18,150 00

The above account does not include partnership debts	$2,803 00
Nor the claim of Brooks Brothers, (bill, p. 26, et. seq.), for which there is a verdict of	788 00
Making real unpaid balance of Hammell's debts	$21,741 00

So that debts to the amount of over $20,000, actually, and the creditors to whom the same are due, must suffer and go unpaid, or recover payment out of persons other than Hammell, and make them suffer.

The goods in controversy are enumerated on page twenty-three of the bill, and had been the partnership property of Hammell and Moore in their business of draying, and amounted in value to about $4,448.00. The same or less value is shown by the Sheriff's inventory and appraisement, an exhibit in the case, (Vid. testimony p. 190; Exhibit No. 111 of complainant.)

Mr. Moore, the complainant's title to these goods, is under the bill of sale and partnership agreement, made between Hammell and the complainant December 6, 1881, and dated on that day—Exhibits No. 101 and 102. The consideration of this bill of sale grew out of the partnership between Hammell and Moore. It amounted to $7,958.47, made up as follows:

Money owing by Hammell to Moore on partnership account	$2,958 47
Moore's cash paid to Hammell for one-half interest in partnership goods and business.	5,000 00
	$7,958 47

An additional consideration is the complainant's personal liability for the partnership debts, page twenty-three of bill.

So that Moore paid a full consideration for the goods,

but did not take his title to them until December 6, 1881, which is the reason for Hammell's formally covenanting in his bill of sale (Exhibit 102; Bill, p. 7) that he had full title to the goods conveyed; and while equitably he had not, technically and legally he had, certainly against everybody in the world, except, possibly, the complainant, and whether or not Hammell held the legal title to these goods as against the complainant was a matter of very little consequence. When Hammell covenanted in
10 his bill of sale that he had the legal title to these goods, as to a part of the goods the covenant related, in point of time, to the time of the formation of the partnership, and as before stated was a covenant against others than the complainant. As provided for by the partnership articles the goods were no longer to be considered as part of the partnership assets; they were owned individually by Moore, the complainant, and neither Hammell nor the partnership had any ownership in them. So much then for the complainant's title to these goods—for the present at least.

20 We contend that it is on bill of sale for good consideration and *bona fide*, and no more voluntary than the defendants' bonds and warrants, upon which their proceedings were taken and their preference claimed. We claim to be prior in time and therefore prior in right.

But the defendants contend that the partnership between Moore, the complainant, and Hammell, forming the basis and consideration of this bill of sale, under which the complainant claims title to these goods, was a dormant co-partnership, and upon this they are very
30 insistant. They contend for the privilege of slandering this partnership in that respect. We propose, for the purposes of argument, to concede them that privilege. I do that for the purpose of agreeing upon the question to be decided.

That we contend is:

Must a judgment entered upon a bond and warrant of attorney, for a pre-existing debt, and execution and levy thereunder, succumb to a prior bill of sale; also for a pre-existing debt, arising out of a dormant co-partnership?

There are minor questions.

1st. Did the dormant co-partnership actually exist?

We show this.

2nd. Was the bill of sale prior to the confessed judgment? 10

This also we show.

3rd. Were the judgment debts, debts of the partnership?

We say they were not.

4th. Were the judgment debts incurred on the faith of the partnership goods in controversy?

This question, as also the last preceding question, we answer emphatically in the negative.

There is no difficulty, as we insist, in setting these minor questions as indicated; and yet, on the settling 20 and resolving of these minor questions, the main question remains as stated; that is to say: Could Hammell, by bill of sale executed and delivered on the 6th of December, 1881, convey chattels specifically enumerated, which the complainant had not taken formal possession of on the 21st of the same month, successfully against an execution and levy under a confessed judgment for a pre-existing debt of the last named day?

We answer, he could. 30

No matter if the consideration of the bill of sale did arise out of a dormant co-partnership.

A good, and even a valuable consideration can, and in this case did, arise out of a dormant partnership, and if the bill of sale was upon good consideration, and *bona*

fide, it is good against the execution and levy on the confessed judgment for a pre-existing debt.

BILL OF SALE.

In New Jersey the early case of Chumar vs. Wood, 1 Halst., 155, which declared retention by the vendor to be conclusive evidence of fraud, is not now considered good law, and the rule undoubtedly is that such possession may be explained.

10 Miller vs. Shreve and Pancoast, 5 Dutch., 253.
Atwood vs. Impson, 5 C. E. Gr., 150.
Stew. Dig., 584.
Benj. on Sales, § 675, note, (Bennett's ed).

(Note. The attention of the Court is specially directed to Atwood vs. Impson).

The true rule is stated by Chancellor Green:

"Whether a conveyance be fraudulent or not depends "upon its being made upon good consideration and *bona* "*fide;* and if defective in either of these respects it is 20 "void as to creditors."

Vid. Sayre vs. Fredericks, 1 C. E. Gr., 205–209.
1 Story's Eq. Jur., § 353, et seq.
1 Fonblanque Equity, Book 1, Chap. 4, § 12, p. 260.

An innocent purchaser of a chattel who has bought it *bona fide*, at a fair price, cannot be deprived of it, although the object of the vendor was to defraud his creditors.

Farrell vs. Colwell, 1 Vr. 123.

It is not sufficient to show that the object of the grantor 30 was fraudulent; it must also be shown that the *grantee* participated in it or had knowledge of it, or of such facts as should have put him upon inquiry.

Merchants' Bank vs. Northrup, 7 C. E. Gr., 58, 8 do. 582.

And Atwood vs. Impson is even stronger to the same effect.

Then if Moore purchased *bona fide* for a fair consideration, and without notice or knowledge of any fact to put him on inquiry, no matter how fraudulent Hammell's designs may have been, we are entitled to hold these goods against these judgment creditors, with their confessed judgments for pre-existing debts. And the testimony shows that Moore did purchase *bona fide* for a fair consideration, and without knowledge or notice of a single fact to put him upon inquiry. 10

But to return to Fonblanque and the part thereof above referred to.

Fonblanque's note (a) beginning on page 260 and extending to page 264, inclusive, and embracing the very language used by Chancellor Green in Sayre vs. Fredericks, at page 209, and by Justice Story in 1 Eq. Jur. § 353, is very instructive. The note closes as follows: "But though creditors may, under some circumstances, "avoid a voluntary conveyance, yet it is binding on the "party and all claiming under him"—and then follow a number of references to cases, and also the important statement of legal principle, viz.: "if there be two or "more voluntary conveyances, the first shall prevail, "unless the latter be for payment of debts,"—elementary and self evident, and the reference is to Goodwyn vs. Goodwyn, 1 (English) Chancery Reports, 92; 2 do., 199. 20

If of two or more voluntary conveyances the first shall prevail, unless the latter be for payment of debts, then necessarily of four voluntary conveyances, all for payment of pre-existing debts, the *first* of *them* shall also *prevail.* And we contend that we have here, in effect, four voluntary conveyances for pre-existing debts. 30

They must take, then, in the order of their priority, and the questions propounded on page 7 of this brief must be answered favorably to the complainant.

In other words, the complainant's title, under his bill of sale and agreement from Hammell, conveyed the title out of Hammell into the complainant, good against the confessed judgment, entered on a contemporaneous warrant of attorney, for a pre-existing debt, with levy thereunder.

10 These judgments, and the levies under them, are as much voluntary conveyances as the complainant's bill of sale.

(a.) All of them, the bill of sale and the three judgments, are for pre-existing debts.

(b.) The consideration supporting the bill of sale is as meritorious as those supporting the judgments.

(c.) The mode of conveyances was no more hidden, sudden or precipitous in the one case than in the other.

(d.) The giving of a bill of sale, conveying specified goods in payment of a pre-existing debt, is no more voluntary than giving for another pre-existing debt a
20 bond, due at once with warrant of attorney to confess judgment thereon.

(e). The one is as much a conveyance as the other, and both are, and in this case were, voluntary.

Test., p. 203.

The minor questions.

1st. Did the dormant co-partnership actually exist?

We do not admit that the partnership was dormant. Whether it be called dormant, or by whatever name it
30 be called, a partnership did exist between the complainant and Hammell from January, 1879, to December 20, 1881, nearly three years.

See Moore's Exhibits, from No. 1 to No. 104, inclusive.

See also Test. of Isora Hammell, p. 4.

See also Receipt, Exhibit No. 4, p. 36.
See also Receipt, Exhibit No. 5, p. 37.
See also Test. of Brewer, p. 183.
See also Test. of Moore, passim.

There is no denial of the existence of the partnership in the answers. The several defendants in their answers only aver that they do not believe any partnership existed.

10

2d. Was the bill of sale prior to the confessed judgments and levies thereunder?

Benj. on Sales, Bennett's last edition, § 39–46.

It, the bill of sale, was executed and delivered December 6, 1881.

Test., p. 58, 197; Bill, p. 9.

The first judgment was entered on the 20th of December, 1881, on a bond given December 20, 1881; and the others followed immediately.

See Testimony, page 58.

20

3d. Were the judgment debts, debts of the partnership between Moore and Hammell?

Most emphatically not.

The answers, in their tame way, deny the partnership; the defendants say they *do not believe* it existed. How, then, can it be pretended for one moment that the defendants are creditors of the partnership?

Moore (Test. p. 70,) says that these debts of these defendants had no reference to or connection with the partnership business. There is no denial of this. 30

Diament says in his answer that he never saw anything in his numerous dealings with Hammell from which he could infer a partnership. Why? Because Diament's dealings with Hammell had no reference

whatever to the partnership, or to the partnership business of draying.

4th. Were the judgment debts incurred on the faith of the partnetship goods in controversy? No.

In other words, would these judgment creditors have given Hammell these credits, or permitted him to have incurred these several liabilities to them, respectively, had they known of the existence of the partnership? We say they undoubtedly would have done so.

10 It is at this stage of the case that the authority of Cammack vs. Johnson (1 Gr. Ch, 163) is invoked, as fatal to the claim of the complainant.

In the case of Cammack vs. Johnson, and the class of cases to which it belongs, the partners were *in trade*, or engaged *in trade*; that is to say, in buying and selling, and the creditors in the Cammack case had been trading and dealing with and selling to Johnson, as they supposed, on the faith of the business, and as they also supposed of his stock in trade (leather).

20 Mark the contrast. None of these debts of the defendants are for goods sold to, or for the use of this business. None of these debts were incurred for or relate to this business of draying, or from the point of view of this business. Hammell and Moore were not in trade at all. They were doing a cash business, not trading but draying; their business was no more like the business of Johnson and Cammack than farming is like the business of buying and selling leather.

While the people who had been dealing with Johnson, or Johnson and Cammack, had dealt with them in respect of their business, these defendants had not dealt 30 with Hammell in respect of the draying business of Moore and Hammell, or in respect of the numerous other businesses of Hammell, but had in the case of the bank lent Hammell money on collateral security; in the

case of Diament had purchased forged Newton Building and Loan Association certificates of indebtedness, and in the case of Benner had lent money on Hammell's personal credit prior to the partnership.

Hammell was engaged in numerous other businesses. Test., p. 235, line 33, viz: two farms, grocery store, feed store and blacksmith shop.

(At this point in the testimony, (p. 235, l. 33), there is an erratum, for "two barns" read "two farms.")

Hammell's credit was beyond reproach—beyond question—see testimony of Depuy, p. 207; Diament, p. 211, l. 20; Campbell, p. 214, l. 20; Merritt, p. 218, l. 20, and others. If a man is ever trusted on his individual credit, irrespective of any property he may own, the defendant Benner's case is in point.

His friendship for Hammell and his confidence in him were unbounded.

None of this money was lent on the credit of this business. The bank lent on security; Diament purchased what he supposed valuable and Benner lent on personal credit.

None of this money went into this business The horses were paid for out of the money arising from the business, Hammell taking credit for them on the weekly slips as a deduction of or credit to Hammell's account of partnership moneys in his, (Hammell's), hands.

We stand then upon our original position, claiming under our voluntary conveyance (bill of sale and agreement) as prior to the three judgments of the three defendants and the three levies thereunder, all the minor questions being settled in our favor.

I

The effect of the answers of the defendants as evidence against the complainant.

It was insisted that the answers of the second answering defendants, especially the answer of the defendant Diament, were adequate to make out a defense.

1. The answer to that effect must be responsive.

2. Must also be direct and positive.

These answers, where they are responsive, they are not direct and positive, and where they are direct and positive they are not responsive.

Confer Frink vs. Adams, 9 Stew., 485.

10 3. Where direct and positive the answer must be contradicted by two witnesses, or one witness and circumstances.

(a) The answers do not directly and positively deny the partnership; they say, (the answering defendant says) they do not believe the partnership existed.

The partnership is proved by the testimony of Moore, the complainant; of Brewer, p. 183; of Mrs. Hammell, p. 4; by the receipts, Exhibit 4; by the weekly slips; the testimony of Evan B. Brown, p. 12, l. 18, 28, et seq.

20 The testimony of this witness, his conversation with Hammell, being an admission of Hammell against interest, at the time, all show the existence of the partnership most conclusively.

(b) The answers insist that the money went into the partnership business.

This contention is negatived by all the facts in the case. All the money was borrowed by Hammell for his own purposes and neither went into the business nor was borrowed on the credit of the business nor of the goods used in the business.

The weekly slips show that the business was never in 30 debt to Hammell, but that Hammell was constantly in debt to the business. The constant outcome of the business in money renders the advance of money to the business by Hammell unreasonable and improbable, and

the facts show that Hammell never in fact did lend any money to the business.

II.

The claim made against Moore as liable to the defendants, because he was the dormant partner of Hammell.

But the dealings of the defendants with Hammell had no reference to the partnership, or the partnership goods in controversy.

If a partner borrows money, and gives his own security for it, (which is this case) it does not become a partnership debt by being applied to the partnership purposes, with the knowledge of the other partner, (which is not this case.) 10

Bevan vs. Lewis, 1 Sim., (376) 189.

See also Gibson vs. Lupton, 9 Bing., 297.

Ex parte Harris, 1 Madd., (583) 313.

In assumpsit against partners on a note by one of them, the partnership or joint contract must be proved.

Tellers vs. Mirth, 2 Penn., 749 (548) (2 N. J. Law.)

Le Roy vs. Johnson, 2 Peters, 186. 20

Ketchum vs. Darkee, 1 Hoff. Ch., 538, and cases there cited.

Loyd vs. Freshfield, 2 Carr & Payne, 325.

It is an erroneous, but popular notion, that if the firm gets the benefit of the contract made with one of the partners, it must needs be bound by the contract.

The question is not, did the firm get the benefit of the contract, but did the firm enter into the contract. 30

1 Lindley on Partnership, 361. Last edition by Ewell.

If one partner was acting and was dealt with on his own account, *i. e.*, as principal and not as agent of the firm, he alone is responsible.

1 Lind. on Part., 339.

See also Ewell's Evans on Agency. (Star pages) *177, *304, *308, *442.

To the effect that,

The undiscovered principal may upon discovery be held liable.

1 Lind. on Part., 338, 340.

Here Weeks, the man sought to be charged, used I. Words equivalent to " we " or " the firm " were not used.

10 1 Lindley on Part., 338.

Marvin vs. Buchanan, 62 Bart., 468.

Therefore Weeks bound only himself and not the firm.

Power to borrow money only exists where it is necessary to carry on the business in the ordinary way.

1 Lind. on Part., 269.

Loyd vs. Freshfield, Supra.

The act of the partner to bind the firm must be necessary to carry on the business.

1 Lindley, 239.

20

The edition of Lindley on Partnership here referred to is the last edition by Ewell, of Chicago, and is the only book which fully treats of the subject of partnership where the question of dormant partnership is raised.

Hammell thus had no power to borrow money for the firm, because such power was not necessary to carry on the business of the firm.

Hammell in fact did not borrow money for the firm, as all the evidence shows, and the money he borrowed

30 was not used in the firm, and the defendants make no attempt to show that the money they have lost by Hammell's rascality was either borrowed on the credit of the firm or went into the firm, except by making namby pamby statements in their answers, about which they

did not know anything and could not know anything. *If these answers possessed the virtue which is now claimed for them, why did not the defendants go to a hearing on bill and answer, especially as the goods were all this time in the possession of the complainant, as they now, at this late day, very much to their disadvantage, claim.*

We insist, then, that as these moneys were not borrowed by the firm, for the firm, and did not benefit the firm, Mr. Moore is not personally liable for them. Hammell's personal credit, his collaterals and private property, moved the loans. The partnership goods of a partnership carried on in Pennsylvania, a foreign commonwealth, cannot be pretended to have influenced these lenders. The facts show it did not influence them.

III.

The existence of the partnership.

Counsel for Benner insisted so persistently that the partnership did not exist, that while no other theory will explain the facts, some special references beside those given under the I. head of this reply seem not unfitting.

Special references showing existence of partnership.

The settlement between Moore and Hammell, and the agreement and bill of sale growing thereout, exhibits 101, 102, 113 and 114.

Test. of complt. on following pages, viz:

Payment of money, p. 179.

Reason for not publishing, p. 22, lines 8–36.

Manner of doing business, p. 34, 85.

Explanation of weekly statements, p. 42, et seq.

Partnership generally—p. 96, 116–7, 122, 130, 141, 144, 151, 146–7, 179.

Payment of money for horses, p. 156.

IV.

The fourth, the principal and the most important point in reply is—

The evidence in support of an execution of the bill of sale on the 6th of December, 1881, or at any time prior to December 20, 1881, when these goods were seized on execution under Marshall's judgment of the last mentioned day, entered on bond and warrant of the same day.

These facts depend entirely upon the proofs, and it is a question of fact, almost entirely.

The evidence of a delivery of the bill of sale of Hammell (Ex. No. 101) to Moore, on December 6th, 1881, depends upon the testimony of Moore, from p. 48—where the preliminaries are shown as to how the settlement was arrived at, onward to about p. 61. Also, testimony of M. B. Taylor, and testimony of Callahan and Benner as to Hammell's behavior and words when he sent the order to Mr. Taylor to hand over the papers, Exhibits No. 101 and 102, to Mr. Moore.

Vid. pp. 231, line 17; p. 233, l. 25.

Mr. Moore's testimony as to a delivery is conclusive, i. e. as to a delivery on the 6th of December, 1881—p. 48.

The facts are

The bill of sale and the partnership agreement were signed, sealed, and delivered, the former by Hammell, the latter by Hammell and Moore, and such signing, sealing and delivery witnessed, the dates filled up, the papers folded and ready to put into Mr. Moore's pocket on the 6th of December, 1881.

See p. 58 lines 1–36, p. 95, 20–36.

The testimony don't say folded, but Moore, at page 95, says he was going to put the bill of sale into his pocket

when a copy was spoken of. They must have been folded.

This was an execution, inclusive of a delivery, on the 6th of December, past any possibility of recall by Hammell, whom we are striving to charge.

Subsequent events show this.

Hammell was not particular about his copy, viz: above reference, at pp. 58 and 95.

Mr. Taylor's testimony, p. 197, is to the same effect. 10 He says the papers were executed on the 6th of December. He speaks as a lawyer; "*executed*" includes "*delivered.*" Then Taylor took them. How? By "the consent of both parties!!" That is to say, with the consent of Mr. Moore. Mr. Moore's testimony, at pp. 58 and 95, shows that Taylor took the papers with "the consent of both parties." Moore had the papers in his hands and could have retained them. They were complete and he was about to put them into his (Moore's) pocket—p. 95.

Now why did Mr. Taylor have Moore's consent to take these papers unless they were, (as we insist *was* the fact,) at that time Moore's papers? When did Mr. Taylor 20 take them? We answer, after they were executed, i. e. after they were signed, sealed and delivered, with the execution witnessed.—p. 197, line 22.

And finally, for what purpose did Mr. Taylor take them? (p. 197, l. 24.) "For the purpose of drawing a "duplicate of the articles of partnership, Exhibit No. "102." There was and is nothing said about a duplicate of the bill of sale, for the manifest reason that there could not be a duplicate of it. It was only the article of co- 30 partnership that was to have been duplicated, as Mr. Taylor says. It is the bill of sale, however, that makes our title, not the articles of partnership. We stand on the bill of sale, of which there could be no duplicate, because it is a deed poll and unilateral.

Mr. Taylor is probably mistaken about the mention of a duplicate of either paper, in view of the facts that when he (Taylor) wrote to complainant Moore to see Hammell and arrange matters, (Ex. 104,) he, Taylor, made no reference to any duplicate of any sort or of any thing further for Moore to do. (2) Moore is explicit upon the subject and he speaks only of copy. (3) Hammell (Ex. 114, I think,) sent word to Taylor to "deliver Moore's papers," "retaining mine," Hammell's. Mr.
10 Taylor handed Moore the papers upon this order without requiring him, Moore, to sign a duplicate of partnership agreement.

Taylor was counsel for Hammell.—vid. p. 198, line 1.

Suppose there had been two counsel—one for Moore and one for Hammell. As it was, this second lot of papers were drawn for the purpose of replacing a former lot, of November 29th, 1881. Would possession of the second lot, by Moore's counsel, have been Moore's possession?

Then was not Taylor's possession, from his dual posi-
20 tion, because he was to a certain extent obliged to act for both, also Moore's possession? Somebody had to have the papers, to make the copies, and under the circumstances of this case we consider the delivery of them so complete, that Hammell's own possession of them would not have invalidated or brought into question Moore's title under this bill of sale, especially in view of the action of the complainant, after the execution of the papers. Vid. p. 96. Benner admits this—see his testimony, p. 229. This was no doubt Marshall's reason for pressing
30 Hammell into giving Marshall Marshall's bond and warrant, causing this bubble to burst.

Again, Hammell's procuring Taylor to retain these papers from Moore was done on a mere pretense, to answer some pride or purpose of his own not explained,

except by allusion by Benner, p. 229. He was probably too proud, or feared the result of admitting that he had settled with Moore and conveyed him the teams to pay him what he owed him. That it was a pretence, the merest, hollowest pretence, is shown by the excuses he (Hammell) gave for his conduct when Moore called upon him (vid. pp. 61, et seq.) Hammell in fact gave no excuse and no reason for requiring Taylor to retain the papers. He told Moore they were all right, and that he, H., would send word to Taylor to let him, M., have the papers. He repeated this twice or three times. The hollowness of the pretence is further shown by the fact that when Callahan and Benner called on Hammell the morning after the seizure under Marshall's execution, December 21, 1881, Hammell wrote in their presence for Moore, the order, (Exhibit 116, I think) to Taylor to hand Moore his papers, retaining Hammell's, saying, in answer to Mr. Benner's questions, "Horace, how about the teams?" "I guess this will let them out." By this Hammell meant, and only could mean, that Moore's bill of sale was paramount to Marshall's execution, the first of all the executions, and such meaning was necessarily predicated, by Hammell, in his own mind, unconsciously perhaps, but nevertheless necessarily, upon a delivery, a full execution beyond recall of this same bill of sale, under which we claim title. (When?) On the 6th day of December, 1881, in advance of all the rest of these voluntary conveyances for pre-existing debts, and consequently prior to them!

Special references in support of fourth point of a delivery of bill of sale on December 6, 1881.

Testimony, pp. 133, l. 30; 119, l. 20; 144, l. 16; 147-8; 156, 165-6-7.

Respectfully submitted, with many thanks for so extended an engrossment of the attention of the Court.

HERBERT A. DRAKE,
For Appellant.

IN CHANCERY.

10

To the Honorable Theodore Runyon, Chancellor of the State of New Jersey:

Humbly complaining, showeth unto your Honor, your orator, Lehman Moore, of the city of Philadelphia, Pennsylvania, that on or about the first day of January, in the year of our Lord, one thousand eight hundred and seventy-nine, your orator filed and entered into a partnership with Horace Hammell, of the City of Camden, in the State of New Jersey; that theretofore the said Hammell had been engaged in the business of general drayman in the said cities of Camden and Philadelphia, with an office at No. 104 Dock street, in said city of Philadelphia, his principal stables in the said city of Camden, and doing the principal part of his business between the city of Philadelphia aforesaid, and the railroad freight stations of the said cities of Camden and Philadelphia; that said Hammell had purchased and then owned and used, in the pursuit of and prosecution of the said business, a large number of horses, mules, wagons, besides harness, blankets and other furniture, goods and chattels thereof and therefor, and some office furniture, estimated at that time aforesaid, together and along with the good will of the said business, at the sum

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of ten thousand dollars, and had found the said business profitable.

2. That, at the time aforesaid, your orator, having for some time previously acted and been employed as the clerk and bookkeeper of the said Hammell, purchased of the said Hammell a one-half interest in the said goods, chattels and business at the price and sum of five thousand dollars, and at once entered into a verbal
10 agreement of co-partnership with the said Hammell, on the basis of equal joint effort, interest and liability in the said business, under the name and style of Horace Hammell.

3. That in pursuance of the said agreement and in part performance thereof, on your orator's part, your orator on or about the tenth day of January, in the said year 1879, paid the said Hammell the sum of five hundred dollars for which the said Hammell drew, signed and handed to your orator a receipt in the following characters, viz:

Phil. Jan'y. 10th, 1879.

20 Received of L. Moore five hundred dollars on account of half interest in teams and business, consisting of twenty-four horses, fourteen wagons and all double heavy harness, &c.

$500.

HORACE HAMMELL.

4. That also, in pursuance of the said agreement, and also in part performance thereof, your orator, on or about the thirteenth day of the month of January aforesaid, paid the said Hammell the further sum of one thousand
30 five hundred dollars, and on the twentieth day of the same month paid said Hammell the still further sum of one thousand dollars, making altogether the sum of three thousand dollars paid in cash on account of the one half interest in said goods and business, and leaving unpaid two thousand of the said five thousand dollars of

purchase money or price thereof, which said two thousand dollars it was agreed should be paid by your orator to said Hammell, out of the profits of the said business.

5. That in further pursuance of the said arrangement and agreement, and also in part performance thereof, the said Hammell and your orator proceeded to carry on the said business of draymen, collecting and settling all bills, as far as possible, at the end of each week, on weekly balance statements of settlement, each of which contained a computation and statement of the amount of net profits for and of the week to which it related.

6. That your orator permitted and allowed his share of the profits to remain in the hands of the said Hammell up to and until the first day of January, in the year of our Lord 1880, when, upon a statement of the said business for the said year 1879, the profits of the said business were ascertained to be slightly rising three thousand six hundred dollars, your orator's one-half of which was at once credited by the said Hammell to the account of your orator for moneys still due for your orator's one-half interest in said partnership, leaving less than two hundred dollars then due therefor.

7. That thereupon the said partnership business was continued by and between your orator and the said Hammell, for the said year 1880, in the same manner, and on a statement and account thereof on the first day of January, in the year of our Lord 1881, the profits thereof, after allowing fifteen dollars to each partner weekly for living expenses, as was also done in the year previous, amounted to four thousand five hundred dollars, and a little over.

8. And that thereupon the said Hammell owed your orator, upon a fair and bona fide settlement and division of the partnership affairs and assets aforesaid, the sum of two thousand dollars and over, and the said business was thenceforward continued as theretofore, your orator

and the said Hammell never having fixed any time or made any arrangement for the dissolution of the said copartnership, and so continued on and up to the sixth day of December in the year 1881.

9. That prior to the date last aforesaid, the said Hammell had been very ill, and was then too ill to attend to said business, although not actually confined to his room; that in the month of August or September last, as your orator has been informed and believes to be true, the said Hammell had what resembled a slight attack of paralysis, and has been under treatment therefor since that time; that in the latter part of October or first part of November last, as your orator has also been informed and believes, the said Hammell, after having on the same day attended the meeting of his own and another physician for the purposes of the examination of, and consultation upon his physical condition—had another and more serious attack of the same nature as aforesaid, and since that time has taken very little part in the conduct of the said partnership business.

10. That owing to the said Hammell's continued serious illness, your orator, immediately prior to the said sixth day of December, 1881, several times called upon the said Hammell, and finding him well enough to talk about said business, and being advised by the physician of said Hammell he could so do, importuned him for a settlement of their partnership affairs, and an arrangement thereof, such as would protect your orator in case anything more serious than theretofore should happen to the said Hammell.

11. That upon a settlement of the said partnership affairs and business, up to the said sixth day of December, made on and immediately prior to that day it was ascertained and settled between the said partners, that the said Hammell owed your orator thereupon the sum of two thousand nine hundred and fifty-eight dollars and

forty-seven cents ($2958.47), and that for the sake of preserving the result of said settlement and securing the benefits thereof to your orator, as well as providing for any contingency which might result from the precarious state of health of the said Hammell, the said Hammell and your orator, after consultation with counsel thereupon, and as advised thereto, on or about the said sixth day of December, entered into an agreement in writing, of which the following is a copy, viz:

This agreement made this sixth day of December, A. D. 1881, between Horace Hammell, of the City of Camden, and State of New Jersey, and Lehman Moore, of the city of Philadelphia, witnesseth, whereas the said parties on the first day of January, A. D. 1879, did agree to form a partnership in the business of hauling and handling produce and other articles of merchandise, and have since been carrying the same on as partners.

And whereas, in the settlement of the accounts of the said partnership this day it has been ascertained that the said Horace Hammell is indebted to the said Lehman Moore over and above his one-half interest in the said partnership to the sum of twenty-nine hundred and fifty-eight $\frac{47}{100}$ dollars, and that the said Horace Hammell has not yet transferred over to him the equal undivided half part of said partnership property;

Therefore, for the purpose of definitely settling the affairs of said partnership, and paying the said Lehman Moore the said sum of twenty-nine hundred and fifty-eight $\frac{47}{100}$ dollars, it has been and is mutually agreed as follows:

1st. That the said Horace Hammell shall immediately after the execution of this agreement convey to said Lehman Moore all the stock, horses, wagons, harness, furniture and personal property now belonging to said partnership absolutely by bill of sale, bearing even date herewith, the value of each of said parties' interest over

and above the debts of said partnership, being the amount of twenty-nine hundred and fifty-eight $\frac{47}{100}$ dollars, one-half of which already belongs to said Moore.

2nd. That upon the execution of said bill of sale the said Lehman Moore shall give to said Horace Hammell a full discharge of said indebtedness of twenty-nine hundred and fifty-eight $\frac{47}{100}$ dollars.

3d. That said partnership shall continue under the name of Horace Hammell as heretofore.

4th. That said Lehman Moore shall suffer and permit the said partnership to use all of said personal property in the business of said partnership, but that the same shall not in anywise be considered partnership property nor taken into account as the assets of the firm.

5th. That the said partnership shall continue for the space of one year from this date, unless dissolved by death of either party, or by mutual consent of both parties hereto.

6th. That in case of death of either party the partnership shall cease and all accounts up to that time settled with the heirs, executors or administrators of the party so dying.

7th. That each party shall devote his time and skill to the best of his ability toward the business of said partnership, and that all profits and losses shall be equally divided between the said parties, and for the purpose of ascertaining the same the said parties shall keep, or cause to be kept, regular books of account of all their dealings and transactions which shall always be open for either party to examine.

8. That at the termination of said partnership, a general settlement of the accounts shall be had between the parties.

9. That neither of the above named parties shall become security or bail for any person or persons or endorse any accommodation paper, or become liable thereon, unless by the consent of the other party.

10. That both of said parties shall devote his time, skill and energy to the business of said partnership, and do all in his power to advance the interest of the same, as hereinbefore stated.

In witness whereof, the said parties have set their hands and seals, the day and year first above written.

Signed, HORACE HAMMELL. [L. S.]
Signed, LEHMAN MOORE. [L. S.]

Sealed and delivered in the presence of
Signed, M. B. TAYLOR, 10

And of which said agreement in writing, the following is a copy of the endorsements:

"Articles of partnership. Horace Hammell and Lehman Moore. Dated Dec. 6, 1881."

12. And your orator further shows, that in accordance with the agreement last mentioned, the said Hammel made to your orator the bill of sale in said last mentioned agreement mentioned, on the same day and bearing even date of which said bill of sale, and of the 20 schedule thereunto annexed, and of the endorsements thereon, the following are copies, viz:

Know all men by these presents, that I, Horace Hammell, of the city of Camden, and State of New Jersey, for and in consideration of the sum of seventy-nine hundred and fifty-eight $\frac{47}{100}$ dollars to me paid by Lehman Moore, of the city of Philadelphia, and State of Pennsylvania, the receipt whereof is hereby acknowledged, hath and by these presents doth give, grant, bargain and sell unto the said Lehman Moore, his executors, administrators or assigns, all the goods and chattels mentioned 30 in the schedule hereunto annexed and by me signed. To have and to hold the same to his and their use forever. And I, the said Horace Hammell, hereby covenant that I am the true and lawful owner of said goods and have full power to sell and dispose of the same.

Witness my hand and seal this sixth day of December, eighteen hundred and eighty-one.

Signed, HORACE HAMMELL. [L. S.]

Sealed and delivered in the presence of

Signed, M. B. TAYLOR.

Schedule of goods referred to in the foregoing bill of sale.

List of horses, wagons and harness, blankets, &c., in the stable situate at Fourth and Divison streets, Camden, New Jersey.

Six bay horses, one roan horse, four black horses, two black mares, one brown mare, two bay mares, two sorrel horses, six iron-grey horses, two iron-grey mares, two brown horses, one dark roan horse, one white mare, eleven double wagons, no tops, two double wagons with tops, one single wagon, no top, one single light wagon, with top, eleven pair of blankets, fourteen sets of heavy double harness, two sets of single harness, lot of corn in crib, hay and straw in mow, wagon hoisters, wagon boards, wrench slide, boards, &c.

List of horses, wagons, harness, blankets, in stable situate Ninth and Carpenter streets, Philadelphia.

Five double wagons, five pair blankets, five sets double heavy harness, all the hay, feed and straw in mow, wagon hoisters, wagon boards, slide boards, two bay mares, one black mare, one bay horse, one brown mare mule, two black mare mules, one black mule, slide boards, wrenches, &c.

List of goods in office, No. 104 Dock St., Philadelphia.

One iron safe, two desks, four chairs, one sofa, seven hundred bags on top of office, one pair of double trees, one set of wagon poles, three hundred bags at J. Barnes & Co., No. 328 North Delaware avenue.

Dated December 6, 1881.

Signed, HORACE HAMMELL.

Witness present,

Signed, M. B. TAYLOR.

Bill of sale. Horace Hammell and Lehman Moore. Dated Dec. 6, 1881.

13. And your orator further shows, that on the same sixth day of December last aforesaid, the said agreement in writing was duly executed by your orator and the said Horace, the said bill of sale duly executed by the said Horace, and the said schedule duly signed by the said Horace, and after the execution thereof, that is to say, after the execution of said agreement in writing and of the said bill of sale, and after the signing of the said schedule thereunto annexed as aforesaid, the said Hammell expressed himself fully satisfied therewith, and thereupon delivered said agreement in writing, bill of sale and schedule, unto your orator, as in and by the same now in the possession of your orator ready to be produced and proved as this honorable court shall direct, and to which your orator refers, shall and will more fully appear.

14. That the first time your orator called upon the said Hammell relative to the settlement and arrangement embraced in the said agreement in writing, and said bill of sale, was on the twenty-first day of November last, since which time the said Horace has not taken any part in the conduct of the said business, the said Hammell being on that day in his own house and too ill to go out, but able to be about his room, your orator finding him in his room standing up looking out the window; that it had theretofore been intimated to your orator that the said Hammell had or might have or be into financial difficulty; that on the day last aforesaid your orator asked the said Horace in relation thereto; on the said Horace denying that he had any financial difficulty or trouble, and denying also that he expected any, your orator still urged a settlement because of the length of time which had elapsed since a settlement of their said partnership business, and because also of the precarious physical con-

dition of the said Hammell; that on the next interview of your orator with the said Hammell your orator again inquired if the said Hammell expected any financial difficulties, and the said Hammell denied that he either had or expected anything of the sort, whereupon your orator again urged a settlement for the reasons aforesaid, 10 and the settlement and arrangement aforesaid were practically agreed upon and fixed and finally consummated on the said sixth day of December, as aforesaid.

15. That on or about the twentieth day of December, 1881, as your orator has been informed and believes, the said Hammell gave his bond or writing obligatory in the penal sum of four thousand dollars, with warrant of attorney thereto annexed to confess judgment thereon, to one Nathan D. Marshall, and that on the same day the said Marshall procured judgment to be entered upon the said bond, in the Circuit Court of Camden county, by virtue of the said warrant of attorney, and procured execution to be issued thereupon endorsed, to levy two 20 thousand dollars debt and four dollars costs of suit; and having caused the said execution to be placed in the hands of Theodore B. Gibbs, then and still Sheriff of the county of Camden, caused the said sheriff among seizures of and levy upon the property, real and personal, of the said Hammell, of which he has considerable in the said county as your orator is informed, to seize upon all the partnership property of the said partnership in the county of Camden; that said seizure and levy were made on the evening of the day last aforesaid; that the 30 goods and chattels of the said partnership thus seized were all the goods and chattels thereof mentioned and scheduled in the said schedule as "in the stable situate at Fourth and Division streets, Camden, New Jersey," except one bay mare, one brown mare, one set of double harness and two wagons.

16. That since the said seizure and levy there have

been entered against the said Hammell in the said Circuit Court the following judgments, viz: on the said twentieth day of December, instant, a judgment for two thousand and four dollars debt and costs in favor of John Smith, Jr.; on the twenty-first day of December, instant, a judgment in favor of Robert B. S. Diament, for $6,808 debt and costs; another judgment in favor of William Benner, for $2,949.66 debt and costs; still another judgment in favor of The First National Bank of Camden, New Jersey, for $5,076.42 debt and costs; on the 10 twenty-second day of December, instant, a judgment in favor of Thomas B. Wood, for $3,377.50 debt and costs, and in favor of Charles Stevenson and others, executors of David E. Marshall, deceased, for the sum of $2,304 debt and costs, as your orator has been informed and believes, or for some other sums; by virtue of which the said several judgment creditors of the said Hammell have caused executions to be issued and levies to be made subsequently to the said Marshall's levy upon the said partnership goods and chattels. 20

17. That of the goods levied upon by the said sheriff, under and by virtue of the writs aforesaid, one brown horse "Plug," one bay horse "George," one black mare, one brown mule and one brown horse "Blangey," are at and upon a farm in the said county of Camden, leased to the said Hammell, in charge of William Bendler, as the superintendent thereof, and known as the "Bendler Farm," the rest of the goods and chattels so seized as aforesaid being in and at the said stable at Fourth and Division streets, in the city of Camden aforesaid; and that the schedule hereunto annexed contains a full and true list 30 of the said goods and chattels of said partnership so levied upon as aforesaid.

18. That on or about the twenty-second day of December, instant, one John J. Atkinson, of the city of Camden, aforesaid, began a suit in foreign attachment in

the District Court in and for the city and county of Philadelphia aforesaid, he having also on that day begun an action in assumpsit in the said Circuit Court of the county of Camden, against the said Hammell for an indebtedness of the said Hammell to the said Atkinson, amounting, as your orator has been informed and believes, to $3,663.00 or about that sum; that under and by virtue of the said attachment so begun in the city of
10 Philadelphia as aforesaid, the said John J. Atkinson has caused the following goods and chattels of the said copartnership to be seized by the Sheriff of the county of Philadelphia, viz: one bay horse, one brown mare, three bay mares, one brown mare mule, two black mare mules, four wagons, four sets of heavy double harness and four pairs of blankets.

19. That when the levy and seizure of the said Marshall was made by the said Sheriff, on the said twentieth day of December, instant, there were employed by the said partnership in the business thereof, sixteen double teams, and although the said teams and other goods
20 and chattels, which were attached in Philadelphia as aforesaid, have been suffered to be used since the twenty-sixth day of December, instant, subject to the said attachment, the teams, goods and chattels, seized in the city of Camden, are not suffered to be used nor to leave the immediate custody of the Sheriff, the Sheriff's keeper in charge thereof, having the strictest orders, as your orator has been informed, to allow none of the said goods and chattels to leave said premises at Fourth and Division streets, where they are impounded.

30 20. That your orator is a man of moderate means, all his property and estate being embraced in the said partnership, assets and business; and that said seizures and levies thereupon, and the consequent impounding thereof, are a very serious loss and damage to him.

21. That the said partnership assets do not amount in

value in the opinion of your orator, to more than six thousand dollars, and are really worth somewhere between five and six thousand dollars, as will more fully appear by the schedule thereof hereto annexed; that the partnership debts of the said partnership amount to over two thousand eight hundred dollars, a schedule of which is also hereunto annexed, to both of which said two schedules your orator refers.

22. That some of the said partnership debts are owing by the said partnership to the said Horace Hammell, and others thereof to said Hammell in partnership with others, that is to say; to the said Hammell, for hay, seventy-five dollars; to the said Hammell and one Jonas Mellor, trading as Hammell & Mellor, for feed, one hundred and thirty-seven dollars and fifty cents, and to the said Hammell and one La Pierre, for blacksmithing, fifty dollars; that all other of said partnership debts are owing to persons entirely disconnected with and unrelated to said partnership.

23. That the said Sheriff of Camden county has advertised the said partnership goods and chattels, so seized by him as aforesaid, with property of the said Hammell, to be sold on the third and fourth days of January next, and that he will proceed and make the said sale unless restrained by this Honorable court.

24. That said execution creditors, or some of them, are well aware of the said partnership existing between your orator and the said Hammell, and well aware that the said goods, so seized as aforesaid, were the partnership goods of said partnership, and that no part of the indebtedness of the said execution creditors are owing by the said partnership.

25. And your orator charges, that the said judgment and execution creditors had no right to seize the said partnership goods and no right to a levy or lein thereupon except as subject to the rights of said partner-

ship, and your orator, partner thereof, that on a fair and full settlement of said partnership affairs and business, and a disposal of the assets thereof, and reducing the same to money and a money valuation, all the said partnership assets belong to your orator subject only to the partnership debts.

26. And your orator humbly insists and charges that the said partnership goods and chattels, and all and every of them, are the sole and separate property of your orator under and by virtue of the said bill of sale and the settlement and agreement aforesaid, upon which the same is founded.

27. And your orator further shows, that not expecting any judgments to be entered upon, recovered against the said Hammell, as aforesaid, your orator did not take any formal possession of the said partnership goods and chattels, other than to keep the same under and in his charge and possession in use for said partnership; that upon the seizure thereof, in the city of Camden as aforesaid, and upon advice of counsel in the city of Philadelphia, aforesaid, your orator apprehending a suit of attachment in Philadelphia, aforesaid, and before said suit in attachment was brought, did take more formal possession of the said goods in the city of Philadelphia aforesaid, by taking the name of Horace Hammell off of the wagons and harness there, putting your orator's name thereon in its place, and putting up your orator's name at the said stable at Ninth and Carpenter streets.

28. And your orator further shows, that on the twenty-seventh day of December, instant, he caused to be served upon the said Theodore B. Gibbs, Sheriff as aforesaid, a notice in writing, notifying him of the claim of your orator, both as partner and as owner, under the said bill of sale as aforesaid, a copy of which said notice is in the possession of your orator ready to be produced and proved and to which your orator refers.

29. That notwithstanding the said notice the said Gibbs, Sheriff as aforesaid, refuses to give up the possession of the said partnership goods, or to permit your orator to use the same in the business of the said partnership.

30. And your orator further shows, that the said Hammell and the said Nathan D. Marshall, John Smith, Jr., Robert B. S. Diament, William Benner, First National Bank of Camden, New Jersey, Thomas B. Wood, John J. Atkinson, and Charles Stevenson, David H. Marshall and Randal E. Morgan, executors of David E. Marshall, deceased, have at all times since the said twentieth day of December, instant, possessed and enjoyed and do still possess and enjoy the said partnership property so seized by the said Sheriff as aforesaid, to the exclusion and manifest wrong and injury of your orator in the premises.

31. And your orator further shows, that he has frequently and in a friendly manner applied to the said Theodore B. Gibbs, Sheriff as aforesaid, and the said Horace Hammell, Nathan D. Marshall, John Smith, Jr., Robert B. S. Diament, William Benner, First National Bank, of Camden, New Jersey, Thomas B. Wood, John Atkinson and J. Charles Stevenson, David B. Marshall and Randal E. Morgan, executors of David E. Marshall, deceased, and requested them to deliver to your orator said partnership goods or suffer your orator to use the same for the purposes and in the business of the said partnership, subject to the said levies.

And your orator well hoped that the said Horace Hammell, Nathan D. Marshall, John Smith, Jr., Robert B. S. Diament, William Benner, First National Bank of Camden, New Jersey, Thomas B. Wood, John J. Atkinson and Charles Stevenson, David H. Marshall and Randal E. Morgan, executors of David E. Marshall, deceased, would have complied with such reasonable requests as in equity

and good conscience they ought to have done. But now, so it is may it please your Honor, that the said Horace Hammell, Nathan D. Marshall, John Smith, Jr., Robert B. S. Diament, William Benner, First National Bank, of Camden, New Jersey, Thomas B. Wood, John J. Atkinson and Charles Stevenson, David H. Marshall and Randal E. Morgan, executors as aforesaid, the defendants in this cause, combining and confederating with divers other persons at present unknown to your orator, but whose names when discovered your orator prays may be inserted in this bill of complaint with apt and proper words to charge them hereto, to injure and aggrieve your orator in the premises, not only refuse to give up the possession of the said partnership goods and chattels to your orator, or to allow your orator to use the same in the business of the said partnership, or in any other manner to comply with such reasonable requests of your orator, as aforesaid, but they, the said defendants, sometimes pretend and give out in speeches that no partnership does nor has at any time heretofore existed between your orator and the said Horace Hammell; and that the said partnership goods belong entirely and solely to the said Horace Hammell; whereas your orator charges and expressly charges the contrary thereof to be true; and at other times they give out and pretend that your orator owns only the equal undivided half part of the said partnership goods, and that the said Horace Hammell, and the said partnership were not indebted to your orator, and that the said bill of sale was not made, and that said goods and chattels have not been in the possession of and do not belong to your orator, whereas your orator expressly charges that he owns a very much larger proportion than the equal undivided half part of said partnership goods; that the said Horace Hammell and the said partnership were and are largely indebted to your orator, on the said partnership, on a full and fair

accounting thereof, equal in value to fully one-half of the assets of the said partnership, after the payment of the partnership debts; and that for and in consideration of the said indebtedness upon the said partnership accounts, the said Horace Hammell made the said bill of sale and thereunder delivered to your orator all the goods of said partnership, including those so levied upon and attached as aforesaid; and at other times the said defendants give out and pretend that said agreement of settlement, and said agreement in writing, were in fact not 10 made and are only shams, which are also as your orator expressly charges directly contrary to the truth; *all which actings and pretences* of the said defendants are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator. In tender consideration whereof and for as much as your orator is without adequate relief in the premises by the strict rules of the common law, and without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendants and 20 their confederates, when discovered, may full, true, perfect and distinct answers make to all and every, the matters aforesaid, and that as fully and completely as if the same were here again repeated, and they thereto particularly interrogated, paragraph by paragraph, that the said partnership may be decreed to be ended and determined; that an account be taken of all and every the said partnership goods, assets, and the value thereof; and of all and every the partnership debts, and to whom owing, and of all and every the said co-partnership deal- 30 ings since the said sixth day of December, in the said year eighteen hundred and eighty-one, and also an account of the moneys paid by your orator since that time, and by the said Hammell for or on account of the said partnership; that the indebtedness of the said

Horace Hammell to your orator in regard to the said partnership business as settled and fixed by them on the said sixth day of December instant, as aforesaid, may be taken into and included in the said partnership accounts; that an account may be taken also of the damage which has accrued to the said partnership, and
10 your orator, by reason of the said levies and seizures under the said executions and attachments, and that the said defendants, or some or one of them, be decreed to pay your orator what is so found to be due to your orator on the said partnership dealings, from the commencement thereof up to the time of the decree of dissolution thereof, and on and for the said damages arising from said levies and seizures; that the said goods and partnership property may be decreed to be the property and goods of your orator, under and by virtue of the said bill of sale; that in the meantime your orator may be decreed to have possession of the said partnership goods, so seized as aforesaid, and that he use
20 the same in and for the purposes of the prosecution of the said partnership business, under and in accordance with the said agreement in writing, herein above set forth in full, up to the time of the decree of dissolution of the said co-partnership, keeping a strict account of all the receipts, payments, expenses, profits and losses thereof, to be divided between your orator and the said Horace Hammell, in accordance with the terms of the said agreement in writing; that the said Sheriff's sale of the said partnership property may be restrained and
30 enjoined perpetually, and that the said execution creditors and said attaching creditors may be restrained and enjoined from further holding the said partnership goods under the said levies and attachment; or, if your Honor shall deem it more equitable and just, that a receiver may be appointed, with full power to receive all the moneys arising from the sale of the said partnership

goods by the said Sheriff, and to demand, sue for, collect and receive and take into his possession, all the goods and chattels, rights and credits, moneys and effects, books, papers, choses in action, bills, notes and property of every description, belonging to the said partnership, and dispose of and divide the same as this honorable court may direct, and that your orator may have such further and other relief in the premises, including costs of suit, as the nature of the case may require, and as may be agreeable to equity and good conscience. 10

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said Nathan D. Marshall, John Smith, Jr., Robert B. S. Diament, William Benner, First National Bank of Camden, New Jersey, Thomas B. Wood, John J. Atkinson and Charles Stevenson, David H. Marshall and Randal E. Morgan, executors of David E. Marshall, deceased, restraining them and each of them from further holding the said partnership goods upon the said levies and attachment, and from proceeding further with the sale by the Sheriff of the county of Camden, of the said partnership goods, and strictly enjoining and restraining them and each of them from further meddling and interfering with the said partnership property and assets; but also a writ or writs of subpoena of the State of New Jersey, to be directed to the said Horace Hammell, Nathan D. Marshall, John Smith, Jr., Robert B. S. Diament, William Benner, First National Bank of Camden, New Jersey, Thomas B. Wood, John J. Atkinson and Charles Stevenson, David E. Marshall and Randal E. Morgan, executors of David E. Marshall, then and there commanding them and each of them, at a certain day and under a certain penalty, therein to be expressed, personally to be and appear before your Honor, in this honorable court, then and 20 30

there to answer the premises and to stand to, abide by and perform such decree as to your Honor shall seem meet and agreeable to equity; and your orator, as in duty bound, will ever pray, &c.

12, 27, '81. H. A. DRAKE,
Solicitor for and of Counsel with Compl't.

STATE OF NEW JERSEY, }
CAMDEN COUNTY. } ss.

10 Lehman Moore, of full age, being duly sworn, on his oath, saith; that he is the complainant mentioned in the foregoing bill of complaint; that the facts, matters and things therein set forth and alleged are true, so far as the same relate to the actings and doings of this deponent, and so far as they relate to the actings and doings of other persons he, this deponent, believes them to be true; that especially is it true that deponent formed with the said Horace Hammell, in the said year 1879, the copartnership in the said bill stated and set forth; that the amount agreed upon to be paid by deponent to 20 said Hammell, as and for the half interest in the said business and assets, and as and for this deponent's one-half part of the capital stock thereof, is correctly stated in the said bill as and at the sum of five thousand dollars; that deponent paid the same, as in the said bill stated, that the business of said partnership was conducted and the indebtedness of said Hammell arose and was settled and fixed as in said bill stated; that the said agreement in writing and said bill of sale and schedule were made, executed and signed as in the said bill set 30 forth; that this deponent had the possession of the said goods under the said bill of sale, as in the bill set forth, and was using the said goods in the said partnership business from and after the said sixth day of December, instant, and in sole charge thereof under said agreement, the said Hammell never having had any charge thereof,

nor taken any part in the conduct of the said business since that date; that it is also true, as in the said bill stated, that the Sheriff of the county of Camden, under and by virtue of the judgments and executions in the said bill mentioned has seized of the partnership goods mentioned in the said bill of sale, those in the said bill of complaint mentioned and now has the same impounded; that the said John J. Atkinson, who resides in the city of Camden, in the said county, as your orator is informed and believes, has attached of the goods of the said partnership, as in the said bill stated; that said business is suffering great loss and damage and is in imminent danger of being utterly destroyed, by reason of said levies, attachment and seizures; that this deponent is without other property or estate except that comprised in the said partnership property and business and his household goods of modest extent and character; that deponent did put up his own name at the stables in Philadelphia, and on the wagons and harness there in the place of the name of the said Hammell, by way of taking more formal possession thereof than he had theretofore done, under the said bill of sale, and to prevent, if possible, a seizure under foreign attachment thereof there.

LEHMAN MOORE.

Sworn and subscribed this 28th day of December, A. D. 1881, before me, a Master in Chancery.

PETER L. VOORHEES, M. C. C.

STATE OF NEW JERSEY, CAMDEN COUNTY. } ss.

Lehman Moore, being again duly sworn, saith, that the partnership debts are truly stated, and in the opinion of this deponent, the partnership assets truly estimated in said bill and schedules, and this deponent states that on a true accounting and settling of the said partnership, the said Hammell owes this deponent enough to con-

sume all the said partnership goods, independent of any ownership by deponent, under said bill of sale.

LEHMAN MOORE.

Sworn and subscribed December 28, A. D. 1881, before me, a Master in Chancery.

PETER L. VOORHEES, M. C. C.

Schedule of goods and chattels of said partnership mentioned in foregoing bill, as levied on, seized and im-
10 pounded by the Sheriff of Camden county.

At stable, Fourth and Division streets, Camden, N. J.:

Five bay horses, one roan horse, four black horses, two black mares, one bay mare, two sorrel horses, six iron-grey horses, two iron-grey mares, one brown horse, one dark roan horse, one white mare, ten double wagons, two double wagons with tops, one single wagon, no top, one light wagon with top, ten pair of blankets, fourteen sets of heavy double harness, two sets of heavy single harness, lot of corn in crib, hay and straw in mow, wagon hoisters, wagon boards, wrench, slide boards, &c.

At Bendler Farm, Camden county:

20 One bay horse, two brown horses, one black mare, one brown mule.

Schedule of partnership assets mentioned in foregoing bill, with valuation:

At stable, Ninth and Carpenter streets, Phila:

10 horses and mules	$750 00
6 wagons	300 00
5 sets of double harness	100 00
5 pair of blankets	15 00
Hay and straw	50 00
30 1 double wagon at Fulton & Walker's	50 00

In office, 104 Dock street, Phila:

1 Iron Safe	25 00
2 Desks	20 00
600 empty bags	60 00
Lot of rope	7 00
Wagon pole and trees	10 00

At stable, Fourth and Division streets, Camden, N. J.:

23 horses	2,300 00
12 double wagons	1,200 00
15 sets of double horses	300 00
23 blankets	23 00
Hay, straw and feed at time of seizure	175 00
At Bendler's Farm, Camden county, N. J.:	
4 horses	400 00
1 mule	50 00
	$5835 00

10

Schedule of partnership debts mentioned in the foregoing bill:

John Lowney, flour and feed	1,319 53
Augustus Seifert, harness-maker	209 75
Le Jambre, veterinary surgeon	175 25
Hammell & Lapierre, blacksmiths	50 00
John Cunningham	25 00
Hammell & Miller, flour and feed	137 50
Horace Hammell, hay from farm	75 00
Fulton & Walker, wagon builders	655 00
John S. Glover, hay	156 00
	$2,803 03

20

A true copy.

G. S. Duryee,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between LEHMAN MOORE, Compl't. and HORACE HAMMELL AND OTHERS, Def'ts.	ON BILL, &c. AMENDMENT TO BILL.

10

Beginning with page 31, line 22.

29 A. And your orator further shows, that other judgments than those above mentioned have been entered against the said Hammell, upon bond and warrant of attorney, as follows, viz: on or about the twenty-seventh day of December, instant, by and in favor of Silas Warner and Albert Merritt, trading under the style of Warner and Merritt, for three thousand and fifty-five dollars debt
20 and costs, or some other sum, and by and in favor of Ephraim Coles and Charles D. Coles, trading under the style of Coles & Co., for two thousand three hundred dollars and seventy-four cents and costs, or some other sum; and on or about the twenty-ninth day of December, instant, by and in favor of "The National Bank of the

Republic," a corporation of said city of Philadelphia, for four thousand seven hundred and fifty-five dollars debt and costs or some other sum; that the said last named judgment creditors have caused executions to be issued on their said judgments respectively, and have caused levies to be made thereunder upon the said partnership goods and chattels subsequently to the said levy of said Marshall, and said execution creditors formerly above mentioned.

29 B. That more of the said debts, for which said judgments were entered as aforesaid, against the said Hammell, are debts of the said partnership, composed of said Hammell and your orator, trading as aforesaid, but that all of the said debts, for which judgment has been entered against the said Hammell as aforesaid, are the individual debts of the said Hammell, separate and apart from the said partnership and the said partnership business.

29 C. That on or about the 24th day of February, in the year eighteen hundred and eighty, the city of Camden recovered judgment in the Supreme Court of Judicature of this State against James W. Wroth, the said Horace Hammell and others, for the sum of eleven thousand one hundred and ten dollars and fifty cents debt, twelve hundred and fifty-four dollars and eighteen cents damages, the costs thereof not having been taxed, or some other sums; by virtue whereof the said the city of Camden, along with said other judgment creditors, claims some lien upon, or some interest in, the said partnership property; but your orator charges that such lien and interest as well of the said city of Camden as of the said other judgment and execution creditors and said Atkinson, if any there be, being solely and entirely for individual debts of the said Hammell, and in no part for partnership debts of said partnership, is subject to the partnership debt, owing to your orator and said other

partnership debts against said partnership assets and effects.

29 D. And your orator further shows, that on or about the first day of March, in the year eighteen hundred and eighty-one, the said Hammell and your orator took an account of all the horses, mules and wagons then owned by the said co-partnership, which he said Hammell then stated to your orator were all settled for, and which were the following, viz: thirty-eight horses and mules and eighteen wagons, since which time the said firm, by the hands of the said Hammell, has purchased and placed among its live stock seven horses, at the prices as returned by the said Hammell to your orator as follows, viz:

1881.		
March 5.	1 brown horse	$202 50
" "	1 black horse	247 50
" 19.	1 bay horse	210 00
" "	1 roan horse	214 00
" 26.	1 black mare	179 00
In April or May, 2 grey horses		430 00
making a total of		$1,483 00

for horses purchased since the said first day of March last, all of which said seven last named horses were purchased, as your orator was informed, from time by his said partner, in whom your orator then reposed the fullest confidence, of three brothers by the name of Brooks, trading and doing business as buyers and sellers of horses, but the given names of the said three brothers and the style under which they traded your orator did not know.

29 E. And your orator further shows, that in the said settlement between your orator and the said Hammell, on the said sixth day of December, the said Hammell solemnly stated to your orator that all of the said seven

last named horses had been paid for by the said Hammell, and thereupon in stating the account between the said Hammell and your orator, by which the said settlement of December the sixth was arrived at and settled upon, the said Hammell had credit for the said sum of fourteen hundred and eighty-three dollars, the price of the said seven last named horses as aforesaid, as and for so much of the partnership moneys expended by him for the use of the said partnership. 10

29 F. That upon the third day of January, in the year eighteen hundred and eighty-two, the Sheriff of the county of Camden served your orator with a writ of summons, of which the following is a copy, viz:

NEW JERSEY, ss.

{ L. S. } The State of New Jersey, to the Sheriff of our county of Camden.

Greeting:

We command you to summon Horace Hammell and Lehman Moore, trading as Horace Hammell, to be and 20 appear before the Supreme Court of the State of New Jersey, to be held at Trenton, in and for said State, on the sixth day of January instant, to answer unto William Brooks, Charles Brooks and George Brooks, trading as Brooks & Bros., in a plea of trespass on the case upon promises, to their damage two thousand dollars, as is said, and have you then and there this writ.

Witness Mercer Beasley, Esquire, Chief Justice, at Trenton, aforesaid, the third day of January, A. D. one thousand eight hundred and eighty-two. 30

BENJAMIN F. LEE,
Clerk.

BERGEN & BERGEN, Atty's.

29 G. That as your orator has been informed, and believes, the said suit of the said Brooks & Brothers is

brought upon two promissory notes signed "Horace Hammell," and payable to the order of the said Brooks & Brothers, one dated May nineteenth, eighteen hundred and eighty-one, at six months, for four hundred and thirty six dollars and seventy cents, and the other dated September twenty third, eighteen hundred and eighty-
10 one, at three months, for five hundred and seventeen dollars and four cents, and that while your orator does not know whether the said notes were given wholly for horses purchased by the said Hammell for the said partnership, or partly for horses purchased by said Hammell on other and individual accounts, yet your orator fears and expects that the said William Brooks, Charles Brooks and George Brooks, trading as aforesaid, will recover against your orator and the said Hammell, a judgement in some amount.

29 H. That the partnership debts owing to John Sowney, Augustus Seifert, Hugh Le Jambre, the said Hammell, trading with said La Pierre and said Mellor, and
20 individually, John Cunningham, Abram Walker and George S. Walker, trading as Fulton, Walker & Co., and John S. Glover are as and for the amounts in the bill and the schedule thereof, concerning the same stated and all of the same except the said partnership debt of the said John S. Glover, of one hundred and fifty-six dollars, were taken into account and allowed for on the said settlement of the said sixth day of December; and your orator charges, that by virtue of the said claims against the said partnership of John S. Glover and said Brooks
30 & Brothers, which were omitted from and credited in the said partnership accounts, and said settlement as aforesaid, your orator has a further claim against the said partnership assets and effects independent of and beyond the said bill of sale and said partnership settlement, upon which the same was founded.

29 L. Names to be inserted in the charges, the prayer

for relief and prayer for process, viz: Silas Warner and Albert Merritt, trading under the style of Warner and Merritt, Ephraim Coles and Charles D. Coles, trading as Coles & Co., The National Bank of the Republic, of Philadelphia, Pennsylvania, the City of Camden, John Sowney, Augustus Seifert, Hugh Le Jambre, Frank La Pierre, Jonas Mellor, John Cunningham, Abram Walker and George T. Shoemaker, trading under the style of Fulton, Walker, & Co., and John S. Glover. 10

29 K. Names to be inserted in the prayer for injunction only, viz: Silas Warner, Albert Merritt, trading under the style of Warner & Merritt, Ephraim Coles and Charles D. Coles, trading as aforesaid, and the National Bank of the Republic, of Philadelphia, Pennsylvania.

1, 10, '82. H. A. DRAKE,
Sol'r. for and of Counsel with Complainant.

STATE OF NEW JERSEY
CAMDEN COUNTY. } ss.

Lehman Moore, of full age, being duly sworn, on his oath saith, that the facts set forth in the foregoing 20 amendment to the bill of complaint, so far as they relate to the actings and doings of this deponent, are true, and so far as they are alleged upon information and belief, or relate to the actings and doings of other persons, he believes them to be true, that especially is it true that the individual debts of the said Hammell and the partnership debts of the said firm, composed of said Hammell and this deponent, are as in the said bill and said amendment thereto stated, and that no part of the moneys due the said judgment and execution creditors, is 30 due by the said partnership composed of this deponent, and said Hammell; that also is it especially true that said William Brooks, Charles Brooks and George Brooks, trading as Brooks & Brothers, have commenced suit as in said amendment stated, against deponent and said Ham-

mell, trading as in said bill stated; that of the indebtedness in the said bill and amendment mentioned and set forth, excepting the debt due your orator and the claim of the said Brooks and Brothers, those only are partnership debts which are mentioned and contained in the schedule annexed to the said bill for the
10 purpose of exhibiting the partnership debts of this deponent and the said Hammell. And this deponent further states, that the claim upon the said partnership of the said John S. Glover was omitted from the said partnership settlement of the sixth day of December unintentionally, as was also the claim of the said Brooks and Brothers, and that the former was so omitted unintentionally while the latter was fraudulently pretended to have been paid by the said Hammell, as this deponent states and believes, the said Hammell having distinctly stated to this deponent shortly before the time of the said settlement of December the sixth, 1881, that all the horses purchased since the first of March last by the said firm had been
20 paid for; that deponent has been credibly informed of the notes sued upon by the said Brooks and Brothers, and believes they will recover the whole or in part against deponent, the said notes being for the sums and payable at the dates as this deponent is informed in the said amendment stated.

LEHMAN MOORE.

Sworn and subscribed this 9th day of January, A. D 1882, before me, a Master in Chancery.

SAM. P. JONES, M. C. C.

ORDER FOR FILING.

On good cause shown. It is on this tenth day of January, A. D. 1882, ordered, that the complainant have leave to amend his bill by filing the foregoing amendments and affidavit and by bringing in the parties defendants therein mentioned and suggested for parties; and it is further ordered that copies of the said amendments, with this order attached, be served within five days on the following defendants, or their respective solicitors, viz: 10
Nathan D. Marshall, Horace Hammell, John Smith, Jr., and all the parties made defendants by the bill as filed originally and not brought in by this amendment.

THEODORE RUNYON, C.

A true copy,

G. S. DURYEE, Clerk.

W. S. Sharp Printing Co., 23 and 25 N. Warren St., Trenton.

IN CHANCERY OF NEW JERSEY.

Between *LEHMAN MOORE,* *Complainant,* *and* *HORACE HAMMELL et al.,* *Defendants.*	*On Bill, &c.*

Answer of First National Bank of Camden.

[Filed March 18, 1882.]

The answer of the First National Bank of Camden, New Jersey, one of the defendants to the bill of complaint of Lehman Moore, complainant.

This defendant, now and at all times, saving and reserving unto itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint, for answer thereto, or unto so much and such parts thereof as this defendant is 10

advised is material for it to make answer unto, answers and says that it admits that the said Horace Hammell, at the time mentioned in said bill, was engaged in the business and possessed of property of the nature and extent mentioned in said bill.

And this defendant, further answering, admits that the said complainant, at the time mentioned in said bill, was employed as clerk or bookkeeper by the said Horace Hammell in the said business; and this defendant says that it
10 has not been informed except by the said bill, and does not believe that the said Horace Hammell entered into any agreement of copartnership with the said complainant, or that said complainant purchased the one-half interest in the said stock, goods, fixtures and business, or any interest therein, or that the said complainant, at the times mentioned in said bill, or at any other time, paid to the said Horace Hammell the sums of money therein mentioned, or any sums of money for the purchase of the half interest in said stock, fixtures and business, or any interest therein.

20 And this defendant, further answering, denies that after said alleged agreement and sale the said complainant, with the said Horace Hammell, proceeded to carry on said business, but charges that the said business was carried on by Horace Hammell individually, in his own name, as theretofore; and this defendant says that if said alleged agreement and sale were made to him as aforesaid, and such copartnership entered into between said complainant and the said Horace Hammell, that the said complainant did wrongfully and fraudulently conceal the same,
30 and that no publicity whatever was given to said partnership, either by the said complainant or the said Horace Hammell, and that the first time this defendant heard of a copartnership existing between said parties was from the allegations of said bill.

And this defendant, further answering, says that it has been informed and believes that the moneys alleged in said bill to have been paid, and the moneys agreed to be paid

by the said Horace Hammell to the said complainant were for wages or hire as bookkeeper and foreman, and not for partnership profits, and if the said complainant allowed the said moneys to remain in the hands of said Horace Hammell, as alleged in said bill, they created only a simple debt, and not a partnership claim.

And this defendant, further answering, says that it has been informed and believes that the various settlements alleged in said bill to have been made between the said complainant and the said Horace Hammell were not made, 10 and that no partnership settlement was ever made between them, and that no money was ever due and owing from the said Horace Hammell to the said complainant for profits from said business, but that all moneys due and owing from the said Horace Hammell to the said complainant, if any there be, are for wages and hire as aforesaid.

And this defendant, further answering, says that it has no knowledge, information or belief as to the making and signing of the agreement in writing mentioned in said bill, 20 except from the allegations of said bill, and that it has no knowledge of the making and signing of the said bill of sale except from the said bill; but this defendant states and says that if the said agreement and bill of sale were made and signed at the times mentioned in said bill, that they were not, nor was either of them, delivered by the said Horace Hammell to the said complainant until the twenty-first day of December, A. D. eighteen hundred and eighty-one, the day on which this defendant recovered its judgment against said Horace Hammell, and after this 30 defendant had issued execution upon said judgment, and levied upon said stock, goods and fixtures.

And this defendant, further answering, denies that the said Horace Hammell took no part in conducting his said business after his illness in November, as alleged in said bill, but says that it has been informed and believes that the said Horace Hammell did direct and fully control

said business up to the said twenty-first day of December, and that the said complainant acted only as the clerk or foreman of the said Horace Hammell in the management of the said business.

And this defendant, further answering, admits that the said Horace Hammell gave his bond or obligation, of the date and for the sum of money mentioned in said bill, to one Nathan D. Marshall, who recovered judgment thereon and issued execution to the sheriff of the county of Cam-
10 den, and that the said sheriff proceeded thereunder to levy upon and take into his custody the goods and stock mentioned in said bill, and it further admits that John Smith, Jr., and Robert B. S. Diament recovered judgments respectively at the times and in the amounts mentioned in said bill.

And this defendant, further answering, says that it has been informed and believes that the stock, goods and fixtures of the said Horace Hammell, mentioned in said bill, were of much greater value that the value attributed to
20 them in said bill.

And this defendant, further answering, admits that this defendant recovered a judgment against the said Horace Hammell in the Camden County Circuit Court on the twenty-first day of December, A. D. eighteen hundred and eighty-one, for the sum of five thousand seventy-six dollars and forty-two cents debt and costs, and issued execution thereon to said sheriff and directed him to make the money endorsed on said execution out of the property and goods of the said Horace Hammell; and this defendant
30 says that said judgment was recovered for moneys loaned to the said Horace Hammell by this defendant at his instance and request for the purposes of his said business; and this defendant has been informed and believes that the said money was used by the said Horace Hammell in his said business as drayman as aforesaid.

And this defendant, further answering, says that the said Horace Hammell kept his bank account with this defend-

ant; that he first commenced said account on the tweny-second day of January, A. D. eighteen hundred and seventy-nine, and has so continued said account uninterruptedly in the name Horace Hammell from thence hitherto; that he deposited the receipts of said business in said account and drew checks upon said account for the purposes of said business and for other purposes; and this defendant says that the said Horace Hammell kept but one account with this defendant and commingled in said account the ordinary and every-day receipts from his said 10 business of drayman with moneys received by him from other sources; that said account was always kept in the name of Horace Hammell, as this defendant always understood and believed, as an individual and not as a firm name; and this defendant says that it was never inferred by the said complainant or by the said Horace Hammell or by any other person or persons, and had no knowledge whatever that the said Horace Hammell had associated with him the said complainant as partner in his said business, but always believed that the said Horace Ham- 20 mell was transacting business in his individual right unconnected with anyone, and so loaned money and extended credit to him.

And this defendant further says that the said Horace Hammell came to its bank in person to open his account with it and subscribed his name in its signature-book and informed this defendant that he desired to open an account with it.

And this defendant, further answering, says that it frequently loaned the said Horace Hammell large sums of 30 money and extended credit to him during said time, and that he always came to it in person to negotiate loans and ask for advances from it; and this defendant at such times made the loans he requested and extended the credit he desired, upon his individual responsibility, and upon the credit of his property and business aforesaid, under the belief that he was trading and doing business in his sole and

separate right, and was the sole and separate owner of the said stock, goods and business.

And this defendant, further answering, says that it loaned to the said Horace Hammell the sum of two thousand five hundred and thirty-five dollars and seventy-one cents upon his individual obligation and credit, and for a part of said loan it received from him a further and collateral security, which said security has proved utterly worthless and from which this defendant is unable to
10 realize any money, and for a part of said money this defendant took a promissory note, endorsed by said Horace Hammell, from which said note this defendant has been unable to realize any money.

And this defendant, further answering, says that it would not have made said loan and advance to said Horace Hammell upon his individual obligation had it been informed that the complainant claimed to be in partnership with him in said business, and claimed to own the whole or any part of said stock, fixtures or business.

20 And this defendant, further answering, says that during the time it has been the banker of the said Horace Hammell it has known the said complainant only as the clerk or employee of the said Horace Hammell, who occasionally came to the receiving teller's window of its bank with the bank-book of the said Horace Hammell and deposited money with it to the credit of said Horace Hammell, and that the money so deposited was credited to said Horace Hammell in the said book and the book returned to the said complainant, and that there was also endorsed in the
30 said bank-book the loans and advances made by this defendant to said Horace Hammell, and that the said complainant had full knowledge that such loans and advances were made.

And this defendant, further answering, says that the said complainant well knew that this defendant was dealing with the said Horace Hammell as an individual, and was loaning him money and making advances to him upon

his individual credit and the credit of his stock, property and business, as aforesaid, for the purposes of his business as drayman, without making known to this defendant that the said complainant claimed to be a copartner in said business.

And this defendant, further answering, says that it has no knowledge, information or belief concerning the other judgments mentioned in said bill as recovered against the said Horace Hammell, except from the allegations of said bill, and that he has no knowledge, information or belief, 10 except from said bill, as to whether the said Horace Hammell was interested in the flour business with one Mellor and in the blacksmithing business with one La Pierre.

And this defendant, further answering, says that it has been informed and believes that none of the property levied upon by the sheriff as aforesaid is owned by the said complainant, and that no injury has been done to the said complainant by said levy and impounding; and this defendant denies that it had any knowledge or information whatever, at the time it loaned the said money to the said 20 Horace Hammell, that the said complainant claimed to have any interest or property in the stock and property levied upon by said sheriff, or that he claimed to be the copartner of said Horace Hammell in said business.

And this defendant, further answering, submits and says that it had the right to seize and levy upon the said goods, and the right to have the same sold to raise and pay the money due to said defendant upon its said judgment, and denies that the said goods and property, or any part thereof, belong to the said complainant and are subject to 30 any partnership debts or claims prior, in any way, or entitled to any preference in payment over the claim of this defendant; and this defendant denies that the said complainant has any right to claim said stock, property and goods, or any part thereof, as his sole and separate property, or otherwise; and this defendant insists that said complainant has no interest or estate whatever in said

stock and property, except subject to the judgment and levy of this defendant.

And this defendant, further answering, says that the said complainant took no possession and exercised no public ownership over said property prior to the levy by the said sheriff under the execution issued on the said judgment of this defendant, but that the said goods were used as the sole and separate property of the said Horace Hammell, not only in his said business, but also upon his said
10 farm and in his other avocations. And this defendant insists that it was the manifest duty of the said complainant to have acquainted this defendant with any copartnership existing between them, if any existed, and not to have allowed this defendant to loan its money to said Horace Hammell upon his sole obligation and credit, as the individual owner of said stock, property and business.

And this defendant, further answering, says that it has no knowledge of the suits at law pending against the said Horace Hammell, alleged in said bill, and against the said
20 complainant, except from the said bill, and cannot set out any knowledge or belief concerning the same, and that it has no knowledge, information or belief of the various claims alleged in said bill to exist against the alleged partnership except from said bill, but says if such suits are pending and such claims exist, they are subject to the said judgment and levy of this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is in and by said bill charged, without this, that there is any other
30 matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be

hence dismissed, with its reasonable costs and charges in this behalf most wrongfully sustained.

P. L. VOORHEES,
Solicitor and of Counsel with the First National Bank of Camden, N. J.

State of New Jersey, Camden county, *ss.*—The First National Bank of Camden, New Jersey, a corporation and body politic, the defendant in the above answer, hereby verifies the truth of the statements, facts, matters and things set forth in said answer, and hereby certifies to the said truth of said statements, facts, matters and things under the common seal of said defendant. 10

In witness and testimony whereof, the said defendant hereto sets its common or corporate seal, and [L. S.] attests the same by the signature of Rene Guillou, its president *pro tem.*, this 8th day of March, A. D. 1882.

RENE GUILLOU,
President pro tem.

State of New Jersey, Camden county, *ss.*—Watson Depuy being duly sworn, deposeth and saith that he is the cashier of the First National Bank of Camden, New Jersey, the defendant named in the above answer, and that he has been cashier of said bank for about four years last past; that he is acquainted with the contents of the above answer; that said answer, so far as it relates to the actings and doings of the said bank, is true, and so far as it relates to the actings and doings of other persons, he believes it to be true. 20

W. DEPUY, 30
Cashier.

Sworn and subscribed at the county aforesaid, this 18th day of March, A. D. 1882, before me.

P. V. VOORHEES, *M. C.*

Answer of Robert B. S. Diament.

[Filed March 18, 1882.]

The answer of Robert B. S. Diament, one of the defendants to the bill of complaint of Lehman Moore, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says that he admits that the said Horace Hammell, at the times mentioned in said bill, was engaged in the business, and was possessed of the property of the nature and extent mentioned in said bill.

And this defendant, further answering, admits that the said complainant, at the time mentioned in said bill, was employed as clerk or bookkeeper by the said Horace Hammell, in said business, and this defendant says he has not been informed, except by the said bill, and does not believe, that the said Horace Hammell entered into any agreement of copartnership with the said complainant, or that said complainant purchased the one-half interest in the said stock, goods, fixtures and business, or any interest therein, or that the said complainant, at the times mentioned in said bill, or at any other time, paid to the said Horace Hammell the sums of money therein alleged to have been paid, or any sums of money, for the purchase of the half interest in said stock, property and business, or any interest therein.

And this defendant, further answering, denies that, after the said alleged agreement and sale, the said complainant, with the said Horace Hammell, proceeded to

carry on said business, but charges and says that said business was carried on by Horace Hammell individually, in his own name, as theretofore; and this defendant says that, if said alleged agreement and sale were made to said complainant, as alleged in said bill, and such copartnership entered into between said complainant and the said Horace Hammell, that the said complainant did wrongfully and fraudulently conceal the same, and that no publicity whatever was given to said copartnership, either by the said complainant or by the said Horace Hammell, and 10 that the first time this defendant heard of a copartnership existing between said parties was from the allegations of said bill.

And this defendant, further answering, says that it has been informed, and believes that the moneys alleged in said bill to have been paid, and the moneys agreed to be paid by the said Horace Hammell to the said complainant, were for wages or hire as bookkeeper or employee, and not for partnership profits, and if the said complainant allowed the said moneys to remain in the hands of 20 said Horace Hammell, uncollected, they created only a simple debt, and not a partnership claim.

And this defendant, further answering, says that it has been informed, and believes that the various settlements alleged in said bill to have been made between the said complainant and the said Horace Hammell, were not made, and that no partnership settlement was ever made between them, and that no money was ever due and owing from the said Horace Hammell to the said complainant for profits from said business, but that all moneys due and owing from 30 the said Horace Hammell to the said complainant, if any there be, are for wages and hire, as aforesaid.

And this defendant, further answering, says that it has no knowledge, information or belief as to the making and signing of the agreement in writing mentioned in said bill, except from the allegations of said bill, and that it has no knowledge of the making and signing of the said

bill of sale, except from the said bill, but this defendant states and says that, if the said agreement and bill of sale were made and signed at the times mentioned in said bill, that they were not, nor was either of them, delivered by the said Horace Hammell to the said complainant until the twenty-first day of December, A. D. eighteen hundred and eighty-one, the day on which this defendant recovered his judgment against said Horace Hammell, and after this defendant had issued execution upon said judgment and
10 levied upon said stock, goods and property.

And this defendant, further answering, denies that the said Horace Hammell took no part in conducting his said business, after his illness in November, as alleged in said bill, but says that it has been informed, and believes that the said Horace Hammell did direct and fully control said business up to the said twenty-first day of December, and that the said complainant acted only as the clerk or foreman of the said Horace Hammell in the management of the said business.

20 And this defendant, further answering, admits that the said Horace Hammell gave his bond or obligation of the date, and for the sum of money mentioned in said bill, to one Nathan D. Marshall, who recovered judgment thereon, and issued execution to the sheriff of the county of Camden, and that the said sheriff proceeded thereunder to levy upon and take into his custody the goods and property mentioned in said bill, and he further admits that John Smith, junior, recovered a judgment against said Horace Hammell, at the time, and for the amount mentioned in
30 said bill.

And this defendant, further answering, says that it has been informed, and believes that the stock, goods and fixtures of the said Horace Hammell, mentioned in said bill, are of much greater value than that given to them in said bill.

And this defendant, further answering, admits that he recovered a judgment against the said Horace Hammell in

the Camden County Circuit Court on the twenty-first day of December, A. D. eighteen hundred and eighty-one, for the sum of six thousand eight hundred and four dollars, debt and costs, and issued execution thereon to said sheriff, and directed him to make the money endorsed on said execution out of the property and goods of the said Horace Hammell; and this defendant says that said judgment was recovered for moneys loaned and advanced to the said Horace Hammell by this defendant at his special instance and request, and as this defendant understood and believes, for the purposes of his business of drayman; and this defendant verily believes that said money was so used by the said Horace Hammell.

And this defendant, further answering, says that he has known the said Horace Hammell intimately for a long time, and has always reposed the greatest confidence in him, and that he has frequently been at his place of business on Dock street, in the city of Philadelphia, and that his harness and wagons were marked with the name Horace Hammell; and this defendant frequently heard the said complainant spoken of as the employee of said Horace Hammell; and this defendant verily believes that the said Horace Hammell was transacting said business in his sole and separate right, and that the said complainant was his bookkeeper and employee; and this defendant further says that he loaned said money to the said Horace Hammell upon his individual responsibility and upon the credit of his property and business; that he had a very large, and as it appeared to this defendant, a very profitable business, and appeared to be, and represented himself to be the sole and separate owner thereof, and no notice that the said complainant or that any other person claimed to be in partnership with him in said business was ever made public or brought to the knowledge of this defendant.

And this defendant, further answering, says that in the summer of eighteen hundred and eighty-one, he had a

conversation with said Horace Hammell about his said business, and that said Hammell then spoke of the complainant as his employee, and of the said business as his sole and separate business; that said conversation took place prior to the loaning said money to the said Horace Hammell; that in the course of the said conversation the said Horace Hammell told this defendant that he paid the said complainant a large salary because he considered him an efficient man to take charge of said business in his absence.

And this defendant, further answering, says that he frequently saw the said complainant at said place of business, and conversed with him about said business, and that said complainant never informed this defendant of the alleged partnership, and never represented himself as having any interest in said business, except as employee as aforesaid.

And this defendant, further answering, says that he loaned to the said Horace Hammell the sum of thirty-four hundred and two dollars upon his individual obligation and credit; and this defendant says that he would not have loaned the said sum of money to the said Horace Hammell if he had been informed that the said complainant claimed to be in partnership with him in said business, and claimed to own the whole or any part of said stock, fixtures and business.

And this defendant, further answering, says that he has no knowledge, information or belief concerning the other judgments mentioned in said bill as recovered against the said Horace Hammell, except from the allegations of said bill, and that he has no knowledge, information or belief, except from said bill, as to whether the said Horace Hammell was interested in the flour business with one Mellor and in the blacksmithing business with one La Pierre.

And this defendant, further answering, says that he has been informed, and believes that none of the property levied upon by the sheriff as aforesaid is owned by the

said complainant, and that no injury has been done to the said complainant by said levy and impounding; and this defendant denies that he had any knowledge or information whatever, at the time he loaned said money to said Horace Hammell, that the said complainant claimed to have any interest or property in the stock and property levied upon by said sheriff, or that he claimed to be in copartnership with said Horace Hammell in said business.

And this defendant, further answering, submits and says that he had the right to seize and levy upon the said goods, and the right to have the same sold to raise and pay the money due him upon his said judgment, and denies that the said goods and property, or any part thereof, belong to the said complainant and are subject to any partnership debts or claims prior in any way or entitled to any preference in payment over the claims of this defendant; and this defendant denies that the said complainant has any right to claim said stock, property and goods, or any part thereof, as his sole and separate property, or otherwise; and this defendant insists that said complainant has no interest or estate whatever in said stock and property, except subject to the judgment and levy of this defendant.

And this defendant, further answering, says that the said complainant took no possession and exercised no public ownership over said property prior to the levy by the said sheriff under the execution issued on the said judgment of this defendant, but that the said goods were used as the sole and separate property of the said Horace Hammell, not only in his said business, but also upon his farm, and in his other avocations; and this defendant insists that it was the manifest duty of the said complainant to have acquainted this defendant with any copartnership existing between himself and the said Horace Hammell, if any existed, and not to have allowed this defendant to loan his money to said Horace Hammell upon his sole

obligation as the individual owner of the said stock, property and business.

And this defendant, further answering, says that he has no knowledge of the suits at law pending against said Horace Hammell, alleged in said bill, and against the said complainant, except from the said bill, and cannot set out any knowledge or belief concerning the same, and that he has no knowledge, information or belief of the various claims alleged in said bill to exist against the
10 alleged partnership, except from said bill, but says if such suits are pending and such claims exist they are subject to the said judgment and levy of this defendant.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is in and by said bill charged, without this that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided
20 or denied, is true, to the knowledge of belief or this defendant. All which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

P. V. VOORHEES,

Sol. for and of Counsel with Robert B. S. Diament.

State of New Jersey, Camden county, *ss.*—Robert B. S. Diament, the above-named defendant, being duly sworn, on his solemn oath saith that the matters and things set
30 forth in the above answer, so far as relates to his own acts, are true, and so far as relates to acts of others he believes them to be true.

ROBERT B. S. DIAMENT.

Sworn and subscribed at the county aforesaid this 15th day of March, A. D. 1882, before me.

WILLIAM C. DAYTON, *M. C.*

Answer of William T. Benner.

[Filed March 21, 1882.]

The answer of William T. Benner, one of the defendants, to the bill of complaint of Lehman Moore, complainant.

This defendant, now and at all times, saving and reserving unto himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's bill of complaint contained, for answer thereto, or unto so much and such parts thereof as this defendant is advised is material for him to make answer 10 unto, answers and says:

1. This defendant admits that the said Horace Hammell, at the time mentioned in the bill, was engaged in the business, and possessed of property of the nature and extent mentioned therein.

2. This defendant admits that the complainant, at the time mentioned in the bill, was employed as clerk or bookkeeper by said Horace Hammell, in said business.

3. This defendant says that he has not been informed, except by said bill, and does not believe that said Horace 20 Hammell entered into any agreement of copartnership with the complainant, or that complainant purchased one-half interest in the said goods, chattels and fixtures, or any interest whatever, in the business and property of said Hammell, or that the complainant, at any time, paid to said Hammell the sum or sums named in the bill, or any other sum or sums, for the purchase set forth therein.

4. This defendant denies that after the said alleged agreement and sale the complainant, with said Hammell, proceeded to carry on said business, but especially charges 30 that said business was carried on by said Hammell individually, and in his own name, as theretofore, as this defendant is informed and believes to be true.

5. This defendant further says that if there was any such arrangement or agreement as set forth in the bill, it was fraudulent and without effect or virtue, and that complainant fraudulently concealed the same, and that neither the complainant nor said Hammell ever, in any manner or form, published the same, or made it known to any person or persons; and that though this defendant had, for many years prior to the filing of the bill, been in close and intimate relations with said Hammell in his said busi-
10 ness, said Hammell alone during this period constituting the firm, and carrying on the same, he never heard of said copartnership before he read the bill.

6. This defendant denies that the sums named in the bill, or any other sums, were credited by the said Hammeli to the account of complainant for moneys still due him on the half interest in said copartnership, as set forth in the bill, and especially alleges that said sums, and all other sums paid, credited as owing by said Hammell to complainant, were as and for his wages and hire as clerk, book-
20 keeper, agent or foreman for said Hammell, as this defendant has been informed and believes to be true.

7. This defendant further denies that the various settlements, accountings, payments and credits, as set forth in the bill, were an account of a partnership, or any partnership interest, existing then, or at any time, between said Hammell and complainant, but, if said settlements, accountings, payments and credits were ever had, they were specifically for and on account of the relation of agent, clerk, bookkeeper or foreman, as above alleged, as this
30 defendant is informed and believes to be true.

8. This defendant further denies that any *bona fide* partnership existed between said Hammell and complainant, as set forth in the bill, or ever did so exist, or that the same was ever carried on as therein set forth, at or before the levy made by this defendant, as set forth in the bill, and admitted to be true by this defendant, but that the alleged partnership, and the conduct of the same, was

fraudulently conceived and pretended for the purpose of defrauding this defendant, and other of Hammell's creditors, as this defendant has been informed and believes to be true.

9. This defendant says that the making, signing and transferring of the articles of agreement set forth in the bill were subsequent to the said levy of this defendant.

10. And this defendant further says that said agreement was made in anticipation of said Hammell's failure in business, and was held, either by himself or some one for him, until his financial ruin became inevitable, when he ordered said agreement to be given to the complainant, and solely with the view and purpose, as this defendant is informed and believes to be true, of protecting said Hammell's personalty, as aforesaid, from his creditors.

11. The defendant denies that said Hammell took no part in the conduct of said business after his illness in November, as set forth in the bill, but alleges that he has been informed and believes to be true, that said Hammell did direct and fully control said business up to the time of this defendant's said levy, and that complainant acted, during all this time, only as the agent, clerk, bookkeeper or foreman as aforesaid in the management of said Hammell's business.

12. This defendant says that he is informed and believes it to be true that the said goods and chattels of said Hammell, as mentioned in the bill, are of much greater value than therein represented to be.

13. This defendant admits that he recovered judgment against said Hammell and issued execution thereunder and made a levy, as stated in the bill, but especially denies that said levy was made upon any partnership goods and chattels, but only upon the proper and personal goods and chattels of said Hammell.

14. This defendant says that his said judgment is for moneys loaned to said Hammell, and that said moneys went directly into the business of said Hammell alone and

not in the business of him and the complainant as copartners.

15. This defendant denies that all or any part of complainant's property was or is embraced in the alleged partnership assets and business, also that there were, at or before this defendant's judgment and levy aforesaid, any partnership debts against said Hammell and complainant, as alleged in the bill.

16. This defendant further denies that he knew or had
10 any reason to believe that a copartnership existed between said Hammell and the complainant, ever or at any time, or that the said goods, seized as in the bill stated, were the partnership goods of said Hammell and the complainant, as copartners, but expressly alleges that said Hammell, before and up to the time of this defendant's said levy, did said business alone, and employed and compensated the complainant as his agent, bookkeeper, clerk or foreman, as heretofore alleged by this defendant, and that said Hammell held himself out to the world as doing the business
20 set forth in the bill, entirely on his own account, and held the complainant out as his clerk and bookkeeper as aforesaid, and not as a copartner.

17. This defendant further denies that the goods and chattels in the bill described, all or any of them, are the sole and separate property of the complainant by virtue of any agreement, settlement or bill of sale of or concerning the same, as intimated and alleged in the bill, but expressly alleges them to be the sole and separate property of said Hammell.

30 18. This defendant further says that he is informed and believes it to be true that complainant put his name on the wagons and harness and stable of said Hammell in place of his name, as in the bill alleged, as a part of a fraudulent scheme to save the said property, on which the names were changed as aforesaid, and all other of said Hammell's property, from his creditors.

19. This defendant further says that the complainant,

previous and up to the time of this defendant's said levy, well knew that said Hammell was carrying on said business individually; that he was making loans and effecting credits in relation to said business, individually; that he was holding himself out to the world as doing said business individually, and as the sole owner and proprietor of said stock, fixtures and all the alleged partnership effects; that during all of said period the complainant was acting as and representing himself to be the clerk, agent, bookkeeper and foreman of said Hammell in all his said business; that complainant, in acting as aforesaid, not only knew that (as this defendant is informed and believes), said loans and credits went into said business as said Hammell's individual business, and that said goods, fixtures and effects were said Hammell's sole and individual property, but actually and persistently represented and affirmed the same to be true, and, by such representations and affirmations, aided in procuring said loans and credits, especially the loan and credit by this defendant to said Hammell, and upon which this defendant's judgment was obtained and his said levy thereunder made.

20. This defendant further says that he loaned the money upon which his said judgment was obtained and levy thereunder made, to said Hammell, upon the repeated representations of him, and the repeated representations of the complainant, that the said money loaned as aforesaid was loaned to said Hammell individually, to go into said business, and upon the belief that the goods, fixtures and effects, as aforesaid, were said Hammell's sole and separate property.

21. The defendant further says that he has no knowledge concerning other judgments and about said Hammell's flour business, mentioned in the bill, except as therein stated.

22. This defendant denies that any wrong or injury has been done the complainant by defendant's said levy.

23. This defendant further denies that he had any in-

formation or knowledge whatever that the complainant had any property or interest in the stock, goods, chattels and fixtures, in the bill mentioned, before, at, or any time after his said loan to said Hammell.

24. This defendant denies further, that the complainant now has, or ever had, directly or indirectly, any claim upon, or interest in all or any part of the goods, chattels, fixtures and personalty named in the bill, except subject to this defendant's said levy.

10 25. This defendant further says that the complainant, at no time prior to said Hammell's financial ruin, had or attempted to have the possession, control or use, or any right to possess, control or use all, or any of the said personal property or fixtures in the bill named, nor did he, during said period, attempt, directly or indirectly, to secure or claim or possess the same, for the reason that they were entirely and solely the said Hammell's.

26. This defendant further says that he has no knowledge of suits at law, or of claims mentioned in the bill,
20 except as therein stated, but says that if such proceedings and claims are true or exist, they are subject to this defendant's said judgment and levy.

27. This defendant lastly denies all and all manner of unlawful combinations and confederacy wherewith he is in and by the bill charged, without this, that any other matter or thing in the bill contained, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant
30 is ready and willing to aver, maintain and prove as this honorable court shall direct; and this defendant humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

JOHN W. WESCOTT,
Solicitor for and of Counsel with William T. Benner.

State of New Jersey, Camden county, *ss.*—William T.

Benner, the defendant in the above answer, being duly sworn according to law, on his oath says that the facts and allegations in the above answer set forth and contained, so far as they relate to the acts and deeds of this deponent, are true, and, so far as they relate to the acts and deeds of other persons, he believes them to be true.

WM. T. BENNER.

Sworn and subscribed this 20th day of March, 1882, before me.

T. J. MIDDLETON, *M. C.* 10

West Jersey Press Printing House, Front and Market Sts., Camden, N. J.

IN CHANCERY OF NEW JERSEY.

Between Lehman Moore, Complainant. and Horace Hammell, et als., Defendant.	On Bill, &c. Notice.

Sir:

Take notice that the depositions of witnesses will 10
be taken in cause, on behalf of the complainant, at the southeast corner of Second and Market streets, in the city of Camden, State of New Jersey, on the thirtieth day of June, instant, at the hour of ten in the forenoon, before Charles V. D. Joline, esquire, one of the Masters

and Examiners in the Court of Chancery of New Jersey.

Dated June 19, 1882.

Respectfully yours,
H. A. DRAKE,
Solicitor of Complainant.

To THOMAS B. HARNED, ESQ.,
Solicitor of Thomas Wood,
Defendant.

10

STATE OF NEW JERSEY, }
CAMDEN COUNTY, } ss.

FRANK C. MEETEER, being duly sworn, saith, that on Tuesday, the twentieth day of June, instant, he served a copy of the within notice, on Thomas B. Harned, to whom the same is directed, by delivering the said copy
20 to a person found in the office of the said Harned at that time, over the age of fourteen years.

FRANK C. MEETEER.

Sworn and subscribed, this 30th day of June, A. D., 1882, before me, a Master in Chancery.

E. A. ARMSTRONG, M. C. C.

IN CHANCERY OF NEW JERSEY.

Between

LEHMAN MOORE,

Complainant.

and

HORACE HAMMELL, ET ALS.,

Defendants.

Depositions taken in the above stated cause, pursuant to agreement, and notice hereto annexed, before Charles V. D. Joline, a master and examiner in chancery, at his office, in Camden, on Friday, June 30th, 1882, at 10 A. M., in the presence of Herbert A. Drake, counsel of the complainant, and Peter V. Voorhees, counsel for First National Bank of Camden and Robert B. S. Diament, Mr. John W. Westcott, counsel for William T. Benner being unavoidably absent and consenting to the examination.

10

Isora Hammell, a witness produced on the part of the complainant, and being duly sworn, deposeth and saith: I am the wife of Horace Hammell, one of the defendants in this suit. I live at 219 South Fifth, in Camden. I know Lehman Moore, the complainant in this suit; all I know about my husband and Mr. Moore being in business together is that my husband told me about three years ago that Mr. Moore had gone into partnership with him.

(Objected to as hearsay.)

10 Papers presented by the witness to the master, she saith. These are supposed to be the business papers between Mr. Hammell and Mr. Moore during their partnership; they came into my possession during the month of December last; they are papers, as I understand, relating to business between Mr. Hammell and Mr. Moore; Mr. Hammell had these papers in his possession and I took charge of them; they have not been in my possession ever since; I am fully satisfied that they are the same papers; they are all the papers I received from Mr. Hammell about this business; they have been, since that time, in the custody, besides my 20 own, of Evan B. Brown, of Moorestown; I put them in Mr. Brown's hands; they were put there for safe keeping simply; Mr. Moore has applied to me for these papers since I took charge of them; I didn't deliver them to Mr. Moore, because I was advised by counsel to hold them; Mr. Moore has not examined or had access to, nor has he seen those papers since December last; I can't tell when I delivered those papers to Mr. Brown; Mr. Brown delivered them back to me on Wednesday, the 28th inst.; I don't know whether Mr. Hammell ever told 30 anybody else than me that Mr. Moore was a partner; the business between Mr. Moore and Mr. Hammell was done in the name of Mr. Hammell only; when Mr. Moore first went into partnership with Mr. Hammell the

latter told me that there were others who wanted to go in with him, and so they wouldn't let the name of Moore appear as partner for a short time; I believe that the cause was so that these other parties shouldn't be offended; I am willing to leave the papers I have produced in the custody of the master.

Cross-examination:

By P. V. Voorhees, Esq.

10

These papers consist of loose pieces of paper of odd sizes and shapes, and are not attached to each other; they may be fastened with pins and some have strings around them.

(Objected to on ground that the condition of the papers and fastenings will appear on examination by the examiner.)

They were all loose when I got them, but have been assorted since then; they were assorted by William T. Benner; I was not in the room at the time; some of the figuring upon these papers is in lead pencil, and some is by Mr. Moore, and some by Mr. Hammell, I suppose; my husband had no books relating to his business that I know of; I was never at their place of business in Philadelphia but a very few times; I do not know whether or not they kept any regular books of their business over there; Mr. Benner is a friend of Mr. Hammell; I don't know whether he is a friend of Mr. Moore; Mr. Hammell told me that Mr. Moore went into the business as half partner; he never afterwards said anything to me with reference to the business; he would merely remark about Mr. Moore, but nothing with reference to the business. Mr. Moore was originally Mr. Hammell's bookkeeper. Mr. Hammell was not in the habit of talking about his business at home. I don't

20

30

remember the circumstances under which Mr. Hammell spoke about Mr. Moore going into partnership with him.

Ques. Did Mr. Hammell tell you that Mr. Moore consented to the business continuing on in Mr. Hammell's name alone?

(Objected to as Mr. Hammell is the best evidence of that.)

Ans. No, sir; he never told me anything of it.

I do not know anything about the business arrangements between my husband and Mr. Moore, except as I
10 have heard it from my husband or others.

Re-direct:

Ques. So far as you know, was Mr. Hammell in the habit of talking much or little about his business?

Ans. Well he never said much at home about his business.

Ques. Whom, if anybody, have you heard that Mr. Hammell told that he and Mr. Moore were partners?

(Objected to.)

Ans. I think he told a Mr. Brewer, Mr. William
20 T. Brewer, a next door neighbor.

I don't know how Mr. Benner came to sort over these papers. It wasn't done at my request. Mr. Benner is the same William T. Benner who is in partnership with Mr. Callahan, the firm being Callahan and Benner and doing business in Philadelphia. When I took charge of these papers they were in Mr. Hammell's house, No. 224 South Fifth street, Camden. I can't tell how long these papers were in the house before I took charge of them. They had usually been kept over at the office. Mr.
30 Moore brought them from the office to the house. He brought them over less than a month before I took charge of them. Mr. Moore came over and saw me and asked me for those papers. I told him that I expected to

keep them for awhile. I kept them as a protection to Mr. Hammell.

Re-cross-examination

By Peter V. Voorhees:

Mr. Hammell was first taken sick so as to be confined to the house in October, I think. The doctor said that the matter with him was partial paralysis.

(Objected to the physician being best evidence.) 10

The doctor said his brain was also affected.

(Objected to, as above.)

He acted very strangely. He was confined to the house a short time, then was out attending to his business two or three weeks, and then he was again taken. I don't know whether he had a second stroke of paralysis. He wasn't affected in the same manner the second time. The second time he came home deathly sick at his stomach. He continued after that to be confined to his house till after December; he never attended to his business after that. I don't consider that he was capable of transacting any complicated business after that. He grew worse for a short time, and afterwards seemed to get better. 20

(All above objected to as not proper cross-examination.)

It was during this last sickness that Mr. Moore brought these slips of paper over.

(Objected to as above.)

It is agreed that the witness shall be produced again to be examined by Mr. John W. Westcott, counsel for William T. Benner, if he should so desire, Mr. Westcott being unavoidably absent to-day. 30

Adjourned until July 3d, 1882, at 10 A. M.

Monday, July 3d, 1882, at 10 A. M. Examination continued in the presence of Mr. Drake, and Mr. Westcott and Mr. P. V. Voorhees.

Evan B. Brown, a witness produced on the part of the complainant, being duly affirmed, deposeth and saith: I know Lehman Moore, the complainant in this case. I live at Moorestown, in Burlington county. I know Horace Hammell, one of the defendants, and Isora
10 Hammell, his wife. Mr. Hammell is my wife's brother.

Witness being shown the bundle produced by Isora Hammell, before the master, at her examination, saith: I should take that to be a bundle of papers. That bundle has not that I know of ever been in my possession. A bundle about that size I had in my possession; Mrs. Hammell gave it to me, upon the charge and request that I should keep it safely for her until she came after it. She told me there was a lot of papers in it containing a settlement between Mr. Moore and Mr.
20 Hammell.

(Objected to.)

I kept the bundle she gave me securely so that no one had access to it. I returned to her the same bundle that she gave me, on her request; she came after it personally, to my house on last Thursday evening, the 29th of June, I think. The bundle that Mrs. Hammell put in my charge was wrapped up in a newspaper, and had written along the edge, private papers, in my handwriting. This is wrapped up in brown paper.

30 The brown paper being removed in presence of master, witness saith, the newspaper inside of the brown paper, enclosing lot of papers, is the paper in which the papers were wrapped when I got possession. I should think it was somewhere in December or January last that Mrs. Hammell gave me the bundle; it may have

been later, it must have been later, it must have been in January or February, though I am not positive.

(All objected to.)

Cross-examination :

By Mr. Wescott.

I was at Mrs. Hammell's house, and she was talking about the papers, or the settlement rather, and she said she didn't know what to do with them, and gave them to me to take home and keep for her. I think my wife was present at the time, and I really don't remember if any other one was. I can't tell positively when it was, it is my impression that it was sometime in January or February.

Ques. Who talked about the settlement?

(Objected to as conversation was not in presence of complainant.)

Ans. We were all talking about it; Mrs. Hammell was speaking about the settlement between Mr. Moore and Mr. Hammell. Mr. Hammell said nothing at all to me, he wasn't present, that is at that time you mean.

Ques. What did she say was the reason she wanted you to take the papers?

(Objected to as not being evidence, because not in the presence of any of the parties, except so far it helps to recognize the papers.)

Ans. Merely that I might keep them for her; that is as far as I remember.

Ques. Why did she want you to keep them for her?

(Objected to, Mrs. Hammell being best evidence.)

Ans. She had been applied to, I think, by Mr. Moore once or twice for the papers, and she thought if they were not in the house she wouldn't be bothered with them, something to that effect were her remarks.

(Objection withdrawn.)

She said they were bills of the settlement, I don't think she used the word partnership. I couldn't tell you whether Mr. Moore had an interest in these papers; she didn't tell me so any more than I have told you. This was after the bill of sale arrangement.

Ques. Was this bill of sale arrangement explained to you at the same time; talked over?

(Objected to as immaterial conversation in the absence of all parties.)

Ans. Not at the time I took those papers. Prior to my
10 taking the papers, I think shortly after the bill of sale was made, Mrs. Hammell told me of the settlement, and at that time she showed me those papers loose in a bundle, and I remarked to her had they no different accounts to settle by than those, and she answered that she had never seen any other accounts. I simply remarked to her that I thought they were a poor specimen of bookkeeping for business men to go by. Horace wasn't there at this time.

Ques. She seemed to rejoice and be relieved that the matter was settled up in this way?

(Objected to as incompetent as above and leading.)

20 Ans. No, sir; I don't think she ever did rejoice in it.

I kept these papers in my drawer, at home. I don't know that Mrs. Hammell was very particular to have me take these papers; she didn't insist upon it. I don't remember that Mrs. Hammell suggested that there might be a law suit about this matter at some time. I can't remember exactly how long I have known Moore. I should think for six years. I couldn't tell you where Mr. Moore lived during those six years. I didn't visit his family. I saw him, I suppose, from every four to six
30 weeks. I don't know that I ever had any business relations with Mr. Moore, with Mr. Hammell. I have had a little business, private business, at intervals. The last

we had was last November, I think. We most did this business over there at the office in Philadelphia.

Qnes. What was the nature of any business you had over at the office, in Philadelphia?

(Objected to, as private business with Mr. Hammell is not evidence in this case.)

Ans. With Mr. Hammell? I used occasionally lend Mr. Hammell some money, and go there sometimes to get it; the most of my visiting at the office was as a friendly call, to see how they were coming on; I went in to see how they were merely as a relative. 10

When I stepped in to see how they were coming on, the usual inquiry I would make would be, "good morning, gentlemen," and talk about matters that we usually talk of when we meet. We would talk about business merely as to how business was, that is all, and that I did with Mr. Moore as well as with Mr. Hammell. During these visits I did not know that Mr. Moore and Mr. Hammell were in partnership. Mr. Moore and Mr. Hammell would either of them engage in these remarks about business with me. I frequently went there when Mr. Hammell would not be in, and I would sit down and talk with Mr. Moore about their business. Mr. Moore did not say anything about the partnership. I don't know whether Horace Hammell paid me out of the partnership or his own funds, when he paid me these bills. I can't say whether after the partnership he gave any checks. I didn't hear anything about the partnership until after the failure. That was in December last, I think. 20

Ques. How large amounts of money did you lend Mr. Hammell? 30

(Objected to as not being part of this investigation.)

Ans. From $500 to $2,200 I think is the largest.

I lent it to him on his request, what he did with it I don't know. He would merely give me his individual paper to show for it.

Ques. Didn't he get this money to put in his business?

Ans. I do not know.

I mean to say that Horace Hammell would come to me and borrow sums from $500 to $2,200 and not tell me what he was going to do with it. I don't know when the partnership took place, but I have loaned him sums of money for many years down to the time of the failure.

Ques. Don't you know that Mr. Hammell put this money in his business?

10 (Objected to as already answered.)

Ans. No, sir.

Mr. Moore never said anything to me about these loans nor the payment of them. The first intimation Mr. Moore ever gave me about his being connected with Mr. Hammell, I think was after Mr. Hammell was arrested and was under bail. I went directly to his office and asked him with reference to his connection with him, and he told me then that they had been partners, it seems to me somewhere about three years I think.

20 At this time he produced some papers connected with their business, like a bill I think for some feed, and it was Hammell & Moore debtor to somebody; whose name I forget now. So far as our conversation ran I can't repeat it now, it was merely as to the manner in which they did their business. I went there and asked him about their being in partnership and he answered the question.

Ques. He assured you there and then, did he not, that they were in partnership?

30 Ans. He did, and told me they had been running so long a time, not naming any particular time though, for about three years, I think, not naming any time in the year, nor the year.

Ques. And to convince that this was true he produced this billhead that you have spoken of, and showed it to you?

Ans. I can't say that he did that on purpose to convince me of that fact, he showed it to me, but I can't say that for that purpose. I don't think that he showed me any other papers to convince me that there was a partnership; he showed me other papers to show me how they were doing business.

Ques. He showed you this billhead spoken of in answer to your question about the partnership?

Ans. No, sir; I don't think I said that; it was not a question of doubt between me and him, I only went directly to him to talk over the matter of Mr. Hammell's general failures. 10

Ques. If there was no question of doubt between you and Mr. Moore as to the partnership, why did you ask him the direct question that you have spoken of?

Ans. That is the next course I had to pursue to know whether it was so or not, I learned it through the papers first. I mean to say by the last part of my answer that I learned through the papers that the business had been transferred to him, Mr. Moore.

Ques. Why was it in this connection that Moore showed to you this billhead? 20

Ans. I can't answer that any more than that. I suppose he thought he might make it more explicit by showing me their business transactions.

Ques. You looked at it did you not?

Ans. Oh, yes.

Ques. You had it in your hand?

Ans. I am not positive about that.

Ques. After looking at it you were entirely satisfied, were you not, and no longer had any doubt about the partnership business? 30

Ans. Yes, I was satisfied that they were in partnership.

Cross-examination:

By Mr. P. V. Voorhees.

Ques. You were frequently at their place of business?

Ans. My business is at town about once a week, and sometimes I would drop in this week, and sometimes it would go a month or six weeks. I had no special time for going.

I never saw anything there, prior to the failure, to lead me to believe that Mr. Hammell and Mr. Moore were in partnership. Mr. Moore appeared to act as bookkeeper. Prior to the failure, Mr. Hammell never said anything
10 to me about Mr. Moore's connection, whether as clerk, bookkeeper, partner or what not. While Mr. Hammell was locked up in the Court House, I said to him I didn't know that Moore was a partner with you, and he answered me by saying, "didn't I ever tell you?" I said "no." I believe his answer was, "I had forgotten that I had not." His answer was of no consequence to me at the time. I don't know whether Mr. Moore knew of my loaning money to Mr. Hammell. Mr. Hammell never
20 told me, at the time he borrowed the money, what he wanted it for; he said he was a little short, or was going to be a little short; there was no explanation to it. Mr. Benner did not examine these papers while they were in my possession. I don't know whether Mr. Hammell ever kept a regular system of books over at the store. I never saw the books. Before the failure Mr. Moore never said he was, nor did anything to lead me to believe he was, a partner, or had any interest in the business.

Ques. When Mr. Hammell gave you notes to secure this money, were his notes signed Horace Hammell; and
30 when he paid you by checks, were they signed Horace Hammell?

Ans. Yes sir.

Ques. Were those checks payable at the First National Bank of Camden?

(Objected to, checks being best evidence.)

Ans. I think they were.

Re-direct :

Ques. Was Horace Hammell a man who was in the habit of talking much about his business?

Ans. No sir, not to me.

Ques. When you were at the office in Philadelphia, whom did you see there the oftenest, Mr. Hammell or Mr. Moore?

Ans. Mr. Moore.

I have gone there and not found Mr. Moore in. When I saw Mr. Moore there he seemed to attend to most of the business. I have seen people come to the door and ask whether Horace was in, he would say "no, is there anything I can do?" they would say "no, I want to see Horace," and would go away. 10

Ques. With regard to persons who sought to transact their business there without insisting on seeing Hammell, personally, did Mr. Moore transact all or only a part of their business?

Ans. So far as I know, all. 20

Ques. In the part of your cross-examination, which was not responsive to my direct examination, you said you made no question about the partnership, was that before or immediately after Moore had told you of the partnership?

Ans. It must have been after he told me of it, because before he told me I didn't know of it.

Ques. Will you please look at the papers which were taken out of the newspaper recognized by you, and see if you can say they are the same which were shown to you, as the papers used in the settlement between Hammell and Moore? 30

(Objected to.)

Ans. I should say that they were, although I never examined them. They look like the same papers.

Re-cross-examined:

By Mr. Wescott.

Ques. Have you any interest directly or indirectly in this controversy?

Ans. No, sir.

Hammell owes me something now, about $1,000 all told. I have put in no claim for it, it was all eaten up before I knew of it or else I would. I have said nothing to Mr. Moore about this except common talk. I haven't asked him to pay it. I suppose I have seen Mr. Moore a
10 half a dozen times since the failure.

Ques. Of course you have never said anything to him about this suit or your testimony to be given therein?

Ans. Not anything at all about testimony as I did not expect to have to give any in the case.

Ques. Were you subpœned to come here?

Ans. No, sir.

Ques. You have said in answer to Mr. Voorhees that Mr. Moore when you saw him at the office in Philadelphia appeared to be acting as bookkeeper; you have also said in answer to Mr. Drake that he appeared to do all of
20 the business of people who called at the office, and not part of it; you have also stated that you called at the office generally, casually, and said good morning, how are you gentlemen, &c., now please state exactly what the truth is about these matters, and state exactly what Mr. Moore did for the various people calling at this office, which enables you, as a disinterested witness, to state, on your affirmation, that Mr. Moore did all of their business and not only part of it?

(Objected to as involved, and as an imperfect statement of the facts it undertakes to state.)

30 Ans. In the first place I don't think that I said that he did all of their business. I said that upon inquiry for Mr. Hammell, if they said he was not in, they would say that they would call again, or that they wanted to see

him personally. So far as to the nature of their business they were what are termed waggoners or jobbers or draymen; they would ask for a wagon to be sent to different places and Mr. Moore would attend to it. He would give directions that a team should be sent to this place, go after empties, &c., or take a load; of course I didn't pay special attention to it. He generally took these down on a piece of paper upon a table where he was working. He would then give directions to the men driving the wagons to follow out the order. I don't know that I can 10 think of anything more than that in answer to the question.

Ques. Did you ever see him do these things before the alleged partnership was entered into?

Ans. Yes.

Ques. Were the people for whom Mr. Moore did the business, as you have above described it, drivers and carters dressed in common working clothes?

Ans. Some were and some were not. The drivers were dressed in their working clothes; some of the people who came there to give directions were dressed in a different 20 style.

Ques. Were not the people that called to see Mr. Hammell in person, well dressed people?

Ans. As a rule they were; they were a mixture.

Ques. Was the table that Mr. Moore worked at that you have spoken of, where he did his bookkeeping?

Ans. The only table that I ever saw him do any writing at was a small rectangular table.

Ques. He had the bookkeeping books on that table, had he not? 30

Ans. I believe I never saw any there.

Ques. Where did they keep them?

(Objected to as not best evidence.)

Ans. I have seen Mr. Hammell writing in what looked

to be a day book at his desk in the other part of the office.

Ques. Then you never saw Mr. Moore keeping the books?

Ans. I saw him writing on these slips of paper I have spoken of only. I don't think I ever saw him writing in what you term books.

Ques. Then why did you say to Mr. Voorhees that Mr. Moore appeared to act as bookkeeper?

10 (Objected to as tending to confuse the witness.)

I suppose he meant to say kept the accounts.

Ans. Simply because he did the writing in my presence while I was there.

I know of what bookkeeping books are when I see them in an ordinary way.

Ques. What are they?

(Objected to as immaterial and improper.)

Ans. They should be a book that they should keep their accounts in; that would explain all their business.

20 Ques. Were these slips of paper, on which Moore wrote, such books?

Ans. No, sir; not to me they wouldn't be—not if I was doing business with them.

Ques. Then I again ask you if these slips of paper were not bookkeeping books, how was it that you so distinctly inferred and knew that Moore was acting as Horace Hammell's bookkeeper?

Ans. Hammell told me when he employed him, that he employed him for a bookkeeper. I supposed when he

30 was doing that writing on that table he was making memoranda which he would put in his books.

Ques. If Mr. Hammell never talked to you about his business, but told you when he employed Mr. Moore that he employed him as his bookkeeper, why do you suppose he didn't tell you that he made him his partner?

(Objected to as containing an incorrect statement of

the evidence referred to, and as improper, incompetent and irrelevant.)

Ans. I don't know.

Ques. You being a disinterested witness, and generally stopping at the office, in Philadelphia, to pay your regards to these gentlemen, how is it that you now remember so clearly the details of what you saw and heard there?

(Objected to as containing an improper allusion.)

Ans. I hardly know how to answer, as I supposed I was not remembering anything much that occurred there; it only comes up to me as a natural propensity. Horace Hammell being a brother-in-law to me, I took an interest in his business and perhaps noticed more than I would at other places. 10

I have been in many other places of business during the same time.

Ques. State one of them.

Ans. I would state William B. Kempton & Co's dry goods house. 20

Ques. State what you saw there, about their bookkeeping and business.

(Objected to as improper.)

Ans. I would go there to buy goods, and the salesman would throw them down for me to examine; after I would purchase they would call them off to the entry clerk to charge them. I would go to their office and pay them money, and they would enter it on their books and give me a receipt.

Ques. Who came in and out of the office, while you were there, and what did they say? 30

Ans. I might say that Mr. Kempton did frequently, and spoke to me and passed the compliments of the day.

That is about all that I remember about people coming in and out. Sometimes they ask questions of busi-

ness, which I don't pay any attention to; they ask me some in the office.

Re-re-direct:

Ques. The papers which were given to you in a bundle by Mrs. Hammell, were they or were they not given to you to keep them from Mr. Moore?

(Objected to.)

Ans. If such is the case, I don't know it; she gave
10 them to me to keep for her: whether she wanted them kept from him I don't know.

Ques. When you spoke of Mr. Moore as bookkeeper, or keeping the books, did you refer to him as actually keeping books, or as keeping the accounts?

Ans. I referred to him, or I supposed he was actual bookkeeper, and that he kept regular books of account. I didn't know then, nor do I know now, how the books were kept, one what I saw.

Ques. Please state, as nearly as you can, during how many years you have been lending money to Horace Hammell?

20 Ans. I think I have been doing a little of it for at least fifteen years, small amounts.

I can't say positively, but I think it was at least six years ago that Hammell first employed Moore, probably longer.

Re-re-cross-examined:

By Mr. Wescott:

My business is general merchandizing, or store-keep-
30 ing at Moorestown. I have been there in that business for twenty-two years.

Ques. Where was Horace Hammell when you went to ask Moore the direct question about the partnership?

Ans. I think he was at home, but I am not sure.

E. B. BROWN.

Affirmed and subscribed this third day of June, 1882.

C. V. D. JOLINE, M. C. C.

Adjourned until July 10th, 1882, at 10 A. M., for the purpose of allowing Mr. Wescott to cross-examine Isora Hammell. It is agreed that the examination of witnesses, after cross-examination of Isora Hammell by Mr. Wescott, shall be adjourned till August 9th, 1882, at 10 A. M. 10

Monday, July 10th 1882, at 10 A. M., examination adjourned until Monday, July 17th, 1882, at 10 A. M.

Monday, July 17th, 1882, at 10 A. M., examination continued in presence of Messrs. Drake and Wescott.

The cross-examination of Isora Hammell adjourned until July 20th, 1882. 20

Mr. Drake now produces Lehman Moore, the complainant, and states there being no objection on the part of Mr. Wescott who is present, nor on the part of Mr. P. V. Voorhees, Mr. Drake having written to the latter and received no objections from him, the time for a reply having now elapsed.

LEHMAN MOORE, the complainant, being duly sworn, deposeth and saith: I live in West Philadelphia. I have never lived in New Jersey. I have lived in West Philadelphia since 1873. I know Horace Hammell, one of the defendants in this case. I know William Benner and Robert Diament, defendants in this case. I was a partner with Horace Hammell; it commenced January 1st, 1879. We were the only two partners in that business. Our office was 104 Dock street, 30

Philadelphia. You might call our business the express business; draymen would cover it I suppose; that is the way the cards were generally made out.

(Witness refers to card now offered in evidence, and which is marked Exhibit 3, of complainant.)

We did business under the name of Horace Hammell. The partnership was not published in the newspaper. It was not published because Mr. Hammell said it was not necessary to publish it for the reason that we were doing a cash business. Just at the time that the partnership
10 was agreed to there was a man by the name of Marshall who wanted an interest in the business. Hammell preferred taking me because I knew all about the business, and everybody connected with it. Marshall was friendly with Hammell; his name was Nathan D. Marshall. A further objection that was made to the publication of the partnership was that Marshall might think hard of his taking me in and shutting him, Marshall, out. After the partnership was formed I proposed to Hammell to publish it. He said that we were doing a cash business, and expected to do a cash business, not making any contracts where we would ask for trust and expect to get
20 any, so that it wasn't necessary to publish it. That is his reply as near as I can remember it.

At the time the partnership was formed I proposed to publish a notice of its formation. He said leave it for a few days, and he would see Marshall and have a talk with him so that he would understand it, and we would talk about the other afterwards. I asked Hammell if he thought we had better change the name in any way, or leave it as it was before. I didn't propose to him that my name should appear in the shape of "Co." He said
30 he saw no advantage of changing the name because he was better known in the business than I was. We kept no regular bound up books of account in our business; the accounts were figured up on small statements every

Saturday, dated every Saturday; the money was all paid in to Hammell, and he put an account of it on this paper, the amount that he received; on the right hand side he would put the money received, and on the left the amount paid out, the slip being dated at the bottom the proper day for which that business was done, the difference being taken between the amount received and the amount paid out, and the balance Hammell would owe. At the bottom of the slip or figuring would be marked due from Hammell so much, as it might figure up; then that amount would be carried to the slip of the next week. Those are the slips that Mrs. Hammell produced here on the first day upon which the accounts were kept. I don't know that they are all there, but they were all delivered to Mr. Hammell to make a settlement at his house where he was sick. I told Mr. Hammell that it was impossible for me to keep books in the regular way, I didn't have the time; he said he would help me, but he failed to do it. He said that the way we kept the account was good enough; it would answer every purpose, as we did a cash business. We did a cash business, settling up every week. The contract of partnership was formal, and was formed on the basis of a half interest, equal liability and equal ownership.

Adjourned until Thursday, July 20th, 1882, at 10 A. M.

Thursday, July 20th, 1882, at 10 A. M., examination continued in presence of Mr. Drake and Mr. Wescott. Mr. Wescott, who was absent when Isora Hammell was examined, now enters an objection to her testimony in chief.

Cross-examination of Isora Hammell:

By Mr. Wescott.

ISORA HAMMELL, being recalled for cross-examination by Mr. Wescott, deposeth and saith:

Ques. Why did you object to giving these papers to Mr. Moore?

Ans. Because I had advice to hold them.

Ques. Who advised you to hold them?

Ans. I object to answering that question.

Ques. Why do you object?

Ans. For reasons best known to myself.

10 Ques. What are the reasons best known to yourself.

(Objected to as immaterial from the first, and because the witness has a perfect right to decline to answer this question, and may do so if she likes.)

Ans. I object to answering.

Ques. Do you positively refuse to state who advised you as above.

Ans. I do.

Ques. It was important, was it not, that you should keep possession of these papers?

20 Ans. It was.

Ques Why was it so important?

Ans. I object to answer; I refuse to answer.

Ques. Then why did you give them up to Mr. Moore, a short time ago, by leaving them accessible to him and his counsel?

(Form of question objected to.)

Ans. I supposed it was necessary for the court to have them.

Ques. Why did you suppose it was necessary for the 30 court to have them?

Ans. I refuse to answer.

Ques. Is it not just as necessary for the court to have all other papers relating to the business of your husband?

(Objected to as hypothetical, and not intended to elicit any facts to throw light on this inquiry).

Ans. I refuse to answer that also.

Ques. Are these all the papers that have been, or now are, in your possession relating to you husband's business.

(Objected to.)

Ans. They are.

Ques. You never examined these papers?

Ans. I did not.

Ques. Then how do you know that they relate to your husband's business?

Ans. Because both Mr. Hammell and Mr. Moore said they were business papers. 10

Ques. What else did they say?

(Objected to as improper, because the question does not refer to the business in hand at all.)

Ans. I refuse to answer.

Mr. Westcott desires master to enter on the record the following statement, as made here by Mr, Drake to the witness: "You must refuse to answer these questions on "your own responsibility, Mrs. Hammell. I disclaim all "responsibility for your refusal. It doesn't follow neces- "sarily, because I object to a question, that you should "refuse to answer it." 20

Ques. How do you know that Mr. Moore has not examined, or had access to, nor seen those papers since December last?

Ans. I don't hardly know how to answer that question.

Question repeated.

Ans. They were in Mr. Hammell's brother-in-law's possession, and he was keeping them for Mr. Hammell's benefit, I suppose.

Ques. How were they to benefit Mr. Hammell? 30

Ans. I refuse to answer.

Ques. Have you had any communication with Mr. Moore concerning your husband's business, or money coming out of that business, since your husband became unable to attend in person?

Ans. None whatever.

Ques. Have you not sent or written to Mr. Moore for money since that time?

Ans. I refuse to answer.

Ques. Have you not told Mr. Benner, the gentleman here present, an intimate friend in your family, and one of the defendants in this suit, that you sent or wrote to Mr. Moore for money, coming out of your husband's business, since his inability to attend to the same in person?

10 Ans. I refuse to answer that question also.

Ques. You have never talked with your husband about his business, nor he to you about the same, if I understand you correctly?

Ans. Not of any importance.

Ques. Did he ever tell you anything about the partnership except that Mr. Moore was a partner?

Ans. No, sir.

Ques. And he told you that, in January, 1879, when the partnership was created?

Ans. He did.

Ques. You are perfectly sure that he never told you 20 anything about the matter except that one fact?

Ans. I am.

Ques. He was doing a good business at that time, wasn't he?

Ans. Yes, sir.

Ques. Did not this fact, of taking a new partner in a profitable business, make impression enough upon your mind to induce you to ask some questions about it, or to get your husband to make some explanations about the same?

30 Ans. I supposed that he knew his own business and I didn't ask him any questions.

Ques. He told you, did he not, that the partnership

contract in this profitable business was merely oral and not written?

Ans. I don't remember whether he did or not.

Ques. Did he not tell you the terms on which this new partnership was formed?

Ans. He did.

Ques. What were the terms?

Ans. I don't remember that either.

Ques. You know the terms now, do you not, of the partnership? 10

The witness requests to have the question explained, whether it means as to the time being or as to that time, as there is no partnership existing now.

Ans. I don't. I never committed them to memory.

Ques. If your husband told you at that time the terms of this partnership, why did you state, so positively, that all he told you was the mere fact that he had taken Moore into partnership?

Ans. I didn't suppose the terms they entered into had any reference to the business transactions in other ways.

Ques. How are you able to say that it was in January, 20 1879, that your husband told you this?

Ans. Well I remember it was during January that he came home and told me, and that is all I do remember. I don't remember the day of the month.

Ques. How do you know it wasn't in February of that year?

Ans. Because I know it was shortly after Christmas.

Ques. How do you know it wasn't shortly after Christmas in the year 1877 or the year 1880?

Ans. I refuse to answer such a question? 30

Ques. Of course you have not heard since that time, January, 1879, from any person or any source that it was in January, 1879?

Ans. I don't choose to answer that question.

Ques. Why was the business done in the name of Mr. Hammell only?

Ans. That is the best known to Mr. Hammell and Mr. Moore.

Ques. You don't know?

Ans. I never meddled with Mr. Hammell's business and don't know much about it, so I can't give any information on the subject whatever.

Ques. Have you ever stated to anybody, if so to whom, 10 or on any occasion, if so when, the reasons, some or all of them, why the business was done in Mr. Hammell's name alone?

Mr. Wescott desires Mr. Drake to put down the following: Mr. Drake here says to witness "Mrs. Hammell "don't answer that question at present until I have seen "the evidence."

Mr. Wescott requests the witness to answer now before Mr. Drake examines the witness, and before he gives any further instruction to the witness.

20 Mr. Drake says that Mr. Wescott refuses him an examination of the evidence, and that from his recollection of the evidence the form of the question is objectionable and misleading.

Mr. Wescott requests the master to state that the last above statement by Mr. Drake is incorrect for two reasons. First, because the master had told Mr. Drake that he would instruct Mr. Wescott to hand him the evidence if he wanted it, and second, because Mr. Wescott has handed him the evidence.

30 The master states that while he was taking down Mr. Drake's last statement he said that he would instruct Mr. Wescott, if Mr. Drake so desired it, to hand to him, Mr. Drake, the evidence, and that Mr. Wescott said certainly, if so instructed I will do it, and laid the evidence on the table between himself and Mr. Drake.

Mr. Drake having now examined the evidence, now makes the same objection as before to the question.

Ans. I refuse to answer that question.

Ques. Was Mr. Benner frequently at your house?

Ans. He was.

Ques· Did you ever examine these papers, or do you know anything about them?

Ans. I do not.

Ques. Don't you know what they contain?

Ans. I suppose they contain the account of the business, so far as I know. 10

Ques. Why do you think that?

Ans. For the reason that Mr. Hammell and Mr. Moore both said they were their business papers.

Ques. Why did Mr. Moore bring these papers from the office to the House?

Ans. Mr. Moore knows that best himself.

Ques. Were they not sent for?

Ans. Not that I know of.

Ques. Whom did he give them to when he brought them to the house? 20

Ans. To Mr. Hammell.

Ques. Did they have any talk together about the papers then?

Ans. They know that best themselves.

Ques. You were present, weren't you, some or part of the time?

Ans. Part of the time.

Ques. And you heard them talk, did you?

Ans. I did, but didn't pay much attention to it.

Ques. Why did Mr. Moore bring these papers to Mr. Hammell and leave them with him? 30

Ans. I refuse to answer.

Re-direct:

Ques. Is the gentleman present, the Mr. Benner who

examined these business papers of Mr. Hammell and Mr. Moore, while they were in your possession?

Ans. Yes, sir.

Ques. Was it a lawyer who advised you not to deliver those papers to Mr. Moore?

Ans. Yes, sir; one of them was.

Ques. Have you given up those papers to Mr. Moore, or have you just put them in the hands of the master?

Ans. I have no further use for them whatever, and it
10 doesn't make any difference to me who has them.

Ques. To the best of your knowledge did Mr. Moore have access to these papers, from the time you took charge of them, until the time you delivered them to the examiner, in this office?

Ans. Not that I know of.

Ques. When you refused to deliver those papers to Mr. Moore on his request, did you desire to keep them for the protection of Mr. Moore?

Ans. For the protection of Mr. Hammell.

20 Ques. Did yon desire at all to keep them for your own protection?

Ans. Certainly, for while I was protecting Mr. Hammell, I was protecting myself.

Ques. When I applied to you as Mr. Moore's counsel, for these papers, did you state that you were willing or unwilling that Mr. Moore should have them?

(Objected to.)

Ans. I stated that the court had a right to them, and of course I had no further use for them whatever.

30 Ques. Were you then satisfied that if you delivered them to the court, or the officer of the court, they were safe, and you would not be further responsible for them?

(Objected to.)

Ans. I didn't consider that I had any further right to them.

Ques. Who do you consider ought to have this

property which is now being contended about in this suit, Mr. Moore or Mr. Hammell's judgment creditors ?

(Objected to).

Ans. I don't consider myself any judge in the matter.

Ques. When Mr. Hammell told you that he and Mr. Moore were partners, did he say they were equal or unequal partners ?

(Objected to.)

Ans. Equal.

Ques. When you stated then that Mr. Moore and Mr. Hammell were partners did you mean by that that they were equal or unequal partners ? 10

(Objected to.)

Ans. Equal partners.

Ques. Did Mr. Hammell ever tell you why the business of Mr. Hammell and Mr. Moore was done in the name of Mr. Hammell ?

(Objected to.)

Ans. I refuse to answer.

Ques. You have already answered that in your examination-in-chief, have you not ? 20

Ans. That I consider sufficient without answering it any more.

Re-cross-examination :

By Mr. Wescott.

Ques. You said that in keeping these papers you were protecting yourself as well as Mr. Hammell; will you explain how you protected yourself by so doing ?

Ans. I prefer to keep that to myself. 30

Ques. You intended to and did act, did you not, on the principle that self-preservation was the first law of nature ?

Ans. That I consider a question uncalled for.

Ques. You intended and did protect yourself did you not?

Ans. That also I don't choose to answer.

Ques. If you protected yourself in keeping the papers, did you destroy yourself financially in giving them up?

Ans. As I said before, I didn't consider them of any futher use to me in one way or another.

Ques. Then, if I understand you, you neither did yourself nor husband any harm in giving up these papers.

Ans. Neither harm nor benefit.

10 Ques. You know, do you not, that Mr Moore relies upon these papers to win this case, and that without them he could do nothing?

Ans. I do not know.

Ques. Do you not know that these papers are supposed to contain the proof of the partnership?

Ans. I do not know that either.

Ques. Do you not know that these papers are supposed to contain the business transactions of your husband and Mr. Moore, since the alleged partnership was formed?

Ans. If there are any others I do not know of them.

Ques. Now do you not know that Mr. Moore relies
20 upon these papers to prove these business transactions?

(Mr. Drake suggests that probably Mr. Moore would be the best evidence of that.)

Ans. Not knowing, I can't say.

Ques. Did you ever, or do you now, think it strange that a large and profitable business should, within a year, by unpublished process, pass from the control of your husband, wholly and entirely to the control and ownership of his poor bookkeeper, and that the papers going to show the truth of such a curious transformation should
30 pass from your control, through the court, to the control of Mr. Moore, the said poor bookkeeper, without any injury either to your husband or yourself, especially after you had protected both your husband and yourself?

(Objected to as hypothetical, as embracing a hypothesis predicated upon facts not only not in evidence but untrue, as involved and as unintelligible.)

Ans. I have no answer for that question.

Ques. You have no interest whatever, directly or indirectly, in this suit, have you?

Ans. None at all.

Ques. Were you subpœnaed to come here and give your testimony?

Ans. I was. 10

Ques. Where is the subpœna?

Ans. That has been burned up. I had no objection to coming.

Re-direct:

Ques. When you refused to deliver the papers to Mr. Moore, at the time of that refusal, had you not the idea that some one beside Mr. Moore had a better right to the partnership property than he had, and if so who?

(Objected to.)

Ans. I can't answer. 20

Ques. When I saw you in relation to the delivering these papers to the master, before the examination, did you or did you not say to me, that you had recently asked a favor of Mr. Moore, that he had refused it, and that you should not ask him for another?

Ans. I did; but I said that the favor I had asked had been some time back, during the winter, and not recently.

Ques. Was it after Mr. Moore had brought the papers to Mr. Hammell? 30

Ans. It was.

ISORA HAMMELL.

Sworn and subscribed July 20th, A. D. 1882.

C. V. D. JOLINE, M. C. C.

Adjourned until Wednesday, August 9th, 1882, at 10 A. M.

Wednesday, August 9th, adjourned until Tuesday, August 22d, 1882, at 10 A. M.

Tuesday, August 22d, 1882, at 10 A. M. Examination continued in presence of Mr. Drake, Mr. Wescott and Mr. P. V. Voorhees.

10 LEHMAN MOORE, the complainant, being still on the stand on his direct examination, deposeth and saith:

Ques. Before you went into business with Mr. Hammell, January 1st, 1879, what was his business?

Ans. Drayman.

Ques. Where had his office been?

Ans. No. 104 Dock street, Philadelphia.

Ques. Prior to that time what had your business been?

Ans. I was employed in the office of Mr. Hammell and looked after the business in general.

20 Ques. Where were his principal stables?

Ans. In Camden, at Fifth and Division, and Ninth and Carpenter, Philadelphia.

Ques. Where did he do his business as drayman?

Ans. At 104 Dock street, Philadelphia.

Ques. Between what points was the draying done?

Ans. Broad and Prime, Delaware avenue and Dock street, Delaware avenue and Vine, North Pennsylvania depot, Camden and Atlantic depot in Camden, West Jersey depot in Camden, and many other places that 30 would be almost impossible to mention. Those were the principal places.

Ques. What articles of produce or merchandise were the subjects of this draying?

Ans. Principally apples, potatoes, peaches, and fresh beef.

Ques. Was the draying from the stations to the markets or from the markets to the stations?

Ans. Both ways.

Ques. What facilities had Mr. Hammell at that time for doing this business?

Ans. Fourteen wagons and twenty-six horses.

Ques. What, if anything, had he in the way of mules, harness, blankets, &c?

Ans. The mules were included in the twenty-six head I gave; some of those were mules. There were a few blankets not counted; there were fourteen sets of double harness. That I guess includes all. 10

Ques. Upon what basis were you to be taken into this partnership?

Ans. I was to own one-half of all horses, wagons, office furniture and fixtures, forks, curry combs, brushes, &c., used in stable, and have half of the profits derived from the business.

Ques. Who proposed this partnership, you or Mr. Hammell? 20

Ans. I asked Mr. Hammell if it would be agreeable to him.

Ques. Proceed with the conversation please?

Ans. He said that it would be agreeable, and that he would be very glad to have me as he had other business to attend to. That he and Mr. Brown expected, if they could get a suitable place, to go into the wholesale grocery business, and his time would be so taken up that it would be necessary for some one equally interested to look after the business. So under the former arrangement I agreed to go in with him. I was to pay him $5,000 for the one-half interest of that business. I paid him $3,000 in cash, the balance out of the profits of the business. 30

Ques. Did you make any estimate of the horses, mules, wagons, &c., of which you were to own the one-half, and if so state how it was made up?

Ans. There was no estimate made. Mr. Hammell said that the horses, wagons, harness, &c., might not be worth that much money, but he considered the business worth some good will, not stating any amount. I tried to get him down $500, but he would not accept the offer.

Ques. Then what was included in the $10,000 estimate besides the horses, mules, wagons and goods and chattels used in the business?

Ans. Good will.

Ques. What payment did you make on account of the
10 $5,000, for your one half interest?

Ans. $500. The date I forget. I think about January 10th.

Ques. If you took a receipt please produce it?

Ans. This is it.

Said paper is marked Exhibit No 4, of complainant, and offered in evidence.

Ques. When did you make the next payment, and how much was it?

Ans. The next payment was about the 13th. It was for $1,500. The next about the 18th of January, 1879. It was $1,000, making altogether up to that time, $3,000.
20 Ques. Were these three sums, making that amount, paid in cash or otherwise?

Ans. Paid in cash.

Ques. For the last two did you take receipts?

Ans. No further receipt than the article of partnership.

Ques. How was the residue paid?

Ans. A little over eighteen hundred dollars was paid out of the profits of the first year ending December 31st, 1879. The balance, about, $186, or perhaps a little over, I haven't got the figures here and can't tell exactly, was
30 paid out of the profits of the following year, 1880, leaving a balance due me of over $2,000.

Ques. How were the accounts kept the first year, 1879?

Ans. Kept on weekly statements.

Ques. What has become of those weekly statements?

Ans. They were delivered to Mr. Hammell in order to get a settlement.

Ques. I mean the weekly statements for 1879?

Ans. They were burned.

Ques. State how they came to be burned?

Ans. They were in the office in their proper place in August, 1881. They were burned by Mr. Hammell in the fore part of September of that year. I was at Ocean Grove at the time. 10

Ques. Had the result of these statements been carried forward to the next year?

Ans. They had been figured on a piece of paper, showing the amount of money due Mr. Hammell on the 1st day of January, 1880. That paper was delivered with the other papers to Mr. Hammell at his house in November, 1881.

Ques. What has become of the weekly statements of your business and Hammell's since December 31st, 1879? 20

Ans. They were delivered by Mrs. Hammell to Mr. Joline, Second and Market streets, Camden, the master in this case.

Ques. Are those the papers which you delivered to Mr. Hammell in November, 1881, to make up his statement?

Ans. Yes, sir.

Counsel for complainant requests the examiner to hand to witness the papers produced here by Mrs. Hammell, and witness is requested to produce from among those papers the statement of the business of 1879, above referred to. 30

The examiner produces said papers, and hands them to the witness.

Witness produces paper and saith: That is the statement.

Said paper is marked Exhibit No. 5, of complainant, and to be offered in evidence.

Ques. State how the sum of $5,358.25 which appears here is made up?

Ans. It is made up of the balances due from Mr. Hammell at the end of each week for the year 1879.

Ques. State how the $1,625.37 taken from it are made up?

Ans. It is made up of bills paid by Mr. Hammell for hay, blacksmith, feed, &c.

Ques. Were these due and unpaid at the time, or had they been paid by Mr. Hammell?

10 Ans. They had been paid, I suppose. I couldn't say positively about that.

Ques. Had Hammell returned them to you as paid?

Ans. Hammell returned all the bills as paid.

Ques. Why is the $105 taken from the amount of the weekly statements above mentioned?

Ans. That I suppose must be another bill.

Ques. What were the net profits for 1879, after paying all the bills?

Ans. $3,627.88.

Ques. Was it ascertained and stated on the same statement how much you owed Mr. Hammell after giving

20 him credit for that year's profit?

Ans. It was. It is $186.06.

Ques. Have you anywhere, or can you produce a statement or addition of sums making up the amount of $5,358.25 above referred to?

Ans. Yes, sir; it is from among the papers left here by Mrs. Hammell.

Witness produces three papers pinned together and saith: That is the statement and addition referred to, said papers are marked Exhibit No. 6 of complainant.

30 Exhibit No. 5 is in my handwriting. Exhibit No. 6 is in my handwriting taken from statements of Mr. Hammell in his handwriting. Those statements in Mr. Hammell's handwriting were weekly statements for the year 1879.

Ques. In your statement, Exhibit No. 6, how are the debit and credit sides, to which the results of those statements belong, respectively indicated?

Ans. By saying due to or from Mr. Hammell, and the result arrived at on Exhibit No. 6 is carried to Exhibit No. 5.

Ques. When you left the office prior to your being away in the summer of 1881, in what order and condition were Hammell's weekly statements of 1879, and where were they? 10

Ans. They were all tied together in regular order in a pigeon hole in the office alongside of the safe.

Ques. What conversation, if any, had you with Hammell about his destroying them?

Ans. I asked him why he burned them; he said he was not aware that they were any longer of any use, in fact didn't profess to know that he had burned them. It was about a week after my return that I missed them. The first time I saw him after I missed them I asked him about them, which was not for two days afterwards.

Ques How do you know he burned them? 20

Ans. Because he told me he burned all the papers that were in that particular place.

Ques. What had you asked him to bring forth that reply?

Ans. I asked him where they were, and he said he must have burned them, as he burned the papers that were in that particular place.

Ques. Had you asked him for the papers in that particular place or for the weekly statements for 1879?

Ans. I asked him for the weekly statements for 1879. 30

Ques. Why then did he say that he had burned all the papers in that particular place?

(Objected to.)

Ans. He said that he burned them to make room for something else.

Ques. Had you told him that these statements were in that place or not?

Ans. Yes, sir; I had told him they were.

Ques. Why was it that he didn't then also destroy the results of those statements as they appear on Exhibits 5 and 6?

(Objected to.)

Ans. Because they were in the safe.

Ques. Will you please now produce from the papers
10 left here by Mrs. Hammell, the first weekly statement for the year 1880, with any bills or vouchers attached thereto?

Ans. I can't find the statement for the first week of 1880. It was there when I handed the papers to Mr. Hammell.

Ques. Do you find these statements now in the same order they were in when you handed them to Mr. Hammell?

Ans. No, sir. They were then all pinned together and
20 strung on a string in their regular order and date, and laid in a book each year's papers separate, and the book tied together with a string.

Ques. Produce, if you please, the first statement for the year 1880 which you find among those papers?

Ans. This is it.

(Witness produces paper which is now marked Exhibit No. 7 of complainant.)

Every Saturday was settling day. Our way of settling was uniform. Mr. Hammell had the money for the
30 week's work. It was given to him by whoever might collect money on Saturday for the week's work. We had collectors. A man named Sailor, and one named Stanton, and what I collected myself, I always gave to him.

Ques. What did Hammell take credit for in these weekly statements?

Ans. For all bills, wages, or whatever else might come

due during the week. I had no credit to take. I didn't receive any money, except fifteen dollars for each week. Hammell took the same amount. I collected some of the money. I paid it to Mr. Hammell and he gave me credit on the statements for it.

Ques. Didn't you sometimes pay bills out of money in hand?

Ans. No, sir.

Ques. How are moneys due from Mr. Hammell indicated on these statements? 10

Ans. Marked on the paper due to or from Mr. Hammell, as the case may be.

Ques. Point out on Exhibit No. 7, where Hammell's weekly allowance of $15 appears?

Ans. At the point marked A, in parenthesis, by the master.

Ques. Where does your $15 appear in that?

Ans. My $15 does not come out of that.

Ques. How does your $15 appear on the statements? 20

Ans. It does not appear on the statements at all.

Ques. By this paper does it appear that money was due to or from Mr. Hammell at the end of the week?

Ans. Due to him, the sum of $10.

Ques. Where does that $144.10 appear?

Ans. It appears in the shape of wages.

Ques. How did Hammell settle with you so that it didn't appear on the statement?

Ans. He would either give to me or put in the drawer $25 or $30, as the case might be, sometimes less than that, sometimes more. I don't see it on that statement either; nevertheless that is the way it was done. 30

Ques. Look at that (pointing to the following on statement, Exhibit No. 7, "Less 40.00")?

Ans. Yes, I suppose that is it.

Ques. How would you get it out of the drawer?

Ans. The drawer was never locked. Well, I shouldn't say that? it was locked occasionally.

Ques. Never locked against you, you mean?

Ans. No, sir; never locked against me.

Ques. What became of the money, over and above what was necessary to pay bills and expenses, at the end of weeks where there was a balance due from Hammell?

Ans. He kept it.

Ques. Mr. Hammell took it less what was in the drawer?

Ans. Yes, sir; he always took that off, and was never charged with it. He was only charged with what he actually owed.

Exhibit No. 7 is in Mr. Hammell's handwriting, all except the date at the bottom and the figuring at the bottom. The date, Jan. 31st, at the top is in his handwriting. The figures 1880, at the top, are in my handwriting.

Ques. Which is the next statement you can produce?

Ans. The papers are so disarranged I can't find it at present.

Adjourned till Friday, September 1st, 1882, at 10 A. M.

Friday, September 1st, 1882, at 10 A. M., adjourned until Friday, September 8th, 1882, at 10 A. M.

Friday, September 8th, 1882, at 10 A. M., adjourned until Monday, September 11th, at 11 A. M.

Monday, September 11th, at 11 A. M., examination continued in presence of Mr. Drake and Mr. P. V. Voorhees.

LEHMAN MOORE, the complainant, being still on the stand, upon his direct examination saith: I have had an opportunity to put the papers in order so far as they are

here. There are no other weekly statements in the month of January, 1880. For the month of February, 1880, there is a statement dated February 14. This is the first one. The next one is February 21st. The next is February 28th.

The above are marked in their order respectively Exhibits No. 8, No. 9, and No. 10, of complainant.

The first in March, 1880, is the 6th ; the next is March 13th ; the next is March 20th ; the next is March 27th.

The above are marked respectively Exhibits No. 11, No. 12, No. 13 and No. 14, of complainant. 10

The statements for February, 1880 are all in Horace Hammell's handwriting, except the dates at the bottom and the words "less tickets" at the bottom of Exhibit No. 10, which are in my handwriting.

The same is true in relation to the statements for March, 1880.

April 3d is the first for April, 1880 ; April 10th is the next ; April 17th is the next ; April the 24th is the next.

The above are marked respectively Exhibits No. 15, 16, 17 and 18 of complainant. 20

May 1st is the first for May, 1880 ; May 8th is the next ; May 15th is the next ; May 22d is the next ; May 29th is the next.

The above are marked respectively Exhibits No. 19, 20, 21, 22, and 23 of the complainant.

The dates at the top of these are generally in Mr. Hammell's handwriting ; those at the bottom are generally in mine.

June 5th is the first in June, 1880 ; June 12th is the next ; June 19th is the next ; June 26th is the next. 30

The above are marked respectively Exhibits No. 24, 25, 26, and 27 of complainant.

July 3d is the first in July, 1880 ; July 10th is the next ; July 17th is the next ; July 24th is the next ; July 31st is the next.

The above are marked respectively Exhibits No. 28, 29, 30, 31, and 32 of complainant.

August 7th is the first in August, 1880; August 14th is the next; August 21st is the next; August 28th is the next.

The above are marked respectively Exhibits No. 33, 34, 35 and 36 of complainant.

September 4th is the first in September, 1880; September 11th is the next; September 18th is the next; September the 25th is the next.

The above are marked respectively Exhibits No. 37, 38, 39 and 40 of complainant.

October 2d is the first for October, 1880. October 9th is the next; October 16th is the next; October 23d is the next; October 30th is the next.

The above are marked respectively Exhibits No. 41, 42, 43, 44 and 45 of the complainant.

November 6th is the first for November, 1880. November 13th is the next; November 20th is the next; November 27th is the next.

The above are marked respectively Exhibits No. 46, 47, 48 and 49 of complainant.

December 4th is the first for December, 1880. December 11th is the next; December 18th is the next; December 25th is the next.

The above are marked respectively Exhibits No. 50, 51, 52 and 53 of complainant.

The statement dated January 1st, 1881, belongs to the 1880 business as the last week in 1880 ended on that day.

(The statement dated January 1st, 1881, is produced, and marked Exhibit No. 54, of complainant.)

The words "end of 1880 business" on Exhibit No. 54, are in Horace Hammell's handwriting.

The statement dated January 1st, 1881, shows how much was due from Hammell at the end of the year 1880. The amount named on that paper as due from

Hammell is to be reduced by the amount I still owed Hammell, at that time, on the partnership arrangement between him and me. The amount due from Hammell was $4,404.63. That was to be reduced by $186.06 still due Hammell as shown by Exhibit No. 5.

Ques. Attached to Exhibit No. 54 is a bill now marked for identification Exhibit No. 54*a*, who signed the receipt attached to that bill?

Ans. Horace Hammell.

He was a member of the firm of Hammell and Mellor. 10 Mr. Hammell made out the bill. He made it out to Hammell and Moore because they were buying the goods. Horace Hammell usually made out these bills from Hammell and Mellor to our firm. Horace Hammell also bought feed of Hammell and Mellor on his private account. He usually headed the bills of Hammell and Mellor to our firm "Hammell and Moore." I don't know or remember of any case where he made them out otherwise after the partnership was formed.

Adjourned until Monday, September 18th, at 10 A. M. 20

Monday, September 18th, at 10 A. M., examination adjourned until Monday, September 25th, 1882, at 11 A. M.

Monday, September 25th, 1882, examination continued in the presence of Mr. Drake, Mr. Wescott and Mr. P. V. Voorhees.

Mr. Lehman Moore, the complainant, being still on the stand, on his direct examination saith: January 8th is the first for 1881; January 15th is the next; Janu- 30 ary 22nd is the next; January 29th is the next.

The above are marked respectively Exhibits 55, 56, 57 and 58 of complainant.

The balance due me at the end, 1880, was carried over on our settlement, but not on those papers.

Ques. Are the balances due to and from Hammell carried forward on the weekly statements of 1881, or does each statement stand by itself?

Ans. Carried forward on each statement.

February 5th is the first for February, 1881; February 12th is the next; February 19th is the next; February 26th is the next.

The above are marked respectively Exhibits 59, 60, 61 and 62 of complainant.

10 Witness being shown paper produced and marked Exhibit 61*a*, saith: That paper is in Horace Hammell's handwriting. It was receipted by Horace Hammell in his handwriting.

March 5th is the first for March, 1881; March 12th is the next; March 19th is the next; March 26th is the next.

The above are marked respectively Exhibits 63, 64, 65 and 66 of complainant.

Witness shown paper marked Exhibit 64*a* of com-
20 plainant, saith: That is in Horace Hammell's handwriting, receipt and all. Horace Hammell signed the receipt.

April 2d is the first for April, 1881; April 9th is the next; April 16th is the next; April 23d is the next; April 30th is the next.

The above are marked respectively Exhibits 67, 68, 69, 70 and 71 of complainant.

Paper marked Exhibit 67*a* shown witness, he saith: That is in Horace Hammell's handwriting, receipt and
30 all. The receipt is signed by Horace Hammell.

The first for May, 1881, is May 7th; the next is May 14th; the next is May 21st; the next is May 28th.

The above are marked respectively Exhibits 72, 73, 74 and 75 of complainant.

Witness being shown paper marked Exhibit 72*a*, saith: That is in Horace Hammell's handwriting. The firm

name Hammell and Mellor was signed by Horace Hammell.

The first for June, 1881, is June 4th; the next is June 11th; the next is June 18th; the next is June 25th.

The above are marked respectively, Exhibits No. 76, 77, 78, and 79 of complainant.

Paper marked Exhibit 78*a*, shown witness, he saith: That is in Horace Hammell's handwriting. Horace Hammell signed the receipt of the name of Hammell and Mellor.

10

July 2d is the first for July, 1881; July 9th is the next; July 16th is the next; July 23d is the next; July 30th is the next.

The above are marked respectively, Exhibits No. 80, 81, 82, 83 and 84 of complainant.

Papers marked respectively, 83*a* and 84*a*, shown witness he saith: Those two bills and receipts are in Horace Hammell's handwriting. Horace Hammell signed the receipts.

20

August 6th is the first for August, 1881; August 13th is the next; August 20th is the next; August 27th is the next.

The above are marked respectively, Exhibits 85, 86, 87 and 88 of complainant. September 3d is the first for September, 1881, September 10th is the next, September 17th is the next, September 24th is the next.

The above are marked Exhibits 89, 90, 91 and 92 of complainant.

October 1st is the first for October, 1881; October 8th is the next; October 15th is the next; October 22d is the next; October 29th is the next.

30

The above are marked respectively, Exhibits 93, 94, 95, 96 and 97 of complainant.

November 5th is the first for November, 1881; November 12th is the next. That is all.

The above are marked respectively, Exhibits No. 98 and 99 of complainant.

Papers marked Exhibit 98*a* and 98*b* of complainant shown witness, he saith: Those bills and receipts are in the handwriting of Horace Hammell.

There are no more of these weekly statements. Up to the settlement that was the last. On the 12th Mr. Hammell was in Philadelphia, at the office, for the last time. The 12th is the final weekly statement used by me in my settlement with Mr. Hammell.

Witness being shown memoranda now produced and marked Exhibit 100 of complainant, saith: That is a
10 memorandum of the final settlement between Mr. Hammell and me up to the 12th of November, 1881.

Ques. What is the $4,404.63?

Ans. The amount of profit for the year 1880, due from Horace Hammell to the firm.

The $1,709.37 is part of the profits for 1881. The sums of $450, $32.19, $25, which being added to the $1,709.37 make $2,216.56, are the profits for 1881, up to November 12th, 1881, due from Horace Hammell to the firm of Hammell and Moore. The sum $6,621.19 is the whole amount due from Horace Hammell to the firm of Hammell and Moore, for 1880 and 1881 to the date of settle-
20 ment, November 12th. The $3,310.59 is the amount due to me; it is half of the last named sum. That sum is reduced by $186.06, which is the amount I owed Mr. Hammell, as the balance due him on my one-half of the business at the end of the year 1879. That sum is further reduced by $166.06, because Mr. Hammell claimed to find a mistake upon the paper in figuring them up. I was not satisfied that there was such a mistake. I allowed it to him because he was sick, and the settlement was a tedious one, and on that account I was anxious to
30 get through with it, and allowed that amount to be deducted in order to satisfy him.

Ques. After your half of the profits for those two years had been reduced by the two sums lastly above mentioned, what balance was still due you from Hammell?

Ans. $2,958.47. That balance is shown by Exhibit No. 100. I think that is the balance we settled on; I am not quite sure though, but it is about that.

Ques. Who made out and presented these bills of Hammell and Mellor to Hammell and Moore, which have been produced here and marked exhibits of the complainant this morning?

Ans. Horace Hammell.

Horace Hammell took credit for them on these weekly statements. The part of Exhibit 100, upon which I have been examined, is in my own handwriting. It was made out when we made the settlement; Hammell and I settled on that.

Adjourned until Friday, September 29th, at 2½ P. M.

Friday, September 29th, 1882, adjourned until Friday, October 6th, 1882, at 2½ P. M.

Friday, October 6th, 1882, at 2½ P. M. adjourned until Monday, October 16th, at 10 A. M.

Monday, October 16th, at 10 A. M., examination continued in presence of Mr. Drake, and Mr. Wescott and Mr. Voorhees.

Lehman Moore, the complainant, being still on the stand, under his direct examination saith: The first payment that I made Mr. Hammell on account of this partnership was $500. That was made January 10th, I think. That is the payment the receipt for which is marked an exhibit in this case. The next payment I made him was $1,000. That was made about three days after, I forget the exact date. The next I made him was $1,500, and was made about three to four days after the last payment. The dates I forget. The first settlement I had after that was about the third day of January, 1880. There was found to be due to Mr. Hammell then $186.06.

The next settlement after that was December the 6th, 1881. Mr. Hammell's health before the settlement of December 6th hadn't been very good for about two months. He had not been at the office regularly. During my partnership with Mr. Hammell there was a day of the week upon which he made it a special point to be at the office. That was Saturday; he was always there on Saturday. He had missed some Saturdays two months prior to December 6th, 1881. He was not there on any Saturday
10 after November 12th, 1881. I had made no settlement with him since January, 1880, up to December 6th, 1881. November 12th fell on Saturday. He was there that day and not afterwards. I talked with him about this settlement of December 6th, 1881, in October, at the office. I next talked with him about it the last week in November, at his house. On that occasion he said that he wanted the matter settled up, and was sorry that it had not been done before.

Ques. Was that all that was said? Please state all.

20 Ans. Then I asked him when he would be ready or able, and he said any time would suit him, and wished me to draw up an article of settlement. I said no, I wanted it done by some person that would be disinterested, so that in case of his death I might not have any further trouble with it. I then asked him who he would like to have draw up the proper papers; he mentioned Marmaduke Taylor. I then went to Mr. Taylor's office, at Mr. Hammell's request, asked Mr. Taylor to go to Mr. Hammell's house, and have a talk with him in reference
30 to a settlement between him and me. He said he would go that afternoon; then I asked him when I should meet him and Mr. Hammell, at the latter's house, to consummate the business; he told me the next day at ten o'clock. On the day appointed I was there, and Mr. Hammell agreed to give me a bill of sale, as he owed me considerable money, and had no cash at his command

at that time. Mr. Taylor was then instructed to draw up the bill of sale and articles of partnership.

Ques. State what was said, if anything, by Hammell at either of these interviews touching his selling out to you or your selling out to him?

(Objected to).

Ans. I proposed to Mr. Hammell, if there was any dissatisfaction on his part, that I should sell out to him, and he said that he was perfectly satisfied and had been, that things should remain as they had 10 been before. I then proposed to buy him out and he said that he had not thought of buying out or selling out. I then told him if he would buy me out I would sell out to him clear and clean, for just what money I had in the concern, and would run the business on a salary that might be agreed upon between him and me, until such time as he was able to take charge of the building himself, and when he was able to take charge himself, if he wanted me no longer, I would step out 20 without any hard feelings toward him. He said no, he would prefer to have things continue as they were, and have Mr. Taylor draw up the proper papers of settlement. I then wanted him to consent to give me a first-class mortgage for all money that was due me, in place of the bill of sale spoken of. He did not seem to want to do that. I then proposed for him to give me a judgment bond, and that I would not push him if he should get in a tight place, as long as no one else did. If no one else ever pushed him I never would. He didn't seem to be willing to do that, so he agreed to give me the bill of sale 30 as before stated.

(Counsel for defendants object to all testimony relating to statements made by Mr. Hammell to Mr. Moore, and offers and propositions of settlements, made by Mr. Moore to Mr. Hammell.)

I can't tell the date when this conversation took place,

it was in the latter part of November. I was anxious to have this settlement made because Mr. Hammell's health was bad and I thought he was liable to die at most anytime. I think it was in August that I was first apprised of anything serious in the condition of Mr. Hammell's health. I heard it from a man by the name of Saylor. Hammell did not say anything to me about it. Hammell was coming to the office then; not all the time, he was probably there two days in the week or part of two days. The next I heard about his ill-health was that
10 he had started on his way home and had got to the little office of the ferry house, on the Philadelphia side of the river, and was sitting on a stool in the ticket agent's office and was suddenly taken with some kind of an attack that they thought might be some form of paralysis. After being picked up he undertook to walk across the street to the Ridgway House, and would have fallen in the street if some parties who saw him had not caught him. The first I saw of that report was in the Philadelphia *Record*. After this happened and until I saw the *Record*, Hammell had not been to the office. After I saw that in the paper I went directly to Mr. Hammell's
20 house, and found Mr. Hammell confined to his bed. He told me that he felt considerably better than he had been since the attack, and said that he would be over to the office either the next day or the day after. I told him that I thought he had better for his own good be as quiet as possible and give himself a chance to recover fully; that I would do the best I could with business matters, and for him not to think anything more about what was going on than he could avoid; but he still insisted that he would be over the next day. This was about the
30 second week in October, I think. After this he was at the office about two Saturdays, I think. He was there two Saturdays in November, the 5th and the 12th.

Ques. Look at Exhibits 98 and 99, the weekly state-

ments for November 5th and 12th, 1881, and state whether they are in the handwriting of Horace Hammell?

Ans. Yes, sir; they are.

He made those out. Up to the 5th of November he might possibly have missed a Saturday, but I don't recollect his missing any.

Ques. Look at Exhibits 95, 96 and 97, weekly statements for October 15th, 22nd and 29th, 1881, and state whose handwriting they are and who made them out? 10

Ans. They are all Mr. Hammell's handwriting and he made them out. Exhibit 94, for October 8th, 1881, is in my handwriting. I recollect now why that was. The reason that was so was because Mr. Hammell had gone away; went away that day. It was not on account of his inability to be there. The words "Due from H. H." in back hand off opposite the mark ("A,") are in Mr. Hammell's handwriting.

Mr. Voorhees objects to all evidence as to whose handwriting, and who made out the statements and exhibits 20 last referred to, the matter having been gone over by the witness before.

I think that at least two of the statements were made after I saw Hammell succeeding the attack at the ferry. Mr. Hammell did not come over the next day after this interview. It was on a Monday morning I think that I saw the notice in the *Record.* I think that Hammell came over the first Friday after that. These statements were made out by Hammell generally on Saturday; they were not always finished on that day, but generally were. 30 If he didn't finish them up on Saturday he always tried to make it a point to do it on Monday. When Hammell came over the Friday succeeding the meeting last spoken of he did a little towards putting the prices on the bills. I mean by that that we would make a statement on our bills of the work done with the dates on which the same

was done, and no price would be put opposite generally by any one except Mr. Hammell. Mr. Hammell would generally do that; it was generally his work. Mr. Hammell would sometimes put prices on some of the bills as early as Thursday, some on Friday and always finish them up on Saturday. That was the way we kept the accounts against the men who patronized us. We had bill heads of three different lengths. We began a man's account the beginning of the week and rendered it to him the following Saturday. I generally made those
10 entries. The original entry was made on little books carried in the pockets of the foremen one at Vine and one at Vine street. They reported to me and I entered right on the bill heads from their books. Each foreman had two small books, one of which was at the office and the other he had in use. Mr. Hammell usually added these bills up after he had fixed the price, and receipted them himself before they went out. They generally went out receipted. Mr. Hammell was also at the store on Saturday after I saw him. He was there the next Tuesday after that I think. I did not go to his house to see him again until after the 12th of November. On
20 Friday, the 18th, he had not been over to fix the prices to the bills. I sent for him on that day in the afternoon. He sent back word that he had started over in the morning, but feeling worse had been obliged to return on the same boat; that he had not left the boat, at least those were the words that came to me. I wanted him there on Friday to fix the bills and put the prices on them. After that I saw him on the next Monday, November 21st, at his own house. I found him standing in the bay window on the second floor, in the sitting room. He appeared to
30 be looking at the flowers. I asked him how he felt and then asked him if he didn't think we had better have our affairs straightened up; have a settlement. He said that he had been thinking about it for some time, and was only sorry it hadn't been done before.

(Objected to.)

It had been intimated to me, I think, just the week previous, that he had some financial difficulty of some kind. I asked if it was so and he said it was not; that he had no trouble of any kind, either financially or otherwise; that he didn't know of anything to give him any trouble in that direction. After I left there I went to see Dr. Mecray, Mr. Hammell's doctor at that time. I asked him if he thought Mr. Hammell would likely recover soon, or whether he thought the chances were 10 against him. He said that he didn't think Mr. Hammell would be any better than he was then—probably ever. I told him that we had a little settlement between us, and I thought it had better be got through with, if he didn't think it would be injurious to Hammell's health. He said if it was a matter that would cause Hammell a great deal of thought it would be better to have it over; that it was not likely that Hammell would ever be any more fit for business than he was then. He said that Mr. Hammell appeared to be a man with a terrible weight on his mind of some kind, and asked me 20 if I knew of anything that would probably worry Hammell relative to his business between him and me or anything else. I told him that I knew of nothing that would be likely to cause him trouble. He said if this was a worrying matter it would be better for Hammell's sake to have it settled. I next saw Hammell at his house the next day, Tuesday. It was on that day that we arranged for a settlement, and I went to see Mr. Taylor as already testified. The next day after that, on the 23d, I went to Mr. Hammell's house with Mr. Taylor, and Mr. 30 Taylor was instructed to draw up an article of partnership and a bill of sale. The next meeting after that was on Monday, the 28th, at 10 o'clock, according to my recollection. My brother, George W. Moore, Mr. Taylor, Mr. Hammell and I were present at that interview. The

papers were drawn and signed that day by Mr. Hammell and me. We had settled and balanced the accounts between us then.

(Witness being shown two papers, a bill of sale with schedule annexed, executed by Horace Hammell, and dated December 6th, 1881, and now marked Exhibit No. 101, of complainant; also paper in writing purporting to be articles of partnership between the witness and Horace Hammell, signed by them, and dated December 6th, 1881, 10 and now marked Exhibit No. 102, of complainant.)

Those are not the papers we signed on the 28th of November. I suppose that the papers we signed on that day were destroyed. Mr. Hammell claimed to find a mistake in the figuring and new papers were drawn up. He claimed that the mistake was against him and in my favor. He claimed that the mistake was $332.12. One-half of it appears on Exhibit No. 100, immediately above the figures "$2,958.47." The last sum $2,958.47 was the balance in my favor upon which we settled. Hammell 20 said he had been looking over the weekly statements after we had left, and that he saw two places where the amount of wages had not been taken off; that amounted to $332.12 above stated. That with some other little alterations caused the ordering of the new papers. On that day we had a long talk with Mr. Hammell; my brother talked to him. He told my brother that he and I had been in business all this time (Objected to,) and he had been receiving all the money (Objected to.) He was sorry that it had run on so long unsettled, and was will- 30 ing and anxious now to have it settled up at once, and was willing to do anything that was right to make me safe; that he was sick and not able to be out, which gave him no chance to get a hold of any money to do anything with, but if his health would permit he would soon straighten everything up between him and me. (Objected to.) I did not see Mr. Hammell after that until

Exhibits No. 101 and 102 were executed on the 6th of December, 1881.

Adjourned until Wednesday, October 18th, at 10 A. M.

Wednesday, October 18th, at 10 A. M. Examination continued in presence of Mr. Drake and Mr. P. V. Voorhees.

LEHMAN MOORE, being still on the stand, upon his direct examination saith: Exhibits No. 101 and 102 were executed on the 6th of December, 1881. 10

(Objected to.)

Ques. In what way do these papers, Exhibits No. 101 and 102, differ from the papers which were prepared and ready for signing on the 28th of November, except as already stated.

(Objected to.)

Ans. The article of partnership doesn't differ much as I know of; what difference there is I couldn't tell without seeing the two together. The difference was not important, whatever it was, in the article of partnership. 20

Ques. In what important particular does the agreement of partnership, Exhibit No. 102, differ from the agreement of partnership under which you had been doing business from January 1st, 1879, to the date of this instrument, except as this instrument is varied by the details of your settlement?

(Objected to.)

Ans. In this agreement, Exhibit No. 102, Mr. Hammell agrees to give me a bill of sale for his entire interest in all horses, wagons, harness, and all fixtures connected with the business. 30

Ques. Is the agreement, Exhibit No. 102, a new agreement of copartnership between Mr. Hammell and you, or is it, practically, a continuance of the old, embodying the bill of sale just spoken of?

(Objected to.)

Ans. Yes, a new agreement.

Ques. How does it differ from the old?

Ans. I don't know any other difference except what I have mentioned. On the day that Exhibits No. 101 and 102 were signed, Mr. Marmaduke Taylor, Mr. Hammell and I were present, and we were at Mr. Hammell's house in his sitting room. On that day I went to Mr. Taylor's office at 10 o'clock A. M., and as soon as Mr. Taylor was ready, which was probably a half hour later, we went to
10 Mr. Hammell's house, found Mr. Hammell sitting in the rocking chair apparently in good spirits for him, and Mr. Taylor showed Mr. Hammell the papers and let him read them all over himself, both of them, and then read them both over to him. After he had looked over them himself and Mr. Taylor had read them both over, I asked Mr. Hammell if he was perfectly satisfied. He said that he was entirely satisfied and was ready to sign the papers.

(Objected to all statements made by Mr. Hammell.)

Then the table was cleared off and Mr. Hammell signed the articles of partnership and then I signed it; Mr. Hammell signed the bill of sale, and Mr. Taylor wit-
20 nessed both of them at the same time. Then I picked up the article of partnership and the bill of sale and was looking over them, and I asked Mr. Taylor if Mr. Hammell would need a copy. He said that he had better have a copy, and that he would need the papers to get a copy for Mr. Hammell. Then Mr. Hammell asked Mr. Taylor when his copy would be ready, and he said that it would be ready either the next day or the day after; he had to go to Woodbury that day himself on business, but that he would instruct his young man to have Mr.
30 Hammell's copy got ready at once. He was to send Mr. Hammell's copy when it was ready to him and was to keep mine until I called for it.

The weekly statements and the bills attached to them

were taken to Hammell's house by me at Mr. Hammell's request. I don't know the exact date that I took them there, but it was after the 12th of November, probably a week. I recollect the 15th and 19th of November, the days I sent for Hammell to come over, and he couldn't come. It was after that. It was after or about the time that my brother was at Mr. Hammell's house with me and Mr. Taylor. It wasn't far from that time either way. I asked Mr. Hammell if I should bring the papers over that he might see them and look over them. He said 10 that he knew all about the papers and what was on them, but I might bring them over as I was coming and he could look over them as he had nothing else to do. The basis of settlement was agreed upon by Mr. Hammell and me by taking the amounts off of these weekly statements.

Ques. I don't refer to the material or data upon which you based your settlement, but to the use you made of that data in coming to a settlement; what passed between you and Mr. Hammell relative to these weekly statements in arriving at the sum of $3,124.53 as the 20 balance dne you?

Ans. I asked Mr. Hammell in looking over the papers if he had found the same correct; he said that he had found them all correct except in one instance where there were $332.12 not credited to him, but which should have been, as I have before stated. Half of that was to come off of him and half off of me, so we divided that amount, making $166.06 to come off, as shown by Exhibit No. 100. This paper, Exhibit No. 100, I handed to Mr. Hammell at the time of the signing of Exhibits No. 30 101 and 102, that he might see the figuring by which the amount settled on was arrived at.

Ques. How was the amount settled on, as stated in the papers that were to be signed on the 28th, arrived at?

(Objected to.)

Ans. In the same way.

I got an order from Mr. Hammell for these papers, Exhibits No. 101 and 102, and went to Mr. Taylor's office and got them.

Ques. You did that finally didn't you?

Ans. Yes, sir.

Ques. Before that what did you do?

Ans. After the papers were signed I gave my papers to Mr. Taylor to make a copy for Mr. Hammell, asking
10 him at the same time when they would be done. He said if I was over the next day I should stop, but if I was not coming over on other business I had best not come till the next day after that; then he thought there was no doubt but all would be done. I called at Mr. Taylor's office the next day, and he said that they had not finished Mr. Hammell's copy, but if I would stop the next day it would be done and I could get mine. I called the next day, on Friday the 9th of December, and Mr. Taylor said he had been very busy himself; that his
20 young man, Mr. Harned, had the day previous for his accommodation had to attend a case in court, and in consequence of that had not been able to get the papers completed, but if I would come over the next day, it being Saturday, December 10th, I should have the papers sure. I told him that Saturday was a very busy day with me, and I did not expect to be able to get over that day, but would call for them on the following Monday. That would be December the 12th. On that day I got very busy and didn't get over, so I made up my mind on
30 Tuesday morning I was coming over anyhow and get the papers. On Tuesday morning at the first delivery of the mail I received a note from Mr. Taylor saying that he had word from Mr. Hammell not to deliver the papers that he had executed, until he, Hammell, saw me. If I can find that letter I will produce it. Still in the bottom of the letter he said that I had better see Mr. Ham-

mell and arrange matters. I went down directly to see Mr. Hammell and we talked about everything except the papers. I asked him how he was and if he had heard anything new. I meant by that if he had any news of any kind. I thought if there was anything wrong about the papers he would mention it himself without my saying anything, but he didn't, so I asked him the question, why he told Mr. Taylor not to deliver my papers, and he kind of smiled and said he had discovered something he didn't understand, and wanted the matter looked after 10 before Mr. Taylor delivered the papers. I asked him if there was anything wrong, if it couldn't be arranged between him and me, or what the nature of the trouble was, and Mrs. Hammell answered saying that the papers were in the hands of a young friend of Mr. Hammell's. By papers I mean the weekly statements settled on. I then asked Mr. Hammell how long it would be before this party could report to him. He said it would not take long, not more than a day or so, and then I could get both the weekly statements and the other papers. I told him I would call the next day in the evening and I 20 did. I suppose this young man is the same young man that Mrs. Hammell testified to as Mr. Benner, one of the defendants in this case. That is all I know about it. I asked Mrs. Hammell who the party was that had these papers that I might call and see them, and find out the nature of the trouble, if there was any. She then said that Mr. Hammell wished it kept strictly private. Then I asked Mr. Hammell, the first time I saw him after that, which was the next day, why he didn't call my attention to whatever it was he didn't understand, without calling 30 in an outside party on business that might be settled between ourselves, as we had been together for several years. I didn't think there was any doubt but that the matter could be arranged between us. He said he had no doubt but it could himself, but he never gave me any idea of

what the trouble was as he supposed. He never told me what the trouble was, but he told me at the same time that he would give me an order for Mr. Taylor to deliver me my papers. I asked him to give me the order then, and he said he was entirely out of paper and envelopes. I told him I would get him some. He said never mind, he would get some himself and send a note to Mr. Taylor by mail to deliver the papers, but he failed to do that. On the 16th I was over again and called at Mr. Taylor's
10 office, and Mr. Taylor said the papers were all duly executed, but he would not like to deliver them without an order from Mr. Hammell. I asked him if he had delivered Mr. Hammell his copy; he said he had not as Mr. Hammell had not requested him to. I then said I thought it was right that I should have the papers, and that I didn't think that he had a right to hold them; that Mr. Hammell had expressed himself fully satisfied with the settlement and papers, both before the signing and after. The only reply he made was that he was
20 ready to deliver them on an order from Mr. Hammell. On the 19th of December I called on Mr. Hammell again and asked him if he had sent an order to Mr. Taylor to deliver my papers. He said that he had not; that he had forgotten or overlooked it; I forget which, but that he would do so that day sure. But he did not do it. So I called at his house on the morning of December 20th, and Mr. Hammell gave me a note to Mr. Taylor, which I brought up myself, and Mr. Taylor's young man, Mr. Harned, Mr. Taylor being absent at the
30 time, delivered me the papers, Exhibits No. 101 and 102. I gave that note to Mr. Harned. On the evening of the 20th the horses and wagons in Camden were seized on Marshal's execution.

(Objected to.)

The weekly statements I left at Mr. Hammell's house as before stated. After I got the Exhibits No. 101 and

102, and immediately after the seizure of the horses, which was about the 22nd of December, I applied to Mr. Hammell for the weekly statements, and he said that they were not there at that time. I went again, probably about a week later, and he still said the papers were not at his house, but that I could have them as soon as they were returned. I don't think that I ever asked for them after that until after Mr. Hammell was arrested. I then asked Mrs. Hammell if the papers were there and she said no. I then went to see Mr. Hammell in the custody of the sheriff, and he said that he would give his nephew an order when he brought his supper up that evening for Mrs. Hammell to deliver to me the papers, but he failed to give the orders. I called on him the second time with the same result. Mr. Hammell's nephew was working for me at that time, and staying at Mrs. Hammell's house in the evenings, and I told him not to let Mr. Hammell forget to give him the order for my papers. He said he would attend to it that evening. The next morning I asked him if he got the papers, but he still came back the next day without them. I then wrote a little note to Mrs. Hammell requesting her to look for the papers, if she had not already done so, and send them over to me by this young man, her nephew. He returned with a note from Mrs. Hammell saying that she would prefer to see me before delivering the papers. I called on her about the next day, or the next day but one, and told her that I had come at her request, as I had understood from a note that I had received from her that she wished to see me before she delivered the papers. She said that she had had legal advice not to deliver them, so I never asked for them again, and never saw them until they were produced here before the examiner.

Adjourned until Thursday, October 26th, at 10 A. M.

Thursday, October 26th, 1882, adjourned until Thursday, November 23rd, 1882, at 10.30 A. M.

Thursday, November 23rd, 1882. Examination continued in presence of Mr. Drake, Mr. P. V. Voorhees and Mr. J. W. Wescott.

LEHMAN MOORE, the complainant, being still on the stand, on his direct examination saith: I was paid my weekly $15 by getting it out of the drawer myself. It
10 was the aim that enough money should be put in the drawer to meet that payment and other little amounts that were paid out during the week. The money that was paid to the men was charged in a book against them until the end of the week.

(Book shown witness marked Exhibit 103, of complainant, he saith:) That is the book in which those accounts were kept. Other moneys were paid out of that drawer which were not entered in this book. All yellow tickets that we used for the teams in crossing the ferries I bought and paid for out of that drawer.

Ques. And your money?

20 Ans. Yes; I took my money out of the drawer.

I don't think that any other moneys were paid out during the week except what I have mentioned.

Ques. In case the wages and name of a man would be missed by Mr. Hammell in making up the account for the week, how would he be paid?

Ans. I would pay him out of the drawer, if I had money enough; sometimes pay him out of my pocket; other times I would borrow money.

Ques. How would you keep the account of that?

30 Ans. His name would be put on the same list with the rest of the men, and I would have to wait until I got the money from Mr. Hammell.

Ques. How would you keep the account of it till the next week?

Ans. It was generally settled; Mr. Hammell would put the money in the drawer or give it to me as a general thing before the end of the week, sometime during the week.

Ques. How was the account for the tickets purchased by you kept during the week?

Ans. A slip was put in the drawer calling for the amount of money paid for tickets.

Ques. You have spoken heretofore, in your examination, of some one who, it was contemplated, was to be taken into partnership with Mr. Hammell instead of yourself; what was that man's name? 10

Ans. Nathan D. Marshall.

Ques. Who was the man from whom Mr. Hammell desired to keep this partnership, and who desired to go into the firm instead of yourself?

(Objected to by Mr. Voorhees as immaterial.)

Ans. Nathan D. Marshall.

Mr. Marshall is now dead. I can't tell the date when he died. It was before Hammell was sent up to Trenton. It must have been last winter for all this business was in the winter. It was after December 28th, 1881, that he committed suicide. Nathan Marshall knew of this partnership between Hammell and me. 20

(Objected to by Mr. Wescott.)

According to the best of my information and belief the goods in controversy in this case were originally taken upon Nathan D. Marshall's execution.

Ques. In arriving at the status of the firm's accounts, and in fixing and settling, between you and Hammell, that his indebtedness to you on the firm business was $2,958.47, as you have already testified to, what took place between you and Hammell? 30

(Objected to.)

Ans. I told him that according to the weekly statements he owed me $3,124 and some cents, which I don't

know now. He said that was a little more than what he had expected it was. I showed him the papers and he said that that must be right, but in looking over them he found one or two places where the wages had not been deducted, so that amount was taken off, which was the difference between the amount I have just stated and the amount we settled at. This is shown by Exhibit No. 100. Half of the sum that Hammell claimed to find was taken off. A set of papers was drawn up on the basis of
10 an indebtedness of $3,124.53. That set of papers I suppose was destroyed. I don't know what was done with them.

(Objected to by Mr. Voorhees.)

The papers, Exhibits No. 101 and 102, were drawn to take the place of those that had the alteration.

Ques. Was anything said during the progress of this settlement about giving a bond with warrant of attorney annexed, and if so what?

Ans. Yes, sir. I wanted Mr. Hammell to give me a
20 bond and warrant. He objected to it because he didn't want to let anything of the kind go out; he said that he had no obligations of the kind; had never given any and didn't want to, so through the advice of Mr. Taylor, who was present, he said that my next best arrangement would be to take a bill of sale, as my relation or connection with Mr. Hammell was such that if he was to give me a bond and warrant, Mr. Hammell not being very well, some serious trouble might arise, and for me to have a bond and warrant, and not to have it entered
30 up would not be any security, as some person might get a snap judgment against Mr. Hammell and cut me out entirely. I was advised that this bill of sale would secure me. November 12th, 1881, was the last day that Horace Hammell received his weekly allowance of $15.

(Witness being shown Exhibit No. 99, saith:) It is

shown on there. That is the last weekly statement produced by me, and it is the last one ever made out by Hammell. He never received any money after that time, except some bills he collected after that time. Hammell gave no directions in regard to the teams after November 12th. I directed when the teams should go in and go out. When I say teams I mean the teams that were employed in the business and stabled at Fourth and Division streets, Camden. They were all together, wagons, harness and horses. 10

Ques. When you would order out a team what would you order out?

(Objected to.)

Ans. The men would get their orders from me the night before when to come out. I would tell the man the night before to take his team to the depot where it would be needed; it might be to the West Jersey in Camden, or to the Pennsylvania in Philadelphia.

Ques. What went with the teams besides the horses? 20

(Objected to.)

Ans. Driver, blankets, a pair, whip, canvas cover, occasionally, not always, a wrench for greasing the wagons, harness and wagon.

Ques. From November 12th, 1881, on to the present time, in whose pay have the men who drove those teams and took care of the horses and stables in Camden been?

(Objected to.)

Ans. My own.

I provided for their feed from November 12th on, except a little feed that the sheriff bought during his 30 possession, which was not much, as there was a good lot on hand when he took possession.

Ques. The 4th section of the articles of partnership is and provides as follows: "4. That said Lehman Moore "shall suffer and permit the said partnership to use all "of said personal property in the business of said partner-

"ship, but that the same shall not in any wise be con-
"sidered partnership property, nor taken into account as
"the assets of the firm;" what remark, if any, did Hammell make to this provision?

Ans. He said that it was right; that the papers were all satisfactory so far as he was concerned; perfectly satisfied he said. After Exhibit No. 102 had been signed I asked Mr. Taylor if it was necessary to publish the partnership and he said not. I told him if it was I wanted it done. He said that he had witnessed the
10 signing and had signed his name to that effect, and that that was all that was required. He said that the bill of sale was a better security for me than a bond and warrant. Mr. Hammell was present when Mr. Taylor told me it wasn't necessary to have the partnership published. Mr. Hammell owned the premises where this stable was from the time the partnership was commenced until November 12th, 1881. We paid him rent for it by his taking the manure and the privilege to keep one driving horse. I had the same privilege if I wished it. Horace Hammell took the manure from this stable up to the time the premises were sold by the sheriff, and then sold
20 it to another party without my consent afterwards for the rent of the stable. I pay rent for the stable now to Mr. Felton, I think his name is, on Federal street. I pay it to him as agent, I suppose you would call it. His rent began from the 16th of March last I think.

Ques. Mention, if you please, all of the persons who knew about this partnership so far as you know?

Ans. Nathan D. Marshall, William T. Brewer, Mrs. Hammell, my brother, George W. Moore. All of my brother's family and my family knew about it.

30 Mr. Taylor first knew about it, I suppose, when I went to him about the settlement; he didn't say that he knew about it before. The others knew about it ever since the time it occurred, January 1st, 1879. Nathan D. Marshall

first knew about it, so far as I know, just a day or two after the arrangement was made. William T. Benner knew about it at the time this thing came out; that is after these goods were seized on Marshall's execution. I was in his office then and he knew about it; and he knew about it just before that, too, but how long I don't know. I said to Mr. Benner, you knew about it didn't you, and he said, well I kind of had an idea. I told him then at the same time that I held a bill of sale for all the goods, that is all the horses, harness, wagons, &c., used in the business, and I told Marshall also that all the horses, wagons, harness, &c., used in the business belonged to me, before any seizure of anything had taken place. When I had this conversation with Benner his execution, so far as I knew, had not been issued.

Adjourned until Tuesday, November 28th, 1882, at 10 A. M.

Tuesday, November 28th, 1882. Examination continued in presence of Mr. Drake, Mr. Wescott and Mr. P. V. Voorhees.

Lehman Moore, being still on the stand, under his direct examination saith: The schedule of the goods seized upon and now in controversy was annexed to my bill. All of those goods were embraced in the schedule to the bill of sale, Exhibit 101. I also annexed to my bill a schedule of all the partnership property, amounting to $5,835.00. That is a full and correct schedule of all the partnership property. We agreed on the estimates of these goods between us. That estimate is about right I guess. The schedule of partnership debts annexed to my bill, amounting to $2,803.03, was as near correct as I knew. Certain persons trading as Brooks Brothers have made claims for partnership debts since that time. Brooks Brothers have sued for their claim,

and the suit is still pending undetermined. I tried to make all these schedules annexed to the bill as near correct as possible at the time they were made. The money that was owing to Marshall, and for which Hammell confessed judgment to Marshall, was an individual debt and not a debt of this partnership. The money owing to John Smith, Jr., and for which Hammell confessed judgment, was an individual debt and not one of this partnership. The same of Diament, of Benner, the First National Bank and of Thomas B. Wood, all of
10 whom are defendants in this case. I did not know anything about these debts when I settled with Mr. Hammell. I had never heard that they were in existence, that Hammell owed the money. I knew nothing about it. The claim of Charles Stevenson and others, executors of David H. Marshall, was not a debt of this partnership. The same is true of the claim of Silas Warner and Albert Merritt, trading as Warner & Merritt, and Ephraim Coles and Charles D. Coles, trading as E. Coles & Co., and also of The National Bank of the Republic, of Philadelphia. None of the debts above mentioned, and for which judgment has been entered against
20 Hammell, were debts of this partnership. The judgment against Hammell in favor of The City of Camden several years ago is not a debt of this partnership. Horace Hammell made out the weekly statements offered in this case as Exhibits. That was part of his work, and they are in his handwriting, except some minor exceptions that I have heretofore testified to. I might have added or inserted a date and some figures, and I believe that there is one which is entirely in my handwriting as I have also heretofore testified to.

30 (Envelope and letter marked Exhibit No. 104, of complainant, shown witness, he saith:) That is the letter I received from Mr. M. B. Taylor on December 13th, 1881, and heretofore testified to.

None of the persons who knew of the partnership between Hammell and me were under charge or obligation to keep it themselves. They were all at liberty to say as much about it as they pleased. So far as I was concerned there was no such obligation, and so far as Hammell was concerned I don't know that there was any except for the time being. Hammell said that he would see Marshall and fix it all right with him, and I saw Marshall a few days afterwards and he said Hammell had had a talk with him and told him that he had given him an interest in the business, and he said he was glad of it because he liked to see me get along. I saw Mr. Brewer a day or two after and he asked me how the new firm was getting on. I had not told him anything about it, and how he knew it that time I don't know. When we made this settlement and signed the Exhibits, No. 101 and 102, Mr. Hammell was in pretty fair condition. He was walking out nearly every day; sometimes he would ride out, and thought, at that time, that it would only be a day or two before he would be out and be able to attend to business as usual. That is the way he expressed himself. His mind seemed to be perfectly clear, and he detected Mr. Taylor in making mistakes in footing a column of figures. He was sitting at one side of Mr. Taylor and looking over him. At the time the bill was filed I had no property outside of this partnership, except my household goods. The statement, in the bill, of the goods taken in Philadelphia upon Atkinson's attachment, is a correct statement of those goods. I did not know that Mr. Brown was lending money to Hammell.

Cross-examination:

By Mr. Wescott.

Mr. Wescott says that Mr. Drake's refusal to offer in

evidence the exhibits marked by the master renders a proper cross-examination of the witness impossible, and now asks Mr. Drake to offer in evidence said exhibits.

Mr. Drake in reply says that the exhibits are here to be used by counsel, and that he did not offer them in evidence because, according to his understanding of the rules, they cannot be offered in evidence, but only marked and used in evidence until cross-examined upon. As counsel seems to desire it, all of the exhibits which have
10 been heretofore produced and marked in this cause are now offered in evidence.

Mr. Wescott objects to said offer and all evidence relative to said exhibits.

Ques. How old are you?

Ans. Thirty-eight.

The examination is taken by question and answer at request of Mr. Wescott.

Mr. Wescott says that Mr. Drake requests above statement put down, and that Mr. Drake says that he has no
20 objection to this course of examination.

Ques. Where do you live?

Ans. At Philadelphia.

Ques. Where?

Ans. West Philadelphia.

Ques. Where in West Philadelphia?

Ans. Bell street.

Ques. Whereabouts on Bell street?

Ans. No. 53.

Ques. How long have you lived in Philadelphia?

30 Ans. Since 1855 I think.

Ques. Where did you live previous to that time?

Ans. Montgomery county, Pa.

Ques. How long did you live there?

Ans. All the time up to that time.

Ques. What was your business during the time you lived there?

Ans. Farming.

I worked for another man on a farm there. I was a farm hand. When I came to Philadelphia, in 1855, I kept books. The man's last name was Stroud; his first name I forget; it was on St. John street below Callowhill. I don't know whether he is still there. His business was flour, feed and hominy; he made hominy. I don't know how long I worked for him; I was there about a year and a half I guess. I was on a salary. I think I got eleven dollars a week. I was not then married. I didn't go anywhere next; I worked for myself. I collected rent of houses or bills of any kind, for anybody I could get it to do for. I worked at collecting at that time about three years I guess. The people that I collected for lived in Philadelphia. I couldn't tell with any accuracy who they were, because I kept no memorandum of it and it was a good many years ago.

Ques. State the full name and address of those that you collected for?

Ans. Wilbur F. Miller at that time lived on Lehigh avenue; the address I can't give for I don't know it.

Ques. What did you next do after finishing this collecting?

Ans. I never finished for a long time; I did it in connection with what else I did.

Ques. Then you have collected bills from the time first named to the present for different parties?

Ans. No, not for the last two years I haven't.

Ques. I suppose the reason you haven't collected, for the last two years, was because your partnership business required your entire attention and time?

Ans. That was it.

Ques. Will you state for whom you collected the three years immediately preceding the partnership; give their full name and address?

Ans. I have said that I don't know their full name and address.

Ques. How much did you make collecting during the three years just spoken of?

Ans. I made a living and saved about $500.

Ques. Have you any evidence of that outside of your recollection?

Ans. No, sir.

Ques. When did you go into Hammell's employ?

Ans. I am not sure. I think it was in 1871.

10 Ques. What did you do with the $500 you made collecting?

Ans. I gave it to my brother.

Ques. Where is he?

Ans. In Pennsylvania, Montgomery county.

Ques. You gave it to him, didn't lend it to him?

Ans. I gave it to him to use.

Ques. Has he paid it back to you?

Ans. Yes, sir.

Ques. What did you do with it?

Ans. Gave it to Mr. Hammell.

Ques. Did you get it from your brother when you
20 made the first payment to Mr. Hammell?

Ans. Yes, sir.

Ques. What is your brother's business?

Ans. A coachmaker.

Ques. You wrote to him for this money I suppose?

Ans. No, sir; I went to see him.

Ques. Have you family?

Ans. I have a wife; no children.

Ques. How long have you been married?

Ans. Since the 8th of January, I think it was, 1868.

30 Ques. State the different streets and numbers of the houses that you have lived in since you came to Philadelphia?

Ans. 149 Siegel street; 207 Marriott street; 236 Chris-

tian street; 1210 North Tenth street; 1445 Faun street; 53 Bell street, West Philadelphia.

Ques. Give an estimate of what you made annually at collecting?

Ans. I never kept any account of that.

Ques. Give an estimate?

Ans. I never kept any account of it; whatever I had I had; if it was $100 I had it, if it was $200 I had it; I never kept any books of it.

Ques. How much did it cost you, during these years of your collecting, to live annually? 10

Ans. I don't know.

Ques. Give an estimate?

Ans. I never kept any account.

Ques. How many years were you making the $500, and what did you do with the different portions of it, while you were collecting it?

Ans. I was about three years in making it in that way and I kept it in the house with me when I wasn't using it. If I had any occasion to use it I did use it.

Ques. It was an even $500 of course? 20

Ans. No, sir; I don't know as it was, you asked me to make an estimate.

Ques. Name the three years that you were making this $500?

Ans. It was three years previous to my going in with Hammell, and I think it was 1871 I went in with him, although I am not sure of that.

Ques. When did you lend the $500 to your brother?

Ans. I can't tell you the date.

Ques. About when? 30

Ans. I can't tell you anything about it; my brother always had money of mine ever since he went in business.

Ques. Did he pay you interest on it?

Ans. Yes, sir.

Ques. It was an even $500 that you lent your brother?

Ans. No, sir.

Ques. Well how much did you lend him?

Ans. $150.

Ques. What did you have to show for your brother's indebtedness to you?

10 Ans. Sometimes I would have a note, sometimes a due bill, sometimes not anything.

Ques. Does your brother carry on a big business?

Ans. A moderate business.

Ques. You have been lending him all through the years you came to Philadelphia have you?

Ans. Yes, sir; and before I came to Philadelphia too. I lent him the first $50 he had in business.

Ques. Were $150 all that you lent your brother?

Ans. No, sir.

Ques. Why then didn't you state in answer to my question, how much you lent him?

Ans. I had stated it.

20 Ques. What had you stated it to be?

Ans. No particular amount, merely an estimate.

Ques. What was the estimate?

Ans. $500 is what I said.

Ques. Then why did you say $150 afterwards?

Ans. In answer to a question of how much I let him have at a time.

Ques. Please state how much rent you paid, respectively, for the use of the house you have named?

Ans. Ten dollars, $12, $16, $28 for one house I think,

30 and $26 per month.

Ques. What was your agreement with Mr. Hammell when you went into his employment?

Ans. To make out his bills, and to see how things were going.

Ques. What did he pay you for your services?

Ans. $15 a week.

Ques. From the beginning clean down to the partnership?

Ans. Yes, sir.

Ques. You had no other source of income during these years?

Ans. Yes, I had.

Ques. State what it was?

Ans. I had invested some money in Pennsylvania Railroad stock, which went from $23 a share, I think, to $53. I don't just remember either of the figures. 10

Ques. When did you make this investment, and how much was it?

Ans. I invested $800. It was just the year previous to going in with Mr. Hammell. I don't know just when, but that year.

Ques. Did you make the $800 in the collecting business?

Ans. I made it and saved it.

Ques. In the collecting business?

Ans. Whatever I was engaged. I aimed not to spend a week all that I made. 20

Ques. How long did you have the $800 invested?

Ans. Well different times.

Ques. Always in the same place?

Ans. I invested it all at once.

Ques. How often did you take this $800 up and then reinvest it?

Ans. I never took it all up at once.

Ques. Was it in registered bonds and stock?

Ans. That I can't tell you about. It was Pennsylvania Railroad stock. I did the business through another man 30 and that part I can't tell you about.

Ques. Who was it?

Ans. Job Harvey Ridgway.

Ques. Where does he live?

Ans. I don't know his number; he did live on Twenty-second street up about Columbia avenue somewhere.

Ques. What was the amount of the income annually of this investment?

Ans. I can't tell the amount of the annual income; I made about $2,400 out of it.

Ques. When did you get the $2,400?

Ans. At different times.

Ques. Through these years?

Ans. Whenever I would make a sale I would get the money.

10 Ques. How many sales did you make between the time of investment and the last sale?

Ans. Ten or twelve, I suppose.

Ques. Will you state now what your income was from this source annually, or about what it was?

Ans. The first two years I didn't make more than about $300, I suppose; $350 probably; I don't know exactly.

Ques. How much the other years?

Ans. It amounted to about $2,000 besides that in the
20 time before I got rid of it altogether.

Ques. Did you receive any interest or dividends on it?

Ans. Some small dividends, and they are included in that amount.

Ques. What other source of income had you?

Ans. I collected some rent and got five per cent. on it.

Ques. About what was your average annual income from this source?

Ans. From what do you mean?

Ques. From the collection of rent at five per cent?

30 Ans. From the collection of rent and the sale of a few houses or a house occasionally, $150 or $250, according as business was during the year.

Ques. How many houses did you sell, when did you sell them and whose were they?

Ans. I can't tell them all, I can tell part of them. I sold three or four houses during the course of the year.

I sold I suppose seven or eight houses in three years or two years and a half. One belonged to a man named Wilbur F. Miller, on Hope street above Susquehanna avenue. Wilbur F. Miller lives on Lehigh avenue; I am not sure whether between Sixteenth and Seventeenth or Seventeenth and Eighteenth streets.

Ques. How much did you get for this sale?

Ans. $25, I think.

Ques. How much did you get for any other sale or sales that you can name?

10

Ans. I sold a house on Mervine street above Burk. I got $100 for that. I sold a house on Tenth street above Columbia avenue. I got $40 for that. I sold one on Camac street above Montgomery avenue and got $40 for that. One on Mervine street above Diamond for which I got $40. Then I bought a house for another party and got $35 for that. I don't think of any others now.

Ques. You were a regular agent for such purposes were you?

20

Ans. Well I would collect a little rent for a man or something like that, and he would say something about having a house for sale and if I got a chance I would sell it.

Ques. Did you advertise yourself as an agent for any of these purposes, collecting rent or selling houses?

Ans. No, but I advertised properties sometimes.

Ques. You kept some account of all this didn't you?

Ans. Nothing except until the transaction was done; they were done at odd times.

Ques. After the transaction was completed you would destroy the evidences of it?

30

Ans. If I had any papers connected with it I would throw them in the waste basket or something of that kind.

Ques. Will you give the names and places of residence of each of the parties for whom you operated in the above sales?

Ans. The house on Camac street I sold for Kitcheman Brothers. I can't tell their place of business exactly; it is on Buttonwood street near Fifth, dye works. The house on Mervine street I can't remember the man's name; he is a builderand I never saw him before nor have I seen him since. He lived not very far from that neighborhood. I think he lived on Brown street near Fifth, but I can't tell the number of the house. Wilbur F. Miller lives on Lehigh avenue between Sixteenth and Seventeenth, I think. They were new houses up there
10 just built at that time and had no numbers on them. J. Walker Clark, I think his number is 1212 Ridge avenue or was at that time. Wilson and Miller were on Ridge avenue about 1010, I think. I don't know that any of these numbers are correct as I have no memorandum of them except from memory. That is all I remember.

Ques. When was that time that you just spoke of?

Ans. What was the time that you had reference to.

Ques. State the day and the month, and if you can't do that, the year in which you made each of these sales, in the order above named?

Ans. It was done, I think, in the years of 1872 and
20 1873.

Ques. This then is all that you can remember about the sale of houses, and your income therefrom?

Ans. Yes, sir.

Ques. State what other source of income, if any, you had during these years?

Ans. I had a little oil stock.

Ques. Where did you have it, when did you have it, and what income did you derive from it when you did have it?

30 Ans. I think it was in the year 1867. I bought it of a man by the name of Wescott, and he had an office at that time at No. 503 Walnut street. I derived about $650 of income from it.

Ques. Annually?

Ans. Oh, no; in the transaction I bought the stock and sold it.

Ques. What did you do with the $600?

Ans. I think I kept it; for sometime at any rate.

Ques. What did you do with it?

Ans. I loaned some of it to my uncle; $200 I think. The balance I kept myself.

Ques. Have you got it yet?

Ans. I suppose it is represented in value; not in cash. 10

Ques. What represents it?

Ans. These horses and wagons, harness, &c. It is invested in them.

Ques. From the time you got it, in 1867, to the time you invested it in horses, wagons, &c., where was it, and what was your income from it?

Ans. My uncle had $200 of it, my brother had about $300 of it; I had the balance myself. I got six per cent. interest for it.

Ques. What other source of income had you during these years? 20

Ans. I had none other except my wages that would amount to anything.

Ques. Were there any papers used in these various transactions between you, your brother and your uncle, and other parties?

Ans. There were notes and due bills sometimes.

Ques. Any receipts?

Ans. No receipts; no, sir.

Ques. Do you hold any of these papers?

Ans. No, sir. 30

Ques. Can you produce these papers?

Ans. No, sir; they were destroyed at the time of the settlement, whenever that might be; that is the papers I had were.

Ques. Do you own any property, real or personal?

Ans. None except household goods and this stock; the goods that are in controversy, I suppose, the horses, wagons, blankets, &c.

Ques. Why do you say that you suppose you own them?

Ans. I said I supposed they would be included in the personal property that I do own.

Ques. Why do you say that you suppose that they will
10 be included in the personal property that you do own?

Ans. I say that they are included in the personal property that I do own. I said that because I was not sure that the law looked upon all property of that kind as personal property; that is why I answered that way.

Ques. If I understand you, you used the term "suppose" because you knew your household effects were looked upon by the law as personal property, while the law might look upon the office furniture, horses, harness, &c., as not personal property, but some other sort of property?

(Objected to on the ground that the witness has already
20 explained the sense in which he used the term and as intended to mislead.)

Ans. I knew the law of Pennsylvania terms everything movable personal property, and the law of New Jersey I don't know. I used the term "suppose" that they looked at everything movable as personal not real property.

Ques. How much of your salary under Hammell would it take to live on, and pay all your weekly and monthly expenses?

30 Ans. I tried to make my living expenses come within ten or twelve dollars a week.

Ques. That included everything, clothing and all did it?

Ans. Yes, sir; a little beyond it sometimes; sometimes not quite so much.

Ques. Have you any evidence going to show that, or is it memory?

Ans. The only evidence I have is that I know I saved a little money each year I was with him until I went in business with him January 1st, 1879.

Ques. Did you keep store accounts anytime during these years?

Ans. No, sir; my wife attended to all that, and bought what I had money to pay for, and what I couldn't pay for we didn't get. 10

Ques. How much did you save during these years, each year and in the aggregate?

Ans. I saved about $150 a year; about $650 that would be.

Ques. Did you invest it or keep it in cash on hand?

Ans. I kept the most of it and loaned my brother some once in a while.

Ques. State exactly and in detail what you did daily for Mr. Hammell?

Ans. When I worked for Mr. Hammell by the week I made out his bills, that was the principal part I did the 20 first year I was with him. I didn't do much else. The second year Mr. Hammell got more interested in other business and gave me more to see to out doors. I would have to take orders to the foreman about what and how to do, and occasionally collect a bill for Mr. Hammell. So it continued about the balance of the time I was in his employ.

Ques. All that you did then from 1871 to 1879 was to make out bills, go to the foreman and tell him what and how to do and occasionally collect a bill? 30

Ans. Yes, sir; that is all I did for Mr. Hammell while I was in his employ.

Ques. State exactly and in detail what you did after you became partner?

Ans. I did the same but worked harder because I felt

that I had more responsibility, and that I was doing that for myself and not for Mr. Hammell only.

Ques. Your principle then was to do better and harder work when working for Mr. Hammell and yourself, than when working for Mr. Hammell alone as a trusted servant?

10 Ans. No, my principle was not to do any better and harder work. When I worked for Mr. Hammell alone his orders to me were to be in the office as much as possible and not to mind the out door work; he would attend to that himself. When I took an interest myself I took the responsibility to try to see to business outside as well as in, as Mr. Hammell was away a great deal of the time.

Ques. The difference then between your work as his servant and as a partner was, that when a partner you attended to out door as well as in door work, and when a servant you did in door work?

(Objected to as misleading.)

20 Ans. When I was a servant I worked according to Mr. Hammell's orders as near as possible, when I was a partner I felt I had a right to use my own judgment, which I did.

Ques. Who kept the books?

Ans. There were no books kept except the statements made out the Saturday of each week by Mr. Hammell of the amount of money received by him and the bills paid, he owing the balance over and above what the bills might amount to.

30 Ques. To whom would he owe the balance?

Ans. To the firm.

Ques. Who kept the books before the firm?

Ans. Before I went in with Mr. Hammell as partner I would put in a small book, at his direction, the amount of money received by him, and the expenses whatever he would say they were, and add it up at the end of the

year, showing the cost on one side and the proceeds on the other. The difference would be the profit for the year. When I went in with him as partner he said we would settle every three months; that he would make a statement at the end of each week of the amount of money received by him, and of the bills paid and the difference he would owe until such settlement was arrived at, and on the bottom of each statement ——.

Ques. How many of these books did you make up in the manner that you have described? 10

Ans. I filled one book part full.

Ques. And it took from 1871 to 1879 to do it?

Ans. Yes, sir. This was not a book of the general business but of the results of the business.

Ques. Where is that book?

Ans. It was destroyed I suppose long ago. I haven't seen it at all since 1879. We had an office 304 South Delaware avenue and had lots of room for everything; we moved from there to a very small place, No. 104 Dock street, and Mr. Hammell's orders were to destroy everything not really in use and not to be lumbered up 20 with it; barrels of papers and receipts the accumulation of years.

Ques. Did you destroy this book?

Ans. No, sir, I did not.

Ques. Who did?

Ans. I don't know just who did it. Mr. Hammell ordered the barrels of shipping receipts, all loose papers, and all memorandum books that were not in use to be dumped out in the street and set fire to.

Ques. This was a blank book large and well bound I 30 suppose, and contained the substance of Mr. Hammell's business from 1871 to 1879?

Ans. It was a small book, cheaply bound, and contained the result of Mr. Hammell's business for about four years.

Ques. If that be true why did you say that it took you from 1871 to 1879 to half fill this book?

Ans. I said that there was but one book used for that purpose, and that was about half full.

Ques. Question repeated?

Ans. That book was only used four years or about that time.

10 Question repeated?

Ans. Because that was the only book used. Mr. Hammell kept his accounts to suit himself before that, and I didn't know anything about it. He kept them on memoranda or on whatever he pleased, and didn't tell me anything about them.

Question repeated?

Ans. I said that was the only book used in that time for that purpose, and it was used four years of that time, and Mr. Hammell previous to that time kept his own account and I knew nothing about them.

Ques. How did Mr. Hammell keep his daily accounts while he was keeping this book?

20 Ans. I can't tell you anything further than I have told you. I don't know what you mean; I don't understand the question.

Ques. During the four years that Hammell kept this book from what would you make up the statement in the book?

Ques. From what Mr. Hammell would tell me.

Ques. From what did you make out the bills?

Ans. From the charges off of his foreman's book.

Ques. Did you or anybody make up slips of paper
30 with items or memoranda of daily business on them during the four years that you had this book?

Ans. There were no slips of paper except what might be loose leaves taken from a book that the foreman would use, perforated in the back, and they would tear the leaves out sometimes; there would be two or three of them with the day's work on.

Ques. How often did you make entries in this book?

Ans. Sometimes it would go for two or three weeks; whenever Mr. Hammell would say so I would put down what he told me, either as money paid or bills received, that is all that went in that book.

Ques. What did he get this information from that he would give you?

Ans. I suppose he got it from the bills he paid; he would give me the men's names whose bills he had paid and the amount of the bills, and the amount of cash he had received. 10

Ques. All the papers used in that big business were the foreman's book and the book you speak of?

Ans. Yes, sir.

Ques. The foreman had the book all day hadn't he?

Ans. Each foreman had two books.

Ques. All day?

Ans. No, sir; we would trade books every night; he would take the book I had, I would take the one he had. 20

Ques. Where did the foremen stay?

Ans. One at Dock and Delaware avenue, one at 328 North Delaware avenue.

Ques. Where did you stay?

Ans. At 104 Dock street; that is since the removal from 304 South Delaware avenue.

Ques. What was the aggregate sum of this business annually, that is its gross receipts and expenditures?

Ans. From $20,000 to $30,000, according to whether it was a busy year or not. From $20,000 to $30,000 seems like a large difference, but there is a large difference when there is a great difference in the peach crop. 30

Adjourned until Wednesday, November 29th, at 10 A. M.

Wednesday, November 29th, at 10 A. M. Exami-

nation continued in presence of Mr. Drake and Mr. P. V. Voorhees.

Cross-examination:

By Mr. Voorhees.

LEHMAN MOORE, being still on the stand, and being cross-examined by Mr. Voorhees, saith:

10

Ques. Mr. Moore when did you first commence to work for Mr. Hammell?

Ans. On the 15th of June, 1873. I answered Mr. Wescott yesterday that I thought it was in 1871. I have found out that it was in 1873. I find out also that my age is 41 years. I was born in 1841 instead of in 1844 as I thought yesterday.

Ques. In what capacity were you employed in, as agent, clerk, bookkeeper or what?

Ans. I was employed to make out bills and to take orders for work in the office.

20 Ques. Did you continue the same kind of work until you went into partnership with Mr. Hammell?

Ans. Yes, sir.

During that time the money was collected on Saturday and paid over to Mr. Hammell by whoever might collect it. I can't recollect any Saturday during that time that Mr. Hammell was absent; he was sure to be there on Saturday. Mr. Hammell at that time kept his bank account at the Tradesman's Bank on Second street below Chestnut in Philadelphia. Once in a great while I would 30 go to bank there for him, but very seldom; he had another young man there who did the running. The nature of our business was hauling and general draying. Mr. Hammell was generally paid in cash on Saturday; as a general thing. Occasionally if a man would get in a tight place, run up a big bill or something of that

kind, it might possibly be settled with a note, but it was very seldom that there was anything of that kind.

Those notes were not generally collected through the bank, in fact there were hardly more than one or two instances that notes were taken during that whole time. Those notes were discounted I think in the Tradesmen's bank. I am not positive though about that, as I was not acquainted much with that. The business was continued in this way down to the partnership. The partnership actually commenced January 1st, 1879. So far as the partnership was concerned it was, as stated in the bill, one of equal joint interest, effort and liability. The first money I think was paid on January 10th, 1879. The actual liability and responsibility of a partner commenced on the 1st of January, 1879.

Ques. Do you remember when your first share of the profits was credited to you?

Ans. Mr. Hammell said that we should settle every three months, but it seemed as though he could never spare the time. Mr. Hammell gave me my first credit at the bottom of the statement that was made on the first Saturday after January 1st, 1879, by saying "due from H. H.," the amount of money that the slip would call for on that date.

Ques. What particular duties did you assume under the partnership?

Ans. Mr. Hammell said he would do the same as he had done, and I said that I would do the same as I had done, with as much more as I could.

Mr. Hammell received all the money from the business, superintended the collecting of our bills, and looked after the financial department of the firm. I made out the bills, took the orders in the office and looked after the business in general as much as time would allow. We had two foremen, and I gave the orders to them where the orders came to the office; there was a great

deal of work done where the orders did not come to the offices. The foremen were looked to to see that the orders given were carried out. As a general thing we had five teams at Vine street, which the foreman there considered he had control of; then the man at Dock street had the balance of the teams under his charge, and when the
10 foreman at Vine street should be busy he would telephone down to our office from 328 Delaware avenue the number of teams he would require to help him out. I would then go and see the other foreman and see how he was fixed; if he had the required number of teams he would send them up to the foreman at Vine street; then they would be under the charge of the foreman at Vine street until he was through with them. The foremen would generally report to me and not to Mr. Hammell, for he was hardly ever there except early in the morning, or something like that. The buying of feed and provender had been arranged before I went in with Mr. Hammell and there was no new arrangement; it came on the
20 same parties the same as it had been doing, except the feed bought in Camden, that was bought as needed from Hammell and Mellor by Mr. Hammell. Mr. Hammell generally supplied the horses; he was always buying horses, he would attend nearly all the sales. The wagons and harness were generally ordered in a different way; he would talk to me about them, whether I thought there was a wagon needed or more harness needed, and he would then make arrangements to see about getting them. Mr. Hammell was also buying horses for other
30 purposes; he ran two farms, a feed store, and kept three or four driving horses himself. The horses he would buy the firm was under no obligation to take because he would use them wherever it suited him best or he could make the most of them. It appears now that the wagons, harness, &c., that he bought he paid for by notes sometimes. I thought at the time that he paid for

them by cash as everything else. I never saw those notes, I suppose they were signed Horace Hammell. January 1st, 1879, there was nothing said about what the name of our firm should be, the matter was not mentioned, but Mr. Hammell in making out bills to the firm made them out to Hammell and Moore.

Ques. What was the name painted on your new wagons and used on your bill heads?

Ans. We had a lot of bill heads on hand which were printed Horace Hammell. They were used in that way. There was but one new wagon and Mr. Hammell said that they got the name on before they got to the shop, that he intended to have an alteration in the name. I think we had some new bill heads printed; they were printed the same. I don't think the name was changed over our place of business. I don't think that this partnership was ever published. I asked Mr. Hammell about it and he said that as we were going to do a strictly cash business, both by paying our bills and in collecting our own, there would be no need of it.

Ques. Did you acquiesce in this?

Ans. No, I would rather have had it published.

I didn't cause it to be published. It was agreed and understood between us that the duties that each assumed should be performed by him. The money of the firm was not deposited in the bank. Mr. Hammell had all the money of the concern. It was to be deposited in the Tradesmen's National Bank of Philadelphia; that was the understanding but it was not carried out. I asked Mr. Hammell why he didn't make any more deposits in the Tradesmen's Bank and why it wasn't worked in that way, and he merely said that he and some of the officials of the bank had a few words and there was not a very good feeling between them, but gave me no reason for not continuing to deposit there the money of the firm. Our firm did not receive any notes for work done during

this time. Mr. Hammell did not receive any notes for work done by the firm that I know of.

Ques. Didn't Mr. Hammell keep the account in the First National Bank after leaving the Tradesmen's Bank?

Ans. He kept his own account there.

Ques. Did he keep any account in any other bank?

Ans. There was an account still in the Tradesmen's Bank of money not drawn out, but there were no more
10 deposits made there until sometime in June or July, 1881, then Mr. Hammell drew all the money out, and closed the account up without any notice to me of anything about it.

Ques. Didn't Mr. Hammell deposit the money he received for the business over there in the First National Bank of Camden?

Ans. I can't say about that; he kept his own personal account in the First National Bank of Camden. He told me that he was very well acquainted with the officers of that bank, and he would keep his own personal account there as he was receiving a great deal of silver from his
20 grocery store and feed store in Camden and they would take it on deposit without discount, and then the two accounts would be entirely separate, one would be in Philadelphia and one in Camden.

Ques. Did he tell you that in response to any question of yours in regard to the moneys of the firm?

Ans. He told me that upon his own responsibility, and in the same breath said that we will have the firm account in the Tradesmen's Bank and I will have my own personal account in First National Bank of Cam-
30 den. I never made any deposit for him in the First National Bank of Camden.

Ques. Where was the money of the firm deposited during Mr. Hammell's sickness; the times that you have mentioned that he was not at the office?

Ans. There was none to deposit.

Adjourned until Monday, December 4th, 1882, at 10 A. M.

Monday, December 4th, 1882, at 10.55 A. M., examination continued in presence of Mr. Drake, Mr. J. W. Wescott and Mr. P. V. Voorhees.

LEHMAN MOORE, being still on the stand, and being further cross-examined by Mr. P. V. Voorhees, deposeth and saith : 10

Ques. When did Hammell stop depositing the firm's money in the Tradesmen's National Bank?

Ans. He didn't commence to do it.

Ques. Where did he deposit the firm's account?

Ans. He didn't deposit any money as money of the firm ; he deposited it as his own.

Ques. In what bank did he deposit the money that he received through the firm?

Ans. So far as I know at that time, that is I mean the commencement of my business with him, he deposited 20 all money that he received in the Tradesmen's Bank as his own.

Ques. When did he stop depositing in the Tradesmen's Bank, and in what bank did he deposit the money received from the firm after that?

Ans. I don't know when he stopped depositing in the Tradesmen's Bank ; I think for a time he deposited in both banks money to his own account.

Ques. During the years of 1880 and 1881 where did he deposit the money received from the firm?

Ans. That I don't know, as the money that was considered as his was charged to him after he took it from the firm. 30

The question being read over at request of Mr. Voorhees, Mr. Drake stated that the master had made a mistake in taking down the answer, that the witness had not

used the word "that" after the word "money," it being claimed by Mr. Wescott that the answer was taken down correctly. The witness was appealed to and he stated that the master had made a mistake and that his answer was as follows: Ans. That I don't know, as the money was considered as his and was charged to him after he took it from the firm.

Ques. Do you mean that it was so considered between
10 you two; Mr. Hammell and yourself?

Ans. I always considered that Mr. Hammell owed the money after it was charged to him.

Question repeated.

Ans. I always considered that Mr. Hammell owed the money after it was charged to him, and he always said charge it to him whatever was over what had been taken out to pay the bills.

Ques. You consented to this and so charged it did you?

Ans. Sometimes I would take it off of the list, and sometimes he would do it himself.

20 Ques. What do you mean by taking it off of the list?

Ans. I mean the list that was made out of the amount of money that was received and paid out every Saturday; it would be added to or taken from the amount of money as would be proper in whichever case it was, whether it was from or to Mr. Hammell.

Ques. Did you object to Mr. Hammell's taking this money and depositing it when he pleased?

Ans. I made no remark as to where he should deposit it; when I found that he was inclined to keep no firm
30 account in any bank, and asked him his reason why, he said he and one of the officers, or two of them probably, had some dissatisfaction between them about something, and he wouldn't knuckle to deposit any money there.

Ques. Did he say where he would deposit it?

Ans. There was nothing more said about depositing

the firm's money. He said he would open his own account in the First National Bank of Camden.

Ques. Did you make any further inquiry about the firm's bank account?

(Objected to.)

Ans. No. I asked nothing more about the firm account in bank after that.

Ques. Did you ever deny this partnership?

Ans. No, sir. I never did.

Ques. Have you denied that you were a partner since 1879? 10

Ans. No, sir.

Ques. Does Exhibit No. 102 state the partnership between you?

Ans. Yes, sir.

Ques. When was Exhibit No. 101 delivered to you?

Ans. December 6th, 1881.

Ques. By whom?

Ans. Mr. Taylor.

Ques. Did you have it in your possession after that time continuously until it was produced here before the 20 master?

Ans. No, sir. I took the bill of sale and was going to put it in my pocket, and I asked Mr. Taylor if Mr. Hammell should have a copy, and he said he guessed it would be best for Mr. Hammell to have a copy. He then asked Mr. Hammell if he would like to have a copy and he said he didn't know as it made much difference, maybe he might as well have one. I then said to Mr. Taylor you will want this copy to draw one for Mr. Hammell and he said he would. I then gave the copy to Mr. Taylor, and 30 he said he would have Mr. Hammell's copy the next day or the day after.

Ques. When did you get it?

Ans. The 20th of December.

Ques. The goods, that are the object of this suit, were

used by the firm as partnership goods were they not, before and after these papers, Exhibits No. 101 and 102, were written and delivered?

Ans. They were used before the execution of those papers as partnership goods; after the execution of the papers they were used as my goods alone.

10 Ques. What notice did you give to the business community that they were your goods?

(Objected to as immaterial.)

Ans. I went to Mr. Taylor and asked him if I should publish it; he said that he witnessing the transaction was all that was necessary; that he had witnessed the papers. I then went to Mr. William T. Benner, at his office in Philadelpha, and told him that all of these goods belonged to me. I went to Nathan D. Marshall, at his office in Philadelphia, and notified him that all of these goods belonged to me. William T. Brewer I told the same thing; that all of these goods belonged to me. Zachariah Patterson I told the same thing to. R. D.
20 Hughes the same. Charles Wentzell the same. Isaac Shivers the same. Jacob Hinchman the same. All the men that worked for me I told it to, and several others, besides the names above mentioned, I told it to, but I can't remember them and could not give them without referring to a list. By the word list I mean the list of the names of the men who worked for me at that time.

Ques. Did you tell these persons of the partnership?

Ans. I didn't tell them personally. I don't know whether they knew it or not.

30 Ques. When did you tell these persons?

Ans. Immediately on the execution of these papers.

Ques. These goods were considered as partnership goods, and went into the partnership as such when the partnership was first formed in 1879, did they not?

Ans. Yes, sir.

Ques. The only claim you had on Mr. Hammell was for these moneys on the firm account was it not?

Ans. The only claim that I considered that I had against Mr. Hammell was one-half of all the goods belonging to me, and one-half of the money that Mr. Hammell owed the firm belonging to me.

Ques. The money that you allude to that Mr. Hammell had, was money received by him, for work done by the firm, was it not?

(Objected to as already answered.) 10

Ans. Yes, sir.

Ques. These exhibits, that you have called weekly statements, are they upon uniform pieces of paper, uniform as to size, &c?

(Objected to because they are the best evidence.)

Ans. No, they are not.

Mr. Voorhees being now advised for the first time that all of the complainant's exhibits have been offered in evidence, now enters an objection to all the weekly statements, and to the result of 1879, heretofore marked as 20 exhibits, for the reason that they are not original entries; that they are not in such form as to be understood by anyone but the complainant, and that they are not the best and only evidence of the business of which they are introduced to explain; and that they are so stated and in such perishable form that they are easily susceptible of erasure and change and are not proper exhibits in this cause.

Counsel for complainant inquires of Mr. Voorhees which "is the best and only evidence of this business" which he would have the complainant introduce? 30

Mr. Voorhees answers, the books of original entry, the original orders, copies of receipts, bank book, testimony of Horace Hammell, and all other original books, accounts, papers, checks and notes used by the firm or by Horace Hammell as a partner.

Counsel for complainant inquires if there is any objection to the offer as not at the proper time?

Mr. Voorhees submits that they were not offered at the proper time.

Ques. Are the figuring, dates, names, &c., on these weekly statements, in ink or lead pencil?

Ans. Generally in lead pencil.

Ques. When were the dates put on?

10 Ans. On the day that the paper is dated.

Ques. By whom?

Ans. Generally by Mr. Hammell.

Ques. Did you have any order books during this time?

Ans. No, sir.

Ques. What was the yearly gross receipts from this business. I mean simply the average?

(Objected to as already asked and answered.)

Ans. From $20,000 to $30,000.

Ques. What were the yearly gross expenses. I mean the average?

Ans. From $18,000 to $23,000.

20 Ques. What were those expenses generally for?

Ans. Wages, feed bills, blacksmith bills, rents of stables, repairs of harness, wagons, wagon grease. I guess that will about cover it.

Ques. Were those expenses paid by Mr. Hammell out of money he received from the firm?

Ans. Yes, sir.

Ques. Did he, Mr. Hammell, attend to the making of contracts for and the payment of money and settlement of those expenses?

30 Ans. I don't think there were any contracts made; the bills were brought to the office and he was supposed to pay them out of money he received from the firm.

Ques. Did those matters naturally fall to his branch of duties as a member of the firm?

Ans. He was expected to pay the bills, when they

would be handed in the office, as he had all the money.

Ques. What reason did Mr. Hammell give why the firm should not be advertised, other than the one you have given about doing a cash business?

Ans. No other reason.

Ques. Did you ever cause notice of the formation of the firm to be published?

(Objected to as already answered.)

Ans. No, I never did.

Ques. Did Mr. Hammell ask you to keep the books of the partnership? 10

Ans. The matter of books was not mentioned. He proposed that we keep the account of the business on these statements.

Ques. Was 1879 a very profitable year?

Ans. It was a fair year, but not as good as the next one.

Ques. When was the paper showing the result of 1879 made out?

Ans. I think it was a day or two, I can't tell the day, just after the first of January, 1880. 20

Ques. By whom was it made out?

Ans. It was made out by me from the results of the weekly statements of 1879.

Ques. Were the results copied from those statements?

Ans. Yes, sir.

Ques. When did you copy them?

Ans. They were copied near the end of the year; I couldn't say just now.

Ques. What was done with those weekly statements?

(Objected to as already answered.) 30

Ans. They were burned, I suppose.

Ques. When did you take Exhibit No. 6 from the bundle of the weekly statements of 1879?

Ans. I took it at different times near the end of the year 1879 from the weekly statements, because the safe

was full and I wanted to preserve the result of the statements until the end of the year, when I would have a settlement with Mr. Hammell.

Ques. After copying it did you place it with the other statements, or what did you do with it?

Ans. I kept it in the safe in case of fire.

10 Ques. You have spoken here of having told a number of gentlemen that you were the owner of these goods and chattels in dispute, when did you tell them that?

(Objected to as already answered.)

Ans. Just after the bill of sale was executed.

Ques. Did you ever tell them that you were part owner before the paper was executed?

Ans. I didn't tell them; some of them told me they knew it.

Ques. Did you tell them of the partnership at the same time?

Ans. I think I did.

Ques. Did you ever tell them of the partnership be-
20 fore those papers were executed?

Ans. I told some of them.

Ques. Was the partnership kept secret at first?

Ans. It was not kept secret at any time. There was one man that wanted to go in with Mr. Hammell, and Mr. Hammell said not to say anything to him until he saw him, which he would the next day or something like that; in a short time anyway, as he didn't want him to get angry about it, that was the only reason.

Ques. What did you ever do to make known the
30 partnership to the world?

Ans. I told all my own folks about it, and hindered no one from saying all they wanted to about it, the more the better so far as I was concerned or anybody else.

Ques. Do you know Robert B. F. Diament, one of the defendants in this suit?

Ans. Just by sight. I have no acquaintance with him.

Ques. Have you ever seen him at your place of business in conversation with Mr. Hammell?

Ans. I have seen him come there and Mr. Hammell go away with him.

Ques. Did you ever tell him of the partnership?

Ans. I don't think I ever did, or ever spoke to him but to pass the time of day.

Ques. Did you ever tell the officers of the First National Bank of Camden of the partnership?

Ans. No, sir; I have never seen them; I don't know them. 10

Ques. Did you ever deposit money either for Mr. Hammell or for the firm in the First National Bank of Camden, at its office on Market street, in the city of Philadelphia, after January 1st, 1879?

Ans. I might have gone to the bank once or twice in the time for Mr. Hammell; the firm kept no bank account.

Ques. Under what name did your firm do business?

Ans. Horace Hammell.

Ques. Was that name used during the whole time of the partnership? 20

Ans. Yes, sir.

Adjourned until Tuesday, December 5th, 1882, at 2½ P. M.

Tuesday, December 5th, 1882, at 2½ P. M., examination continued in presence of Mr. Drake and Mr. Wescott.

LEHMAN MOORE, being still on the stand, and being further cross-examined by Mr. Wescott, saith: 30

Ques. Your business of $20,000 or $30,000 a year, was made up entirely of small items and details, was it not?

Ans. Yes, sir.

Ques. The statements offered in evidence by you, are

merely summaries of these numerous items and details are they not?

(Objected to as statements are best evidence.)

Ans. No, sir, they are statements of the business of the week of the amount of cash received and a statement of the bills paid.

10 Ques. Of what then did the week's business consist?

Ans. I don't understand the question. I don't know how to answer such a question.

Ques. You say that these weekly statements, offered in evidence by you, are not summaries of the details of the business of each week; I ask you what were the details and items of a week's business?

Ans. They were the items contained on those weekly statements.

Ques. You mean that if a weekly statement shows six items and six names, those six items and six names would be all the persons with whom you did business that week, and each business act for said week?

20 (Objected to as unintelligible, immaterial, intended to mislead, and as not the best evidence.)

Ans. No, sir, the statements contained the result of all the transactions of the week.

Adjourned until Wednesday, December 6th, at 2½ P. M.

Wednesday, December 6th, at 2½ P. M., adjourned until Friday, December 8th, at 10 A. M.

30 Friday, December 8th, 1882, at 10 A. M., examination continued in presence of Mr. H. A. Drake and Mr. J. W. Wescott.

Lehman Moore, being still on the stand, upon his cross-examination by Mr. Wescott, saith:

Ques. By what process, or in what manner, did you or

Mr. Hammell reduce the details of a given week's business to these weekly statements or summaries?

(Objected to as untelligible.)

Ans. The amount of the week's business would be reduced by bills that were paid out of the gross amount for the week.

Ques. I have picked up, indiscriminately, one of these weekly statements, marked Exhibit 74, on the right hand side of which there is a summary of $557.18 composed of six items, on the left a summary of $565.96 composed of ten items. I ask you to look at it, and then state how you made up the six items making $557.18, and how you made up the ten items making $565.96?

(Objected to as multifarious and involved.)

Ans. The sum of $557.18 is made up of amounts of money collected by myself, John D. Stanton, Thomas Sailer, and a bill from Mr. Pfeiffer and a bill from the Camden Chemical Works. Mr. Wescott made a mistake, he said there were six items, there are only five. The amount of $565.96, on the left of this statement, is made up from amount of wages paid, amount of freight to the Pennsylvania Railroad Company, and Philadelphia, Wilmington and Baltimore Railroad Company. Pennsylvania Railroad Company, West Jersey Division, Camden, Pennsylvania Railroad Company, West Jersey Division, Philadelphia. Amount of money in drawer. William B. Johnson, blacksmith bill. Bill to William A. Church, printer, and $15 to Mr. Hammell himself.

Ques. You have evaded the question by repeating what appears on the face of the exhibit, therefore I repeat the question and ask you to answer it?

(Objected to as a comment upon evidence, or the behavior of the witness as containing an accusation which is not true, and as asking for what is already contained in the answer.)

Ans. I had nothing to do with making up this state-

ment, in the parts asked to be explained, and know no other answer to the question than the one already given.

Ques. From what were the five or six items on the right hand side of said exhibit taken?

Ans. They were taken from the amounts of the different bills collected by the parties named upon the paper.

Ques. From what were the ten items on the left hand
10 side taken?

Ans. The freight bills, amount of men's wages, amount of money put in drawer from the amount of the bills paid, and the amount of money taken by Mr. Hammell for his own use.

Ques. What items compose the items of wages in that exhibit?

Ans. Andrew, $7.25; W. F. Harris, $7.25; Johnson, $8.00; Chick, $10.00; D. Kennedy, $6.50; Tim Gale, $10.93; Theodore, $9.00; W. F. Brown, $11.70; J. Marshall, $5.75; A. Wolf, $11.50; Jackson, $14.00; W. Gale, $12.00; John Stanton, $15.00; B. Martin, $12.00; J.
20 Martin, $8.00; J. Martin, $3.00; A. Deno, $10.00; H. Andrews, $12.00; Warrick, $12.00; A. Ward, $12.00; Conard, $9.00; D. Smith, $9.00. These amounts in this figuring make $216.38.

Ques. From what did you get each of those items?

Ans. I got them off of this list, Exhibit 74.

Ques. From what were they taken when they were put on the list?

Ans. They were not taken from anything; they were put down from memory by Mr. Hammell.

30 Ques. Then how do you know they are correct?

Ans. It is supposed they are correct as we generally knew from each week who was working and who was not.

Ques. You mean to say that during these years of partnership, Mr. Hammell carried all these items in his

memory, and had no other means of knowing their correctness?

Ans. He had no other means of knowing the men we were to pay at the end of the week, except by memory or by seeing them at work.

Question repeated.

(Objected to as already answered.)

Ans. He had no other means of knowing what the wages were, or who he owed, or how many, until Saturday night when the men come in for their pay. 10

Question repeated?

(Objected to as before.)

Ans. I know of no other answer to that question than the former one.

Ques. How was the item "B. &. P., 190, 31," made up, and from what was it taken?

(Mr. Drake directs witness not to answer the question until he sees the exhibit.)

Exhibit shown witness, he saith:

Ans. It was made up from bill for freight due to the Philadelphia, Wilmington and Baltimore Railroad Company. The amounts were taken off of these bills to make that amount. 20

Ques. How do you know that Sailer received $156.14?

Ans. I suppose he must have received it or he couldn't have paid it to Mr. Hammell.

Ques. Did you keep no account of Sailer's business when he was sent on an errand, when he did work, for whom he worked, how long he worked, how much he charged, how much received, &c?

(Objected to as involved, multifarious, and as in part predicated upon a state of facts which didn't exist as shown by the evidence.) 30

Ans. We kept no account with Sailer except as shown by the statement.

Ques. Do you mean to say that you kept no books, no

accounts, no memoranda of any or all the almost numberless items that made up an aggregate business of $20,000 or $30,000 a year, except these weekly statements offered?

Ans. We kept no books; the items of the week for each separate party were put on their bills; on Saturday the
10 bills were collected and the amounts of money put on the weekly statement.

Ques. Didn't the men themselves have item or memoranda books?

Ans. The two foremen had two small books apiece.

Ques. What did they put in those books?

Ans. They put the work that was done each day.

Ques. Then you were able to verify the wages, that is find out what they were; also to make out bills against various parties from the foremen's books?

(Objected to as misleading.)

Ans. The foremen's books had no connection with wages whatever; they were merely a memorandum of
20 the work done for the day by the teams.

Ques. Why did you keep these memorandum books; what use did you make of them?

Ans. We took the charges from them on to the bills; when they were full we considered them of no further use. We kept them to get the charges from them of the work that was done.

Ques. I suppose the business was carried on in the same way before the partnership, omitting the weekly statements?

30 Ans. Yes, sir.

Ques. Weren't there ever any weekly statements or summaries, of any sort, made out and used before the partnership?

Ans. There was a memorandum of the money received and bills paid kept part of the time.

Ques. They contained your item of weekly wages, I suppose?

Ans. It contained the wages in one amount.

Mr. Wescott says he would like the witness to produce at the next meeting all of the statements or memoranda made up and used before the partnership.

The witness saith: There are not any in existence that I know of; they were destroyed years ago, I suppose; I don't know anything about them.

Ques. Do you carry on business the in the same way now as you did during the partnership?

(Objected to as immaterial.) 10

Ans. Yes, sir.

Ques. You keep no books?

(Objected to as above.)

Ans. No, sir.

Ques. You still make out the weekly statements?

(Objected to as above.)

Ans. Yes, sir.

Mr. Wescott requests the witness to produce at some subsequent meeting all the weekly statements made up since the date of the last one offered in evidence. 20

Exhibit No. 103 shown witness he is asked.

Ques. What is that exhibit and what did you use it for?

(Objected to as already answered.)

Ans. We used it for a memorandum of money paid the men during the week.

Question repeated.

Ans. We used it as a memorandum of money paid the men during the week. I mean by "men" the men who worked for us, if that is any more explicit. 30

Ques. All that that book was for then was to keep an account of what you paid each one of your servants during the week?

Ans. It was to keep an account of the money paid to whoever might draw it during the week.

Ques. It was wages, a payment of wages, was it?

Ans. Yes, sir.

Ques. Isn't that the way then that you kept the wages account with your servants, and wasn't it from this book that you knew how much to pay each one at the end of the week?

(Objected to as unintelligible, as not predicated on the facts above testified to and unintelligent.)

Ans. No, sir; it was not; the book had no reference to anyone except who drew money during the week.

Ques. Did you allow those to draw money that you
10 didn't owe it to?

Ans. No, sir.

Ques. When you paid a man at the end of the week, you would look at this book, and find out how much you had paid him during the week, and deduct it from the week's wages?

Ans. Not unless the man had drawn some money during the week.

Ques. You kept this book did you?

Ans. I always put money down if I paid it out and
20 Mr. Hammell did the same. You will see his writing in them.

The lead pencil writing on page marked "A," and signed by the examiner, is mine, and it has no reference to any other part of the book at all. The items were entered in there at those dates.

Ques. Have you any other book of that sort?

Ans. I have not, and haven't used any other since the partnership.

Ques. The accuracy of the wages items, in the weekly
30 statements, is founded upon this exhibit, No. 103, is it not?

(Objected to as unintelligent.)

Ans. The charges in that book only affect the men that were working for us, transient or otherwise, that would draw money from day to day, as the case might be, and

the amount the book would call for at the end of the week would be taken from the man's wages that was working for us; the balance would be paid him in cash and put down on the weekly statement.

Adjourned until Friday, December 22nd, 1882, at 10 A. M.

Friday, December 22d, 1882, at 10 A. M., examination adjourned until Thursday, December 28th, at 10 A. M. 10

Thursday, December 28th, at 10 A. M., examination continued in presence of Mr. Drake and Mr. Wescott.

LEHMAN MOORE being still on the stand, upon his cross-examination by Mr. Wescott, saith.

Ques. If I remember correctly, at the last sitting you stated that all or many of the items in the summaries offered in evidence, were made up and taken from itemized bills and memoranda books?

(Objected to, as the witness said results, and not summaries.) 20

Ans. I said that they were made up of the results of the bills of the week.

Ques. If I remember correctly, at the last sitting you stated that all or many of the items constituting "the results" were made up and taken from itemized bills and memoranda books?

Ans. No; I said they were made up of the results of the bills for the week ending on that date, whatever it might be. 30

Ques. What were the results made up of?

Ans. Made up of the money that was collected that day.

Ques. Where did you get the $1,500 with which you made the second payment to Hammell, for your interest in the business?

Ans. I had it at my house?

Ques. How long had you had it there?

Ans. I had had it four or five years, I suppose, I couldn't tell exactly.

Ques. Where did you get the $1,000 with which you made the third payment for the same purpose?

Ans. I got $700 of it from my brother; or about $700. The other $300 I had myself.

Ques. Where did you keep it?

Ans. I kept it in the cellar.

10 Ques. How long had you kept it there?

Ans. I couldn't say; some three or four years I suppose. I didn't keep any account of the dates either way.

Ques. What did you give your brother as evidence of or security for the $700?

Ans. I think I gave him a due bill or a receipt, I don't remember which now.

Ques. Have you paid him yet?

Ans. Yes, sir.

Ques. When did you pay him?

20 Ans. I can't say just when; a short time though after I got the money from him. I couldn't say what time as I haven't any account of it.

Ques. Where did you get the money to pay your brother?

Ans. He owed me a portion of it at the time, probably a half; the balance I got from Mr. Ridgway.

Ques. Where is the due bill or receipt that you gave your brother?

Ans. It was destroyed at the time of the settlement.

30 Ques. How long a time intervened between your borrowing this money of and the paying it to your brother?

Ans. I couldn't say; it might have been two months and it might not have been so long; I couldn't say.

Ques. Why did you borrow of Ridgway to pay your brother?

Ans. I did not borrow it; he owed it to me.

Ques. What for?

Ans. I let him have it to use for a little while, to accommodate him.

Ques. Have you preserved any evidence of the Ridgway transaction?

Ans. No, sir.

Ques. State his full name and address.

Ans. Job Harvey Ridgway is his full name; he lived on 22nd street above Columbia avenue, but I don't know his number; I was never at his house. 10

Ques. State his place of business?

Ans. He had an office in the Merchants' Exchange; on the second floor, I think number 9, but I am not sure.

Ques. How much was it?

Ans. Between $600 and $700, I don't remember exactly.

Ques. How much did your brother owe you?

Ans. I think that he owed me about $500.

Ques. It has always been your aim, has it not, to use economy, and business prudence, and to make your money productive? 20

Ans. I never went into anything unless I thought it was safe, and I have tried to be as economical myself as possible.

Ques. Did you know of any safe transactions or ventures or speculations between 1873 and 1879?

Ans. No, I didn't know of any that were perfectly safe, but some were safer than others, and if I took anything, I tried to take the safest side. 30

Ques. Is your business about as large and profitable now as it was when Hammell was in it, or more so?

Ans. No, sir; it isn't as large or as profitable.

Ques. Why?

(Objected to as immaterial,)

Ans. One reason was, Mr. Hammell's misfortune made enemies to the business instead of friends; another reason, I have had twice the competition in the business that there ever was before, and the prices of work much lower than formerly.

Ques. You have about the same amount of capital in
10 the business?

Ans. I didn't have any money in the business.

Ques. You have about the same amount of personal property in the business?

Ans. Yes, about the same.

Ques. Hammell always furnished the actual cash that went into the business did he not?

(Objected to as misleading.)

Ans. No, sir; the business made money enough of itself.

Ques. Does it now?

Ans. Yes, sir.

Ques. About how much cash does it take to run the
20 business now?

(Objected to as immaterial.)

Ans. It takes from $500 or $600 a week; sometimes more and sometimes less.

Ques. Do you buy any new horses and wagons?

(Objected to as immaterial.)

Ans. I haven't bought any new wagons; my brother got me some new horses.

Ques. How many and what did they cost?

(Objected to as immaterial.)

30 Ans. Seven; they cost $1,500 or about that; I am not sure if it was just that.

Ques. Have you any evidence of this transaction?

(Objected to as immaterial.)

Ans. No, sir.

Ques. Do you keep books of your business?

Ans. No, sir.

Ques. What are the annual profits of the business now?

(Objected to as immaterial and not the best evidence.)

Ans. The profits will be my living I guess this year; if I get that I will be lucky.

Ques. How do you know whether or no you will get your living?

Ans. Well I have lived this far through the year and I have a fair prospect of living the balance.

Ques. How do you know whether or no you will come out in debt? 10

Ans. I don't know, but if I have anything at the end of the year and don't owe anything I will have what is left.

Ques. Why didn't you take Hammell's receipt for the payment of $1,500, and for the payment of $1,000?

Ans. The articles of partnership were to be the receipt for the whole business.

Ques. Then why did you take the $500 receipt?

Ans. Mr. Hammell gave me the receipt for the $500 when I gave him the $500, saying that we would fix it 20 all up together on the papers.

Ques. Then you didn't want the $500 receipt yourself?

Ans. Yes, I wanted it.

Ques. Did he object to giving it to you at first?

Ans. No, sir; he gave it to me without asking him.

Ques. What did you make out of the business last year?

Ans. Do you mean my share or the whole amount?

Ques. The whole amount?

Ans. I don't remember the figures; about $2,200, I 30 think.

Ques. What did you do with Hammell's share of last year's business?

(Objected to as misleading.)

Ans. I didn't have it; Mr. Hammell had it, his and mine too.

15

Ques. This year will end January 1st, will it not?

Ans. Yes, sir.

Ques. Mr. Hammell promised to make out the papers when you first made your agreement of partnership, didn't he?

Ans. No; he didn't promise to make them out.

Ques. Why did you wait until the Sheriff levied upon your property, and just at that time have these papers made out?

Ans. The papers were made out nearly a month before
10 we knew anything about the Sheriff, at least before I did, or anybody else, I guess.

Ques. You knew that all you had in the world was in this business, or substantially so, that Hammell had the chief control of it, that he was receiving all the cash income of the business, that he had received your $3,000 in cash, and that, in several particulars, he was not keeping his engagements with you; why then, I ask you again, did you delay the execution of these papers and their delivery until the Sheriff seized your property?

20 (Counsel for complainant objects to the witness answering so many questions by one answer, and to the last part of the question as containing a false statement of the facts, and asks counsel for defendant, Benner, to put the question separately.)

Ans. I made no delay in the delivery, the delay was caused by Mr. Hammell.

Mr. Wescott, after the above answer had been put down, asked the Master to insert the word "then" in the seventh line on this page to make the question read smoother.

30 Mr. Drake thereupon demanded that the question be again read to the witness by the Master, which is done.

Mr. Wescott then asks if there is any further answer, and the witness answers, not to that question.

Ques. When did you take Mr. Hammell's name off and put your own on the personal property of this business?

Ans. It was in December, 1881. I couldn't say what time.

Ques. Why did you do it?

Ans. I was advised to do it.

Ques. Why?

Ans. Because it was thought proper that if it had anybody's name on it, I should have mine.

Ques. Why should it have yours?

Ans. The property belonged to me; it was merely a matter of fancy whether it should have any name on or not. 10

Ques. Why didn't you do this before?

Ans. These names were already on the wagon, and there was nothing said about there being any change.

Ques. When did you first put your name on the wagon?

Ans. I couldn't say; I don't know the day of the month.

Ques. Why did you put it on the wagons, and not the rest of the things?

Ans. I didn't put it on all the wagons. There wasn't anything else to put the name on that I know of. 20

Ques. Did you put your name on the place of business, or at the stable?

Ans. I put my name on the window at the office.

Ques. When?

Ans. It was done about the same time; I don't know what day; I was not there when it was done.

Ques. Why?

Ans. I don't know what you have reference to.

Ques. Why did you put your name on the window? 30

Ans. The man put it there without orders; I don't know why he did it.

Ques. Why didn't you take it down?

Ans. It didn't do any hurt and I left it be.

Ques. What was it, what did it read?

Ans. "L. Moore," that was all.

Ques. Did you have bill heads made out with your name alone on them?

Ans. Yes, sir.

Ques. When?

Ans. Sometime in December, 1881; I couldn't tell
10 when.

Ques. Why did you do that?

Ans. I was doing the business, and I thought it was proper for me to have bills in my own name.

Ques. Did you not know that Hammell was your partner at that time?

(Objected to as a question for a statement of law, and not of fact.)

Ans. I didn't consider Hammell any partner to me at that time.

Ques. How long was that after the articles of partnership were executed and delivered?

Ans. About three weeks, I suppose.

20 Ques. How long after the articles of partnership were executed and delivered, did you consider the partnership set forth in the same at an end?

Ans. I considered it at an end as soon as Mr. Hammell allowed the Sheriff to seize the goods that belonged to me.

Ques. Had Mr. Hammell given you to understand directly or indirectly that he would not let this property be seized by the Sheriff?

Ans. No, sir; the Sheriff's name was not mentioned or
30 thought of.

Ques. Then why did you consider that the Sheriff's seizure of the property terminated your solemn contract of partnership?

Ans. I consider that the Sheriff dissolves any contract partnership or otherwise.

Ques. Was it Mr. Hammell's fault that the Sheriff seized this property?

Ans. It certainly was his fault for being so involved.

Question repeated?

(Objected to as already answered.)

Ans. It certainly was his fault for being so involved as to bring on the seizure of the Sheriff.

Ques. What had Mr. Hammell to do with your own property?

Ans. He had nothing to do with it.

Ques. Then why did the seizure by the Sheriff of your property destroy the contract of partnership between you and Hammell? 10

(Objected to as a question of law and as immaterial.)

Ans. Because the seizure was brought on by his own private debts and would ruin my business for him to continue to have any claim whatever.

Ques. Of course you never consulted Hammell about changing the name on the personal property, or putting your name on the window, or considering him as out of the business entirely?

Ans. No, sir; so far as putting the name on the property was concerned the property was mine, and I had a right to put my name on it. 20

Ques. Why didn't you think of the Sheriff?

Ans. I had no reason to think of him.

Ques. Where did you say that the personal property seized by the Sheriff was located?

Ans. Fourth and Division street, Camden.

Ques. How long had this property been there?

Ans. It had been there about three years as partnership property.

Ques. How long had Hammell been in this business before the partnership? 30

(Objected to as already testified to.)

Ans. I don't remember, but I suppose about 14 or 15 years; it may have been a little longer, and may not have been quite so long.

Ques. He had used these same stables, Fourth and Division street, for years before the partnership?

Ans. Yes.

Ques. Did he own or lease them?

(Objected to as already testified to.)

Ans. He owned them at the time that I went in.

10 Ques. How long afterwards?

(Objected to as already testified to.)

Ans. Until the Sheriff seized them.

Ques. This property remained there in Hammell's possession until the Sheriff seized it, did it not?

(Objected to as misleading.)

Ans. No, sir; the stable was rented.

Ques. Who rented it?

(Objected to as already testified to.)

Ans. The firm of Hammell and Moore.

Ques. When did you rent it, and of whom?

(Objected to as above.)

Ans. We rented it January 1st, 1879, of Horace Ham-
20 mell.

Ques. Did you lease in writing?

Ans. No, by verbal agreement; Mr. Hammell was to take the manure for the rent.

Ques. For how long a time did you rent?

Ans. It was to be until the expiration of the partnership, whenever that might occur.

Ques. When did that occur?

Ans. That occurred on the seizure of the goods by the Sheriff, about the 21st of December, I think.

30 Ques. Did you comply with the agreement of partnership up to the 21st of December?

Ans. Yes, sir, as far as I know.

Ques. When did you say you put your name on the things over in Philadelphia?

Ans. I said it was in December, 1881, but I did not know the day of the month.

Ques. About what time in the month?

Ans. Somewhere about the 20th.

Ques. Before or after?

Ans. I think most likely after. I couldn't say for a certainty that it wasn't on that day. I wasn't there.

Ques. Give the address and name of the person or persons who put your name on the window, and on the other things?

Ans. I couldn't tell, I think the man's name was Welsh, and I think his place of business was on Second just below Spruce, Philadelphia. 10

Ques. Have you any evidence of the agreement between you and him to do this work?

(Objected to as immaterial)

Ans. No, I don't think I have. I didn't see the man, and I think I paid him for it without a bill. I think I gave the money to another man to give to him.

Ques. There is nothing in this business now as I understand you?

Ans. Very little. 20

Ques. When were these papers delivered?

(Objected to as a question of law.)

Ans. On the 6th of December, 1881.

Ques. Who gave them to you?

Ans. Mr. Taylor. I mean the bill of sale and article of partnership.

Ques. Why did you wait until December 6th to execute these papers?

Ans. We did not wait until that time. Mr. Taylor was working at the papers, or had the order to draw them, for about three weeks before they were completed, and one set of papers had been drawn and there was a mistake and others had to be drawn on that account. 30

Ques. When did you have settlement with Hammell?

Ans. I don't know the date, but it was after the 12th of November, 1881.

Ques. Hammell had not kept his contract with you from January 1st, 1879, to December 6th, 1881?

Ans. Not entirely.

Ques. Why then did you wait until November, 1881, for a settlement?

Ans. We had settlements between the times.

Ques. When and what were they?

Ans. January 1st, 1880, we had a settlement.

Ques. Why didn't you have the papers executed then?

10 Ans. There was no particular reasons for it, that I know of, except that it was not done.

Ques. What did Hammell do to secure you for your share of the profits of the business, accruing between January, 1879, and January, 1881?

Ans. The year of 1879 it took my half of the profits to pay Mr. Hammell the balance I owed him for my half of the business. For my share of the profits for 1880 and 1881 he gave me a bill of sale.

Ques. What did he do to secure you for your share of

20 the profits from January, 1881, to December 21st, 1881?

Ans. The bill of sale covered the whole amount.

Ques. Did you not think it strange that this business, which had taken fifteen years to establish, whose aggregate annual volume ranged between $20,000 and $30,000, with an annual profit of $6,000, and a capital of $10,000 or $12,000, entirely owned by Mr. Hammell, should be as entirely transmitted to your ownership in such a peculiar manner, and in so short a space of time?

(Objected to.)

30 Ans. Not when I considered that it cost me about half as much again as it was worth, in time and money, and solely on my own credit.

Ques. Did it ever strike you as peculiar, that so large and profitable a business should pass to your ownership, and that you should still allow Mr. Hammell,

not only to participate in the partnership as a partner, but actually to receive the whole income of the business?

(Objected to as misleading.)

Ans. He was charged with money that he took, and I expected that he would pay it back at any time it was demanded.

Ques. Did you keep regular books from December 6th, 1881, to December 20th, 1881, according to contract?

(Objected to as already testified to.) 10

Ans. The accounts were kept the same as they always had been.

Ques. When did Mr. Hammell stop taking manure from the stables, at Fourth and Division, Camden?

(Objected to as already testified to.)

Ans. I think not until the 4th of March, 1882.

Ques. He received it as payment of rent up to that time, did he?

Ans. Yes, sir.

Ques. You knew, did you not, that your patrons, from 1879 to 1881, were doing business with you under the belief that Hammell was the sole owner, and you still 20 his servant?

Ans. No, sir; I did not.

Ques. Why didn't you?

Ans. I had no reason to think so.

Ques. Why had you no reason to think so?

Ans. None of them ever told me that they thought so.

Ques. Did any of them ever tell you that they didn't think so?

Ans. Yes, sir.

Ques. When, and who? 30

Ans. William F. Brewer told me that he knew all about the arrangement sometime in January, 1879. Nathan D. Marshall told me that he knew all about it; I don't think of any others just now.

Ques. Did Benner?

Ans. Not at that time.

Ques. When did he?

Ans. I don't think he ever said he knew about it exactly; I think he said he had an idea there was something.

Ques. Did you tell him all about it then?

10 Ans. Yes; I had told him before that.

Ques. How many patrons had you besides Brewer, Marshall and Benner?

Ans. There were a good many; I couldn't say; probably fifty transient and otherwise.

Ques. You think they all knew about the partnership too?

Ans. I don't know about that.

Ques. If you don't know about that, why do you think, or why don't you know, that all your patrons except the three named were dealing with Hammell in the honest belief that he was sole owner?

(Objected to as obscure.)

20 Ans. Hammell told these other parties and he was mingling with these other men all the time, and I knew no reason why he should not tell them.

Ques. You had something to do with your other patrons, except the three named, hadn't you.

Ans. I took orders from them occasionally and saw that the business we transacted for them was done. They would come to the office and ask for me, and tell me what they wanted done without any reference to Mr. Hammell.

30 Ques. Didn't they do that before the partnership as well as after?

Ans. Not so much.

Ques. Well state the difference?

Ans. Before the partnership they would go down to the corner and hunt up Mr. Hammell or the foreman, probably; after the partnership I took it on myself to see that the order was carried out.

Ques. You never did that before the partnership?

Ans. No, sir; I had no authority to do it.

Ques. Why did you tell only these three about the partnership and none of the rest?

Ans. Mr. Hammell told them himself.

Ques. How do you know he did?

Ans. I know they said so.

Ques. Who said so?

Ans. Nathan D. Marshall and W. T. Brewer.

Ques. Who else? 10

Ans. They are the only ones I know of; there might have been others that I don't think of now.

Ques. You look after the legal points of your business pretty sharply, to see that you conform to the rules of law, do you not?

(Objected to as immaterial.)

Ans. Not that I know of.

Ques. Why didn't you publish this partnership?

Ans. Mr. Hammell thought it was not at all necessary, as we were going to do a cash business, not to trust or ask 20 to be trusted.

Adjourned until Wednesday, January 3rd, 1883, at 10 A. M.

Wednesday, January 3rd, 1883, at 10 A. M., examination continued in presence of Mr. Drake and Mr. Wescott.

Lehman Moore being still on the stand, upon his cross-examination by Mr. Wescott, saith: 30

Ques. Was there any other reason for your failure to publish the partnership?

Ans. None that I know of.

Ques. Did it not occur to you that it would be safer to publish the partnership?

Ans. No, not at that time.

Ques. When did it?

Ans. Not at any time.

Ques. You knew, didn't you, that it was the usual practice to give publication to changes in partnership?

(Objected to as immaterial.)

Ans. I knew that some did it.

Ques. Why did they do it?

(Objected to as above.)

Ans. That I don't know.

10 Ques. Why do you think they did it?

(Objected to as immaterial.)

Ans. I don't know why they did it.

Question repeated.

Counsel for Mr. Moore directs witness not to answer that question.

Question repeated.

Witness is advised by counsel that he need not answer the question, as he has already answered it.

Ques. Will you or will you not answer the question?

Witness is advised not to answer that question as he

20 has already answered it.

Ques. Will you answer the question?

(Witness is advised not to answer the question.)

Mr. Wescott requests Master to put down that after the Master read the last question and before the witness had time to answer, Mr. Drake said "hold on, hold on; witness "is advised not to answer the question."

Ques. Do you not know that changes in partnership are published to the world because it is a safe legal course to pursue?

30 (Objected to as immaterial.)

Ans. No, sir; I don't know that.

Ques. You never heard of such a thing?

(Objected to as immaterial and obscure.)

Ans. No, sir.

Ques. Then why did you say anything to Mr. Hammell about publishing your partnership?

(Objected to as already answered.)

Ans. I had no particular reason; I just thought I would mention it.

Ques. Why did you just think you would mention it?

Ans. I don't know why the thought came in my mind.

Ques. Why did the thought just come in your mind?

(Objected to as unreasonable and incapable of an answer.)

Ans. I don't know.

Ques. Why do you, in stating the reason for not publishing the partnership, always use almost exactly the same language? 10

(Objected to as improper.)

Ans. I suppose the same question requires the same answer.

Ques. When you came to be owner of the personal property levied on by the Sheriff, did you remove the property from where it had previously been?

(Objected to as already testified to.)

Ans. No, sir. 20

Ques. You left it just as it was before?

(Objected to as already testified to.)

Ans. I don't know in what shape he means that question.

Ques. The property remained in the same place, and under the same conditions, after the bill of sale as before, did it not?

(Objected to as already testified to.)

Ans. The property remained in the same place after the bill of sale as before, but not under the same conditions. 30

Ques. What was the change?

(Objected to as above.)

Ans. Before the bill of sale it was partnership property, but after the bill of sale it belonged to me personally, the partnership to have no claim on it whatever.

Ques. Was there anything to indicate that except the bill of sale?

(Objected to as above.)

Ans. Nothing, except that I told several people that the property belonged to me.

Ques. Whom?

(Objected to as above.)

Ans. William T. Brewer, Nathan D. Marshall and several others, but I can't just think of their names now. Mr. Benner, one of the defendants in this case, was another.

Ques. Then the property remained so that Mr. Hammell could exercise the same actual control over it after as before the bill of sale?

Ans. No, sir.

Ques. Why couldn't he?

Ans. After the bill of sale it belonged to me, and he had no authority whatever to do anything with the property, except with my consent.

Ques. Who took care of it?

(Objected to as above)

Ans. William Martin and a man by the name of Deno; I don't know his first name.

Ques. Before and after the bill of sale?

(Objected to as above.)

Ans. Yes, sir.

Ques. Who hired them; who paid them?

(Objected to as already testified to.)

Ans. I guess Mr. Hammell probably hired them, at the time they were hired, at the time of the bill of sale I paid them.

Ques. How much?

(Objected to as immaterial.)

Ans. At that time, one $12 a week and the other $10.

Ques. When did you make the first payment to them?

Ans. I couldn't say the date; they always got their wages on Saturday.

Ques. Have you paid them ever since?

(Objected to as already testified to.)

Ans. I paid them except the time the goods were in the charge of the Sheriff.

Ques. Have you any evidence of these payments?

Ans. I have no receipt; I never had any.

Question repeated.

Ans. I have the list of wages paid each week.

Counsel for Mr. Benner requests witness to produce the list of wages paid both before and after the bill of sale to these two men, and all others in your employment in this business. 10

Counsel for complainant states that certain papers that the witness, at the meeting before the last, was requested to produce, he brought with him and had here in his possession ready to be produced on call; as they were not called for he offered to produce them to the Master just after counsel for the defendant, Mr. Benner, had left, and the Master directed him to retain them and produce at the next, that is, this meeting.

Ques. Did you pay the $1,500 and the $1,000 to Hammell in cash or by check? 20

Ans. In cash.

Ques. In bills or metal?

Ans. In bills.

Ques. The same money that you had in the cellar?

Ans. Yes, sir.

Ques. If you preserved no evidence of the payments, how do you remember the dates of the payments?

Ans. I can't say any more than that is about the time, according to my memory, that I paid it. 30

Ques. Hammell was very eager for money was he not?

Ans. Not any more so than other men that I know of.

Question repeated.

(Objected to as already testified to.)

Ans. Not that I know of.

Ques. Did you ever wonder what he did with so much money?

(Objected to as immaterial.)

Ans. No, sir.

Ques. Where do you keep the horses now?

(Objected to as already testified to.)

Ans. At the stables, Fourth and Division.

10 Ques. Who takes the manure?

Ans. John D. Glover.

Ques. What does he do with it?

(Objected to as immaterial.)

Ans. I suppose that he hauls it home, but I don't know.

Ques. Where do Hammell, his wife and children live now?

(Objected to as immaterial.)

Ans. I don't know; I have heard that Hammell lives with his brother-in-law, but that his wife and children are with her mother. That is what I heard, but I don't know.

20 Ques. Do either of them live on a farm?

Ans. Who does he mean?

Ques. Mr. Hammell, his wife or children?

Ans. There is a farm where Mr. Hammell is I expect. I was never there.

Ques. Why do you expect there is a farm there?

(Objected to as immaterial.)

Ans. It is out in the country, and most places are made up of farms in the country.

30 Ques. Can you say that this manure don't go on that farm?

Ans. I don't know where the manure goes; I don't see it go away; I don't know anything about it whatever. Mr. Glover takes the manure away and pays me for it.

Ques. Of course since the business passed into your hands, together with the ownership of the property, you

have had nothing to do, directly or indirectly, with Mr. Hammell or any of his family?

(Objected to as misleading.)

Ans. No, sir.

Ques. You have neither visited them yourself, or had anybody to visit them for you, nor received any visits or communications from them?

Ans. I called to see Mrs. Hammell once; I called to see Mr. Hammell probably two or three times.

Ques. When? 10

Ans. I couldn't give the date.

Ques. About when?

Ans. I couldn't say that; it was after I had had a settlement with Mr. Hammell, but as to the time I couldn't say; I think I went to see him twice while he was in the Camden jail here, and I think I went to see Mrs. Hammell once while he was in jail.

Ques. Has Mrs. Hammell requested you to advance money to her since you became the owner of the business and property? 20

(Objected to as immaterial.)

Ans. No, she didn't ask me to advance her any money; she said she was in need of help and if I could do anything for her she would be very glad.

Ques. Of course you did nothing to help the wife of the man who had transmitted to you in such an unusual manner, you being his bookkeeper, so valuable a business and property?

(Objected to as improper.)

Ans. I was not his bookkeeper and he transmitted no business to me, until he had ruined it himself. I did 30 nothing for his wife; I had all I could do for myself.

Ques. You propose to stick to this declining and almost profitless business do you not?

(Objected to as immaterial and improper.)

Ans. I can't say about that.

Ques. Have you sold any of the horses or attempted to?

Ans. No, sir.

Ques. When was Benner's debt created?

Ans. I don't know. I don't know anything about that.

Ques. Was it before or after you entered into this peculiar and, so far as Benner was concerned, secret partnership?

10 (Objected to as already testified to.)

Ans. I never entered into any secret partnership, and Benner's debt I know nothing about, it had nothing to do with the business I was connected with whatever.

Ques. How do you know that?

Ans. I know that the concern didn't owe Benner anything.

Ques. How do you know it didn't?

Ans. It did no business with him to owe him anything.

Ques. It required money to buy horses, also to tide
20 over months or weeks where the income of the business didn't meet the necessary expenses of the same, how do you know therefore that money for one or both of these purposes didn't come from Benner or Callahan and Benner?

Ans. Because the concern had money enough itself to pay all expenses to buy all horses and to tide over all bad months.

Ques. Hammell bought all of the horses, and tended to the larger outside portions of the business, did he not?

30 (Objected to as already testified to.)

Ans. Hammell bought horses if he thought well of them for the business, and could do no better with them, and if we needed horses at that time, they were put in; otherwise they were not.

"At this point Mr. Wescott requests Master to put "down that witness stopped, and that he, Mr. Wescott,

"said Hammell did all that, didn't he," and the witness said, "hold on, I haven't finished that; what have you "got there, I haven't answered all that yet; now read "the question again if you are through."

Because the Master declined to put the above down at his own motion, but insisted upon the same being put down as coming from Mr. Wescott, the latter declined to go on with the examination, and left the Master's chambers.

The witness states that the reason for his stopping as above was because the master had not finished writing his answer, and that he, the witness, intended to go on with it, but before he got a chance to, Mr. Wescott asked the next question, and that the witness then said, hold on as above stated.

Re-direct in presence of Mr. Drake and Mr. Voorhees:

The officers of the First National Bank, of Camden, did not have any business with our firm. The defendant, Diament, did not have any business with our firm. Thomas T. Wood had no business with our firm. The office was moved from 304 South Delaware avenue, to 104 Dock street, in June, 1878 I think; I am sure that it was before the partnership. During the partnership each foreman had two small books. They would put down, each one, what work they would do or get account of during the day after the depot work was done in the morning. At night the book used through the day would be left at the office and another one taken to be used the next day by each man. The book left at the office the charges would be taken off and put on each customer's bill. The book which the foreman took he would keep all day until night. At our first settlement, in 1880, our firm took credit for something over $3,600. I don't remember the exact amount. That sum was the profit for the year 1879.

The credits which made up that profit commenced January 1st, 1879. I think the telephone was put in in 1878, before the partnership commenced. The telephone connected with the public telephone exchange, connecting with any person who had a telephone; we used it principally between Dock street and Vine street. We could reach the Vine street foreman by the telephone. The office in which the Vine street telephone was kept was 328 North Delaware avenue. I took orders at the office as well as the foreman. No. 328 North Delaware avenue was right at Vine street market. We could not reach the Dock street foreman by telephone.

Ques. Was it necessary to reach the Dock street foreman by telephone?

Ans. It would have been a great deal handier sometimes.

The Dock street foreman was about a half a square away from the office. During the partnership Mr. Hammell took the most time away from the business. Hammell took the most time away from the business after the partnership.

Ques. Before the partnership and about that time did Hammell propose to go into any other business that would take more of his time away from this draying business, and if so what?

(Objected to.)

Ans. Yes, sir. He said he was going into the wholesale grocery business with Mr. Brown, the man who has been a witness in this case. They were looking for a store on Front street, in Philadelphia. He proposed to keep both businesses going at the same time, and made that as his reason for wanting to take a partner in the carting business.

Ques. After Hammell had bought horses in the way you have described, in what way were they taken into the firm for firm purposes?

Ans. They were geared up and tried, probably for two or three days or a week; if suitable they were taken permanently.

In making up the weekly statements, in reference to wages, Hammell trusted to his memory. He had an extraordinary memory about matters connected with his business. The men hired by the firm were paid according to the amounts on the statements, unless sometimes they would say that they hadn't had as much money as would be taken off of them during the week, 10 and if I had paid it to them he would ask me if I knew anything different. Sometimes in settling up on Saturday night with the men we would find that one of their names had been omitted on the list; his name would then be added to the list and the amount paid him. I trusted Mr. Hammell to make up these statements especially as to money received.

Ques. Had you any means of knowing generally what the collections were?

Ans. No; I couldn't get at it. After the prices had 20 been fixed to the bills and the amounts made up at the end of the week I had access to them so that I could see what they were, but generally on Saturday we were very busy. We kept a list of the bills, but I didn't figure after Hammell to see that his collections were correct.

Ques. Have you any evidence of the transaction of the purchase of the horses since the seizure by the Sheriff?

Ans. I have the horses, but no other evidence.

I did not delay the execution of the articles of part- 30 nership and the bill of sale, Exhibits No. 101 and 102 until the Sheriff seized my goods. Those instruments were executed December 6th, 1881. My goods were seized by the Sheriff, December 20th, I think, of the same year. From December 20th, until sometime in January following, I did very little business, hardly

worth mentioning; I would have been better off if I hadn't done any; I had to hire outside teams, and depend on their uncertainty of getting any help. I put my name up at the office, 104 Dock street, somewhere about or after December 20th; it was after the seizure by the Sheriff here in Camden. After the seizure here in Camden, I took the names off of the harness and wagons in Philadelphia, and put my name up at the stable and office. That was done about the next day or two after
10 the seizure by the Sheriff, in Camden.

(The above objected to by Mr. Voorhees as immaterial.)

The name of Hammell's brother-in-law, with whom he lives, is George M. Ward, I think. The middle letter I am not sure about; I know it is George Ward, though; I don't know what Hammell's condition is now, whether he is fit to testify or not. The last information I had was that he was not fit to testify, and would never be; I have traded off one horse taken by the Sheriff, under this seizure; I traded him off because he was baulky,
20 and not worth anything in the business; I got a good work horse in his stead, and gave $15 to boot.

Adjourned until Monday, January 8th, 1883, at 10 A. M.

Monday, January 8th, 1883, adjourned until Thursday, January 11th, 1883, at 2½ P. M.

Thursday, January 11th, adjourned until Monday, January 15th, at 10 A. M.

30

Monday, January 15th, examination continued in presence of Mr. Drake and Mr. Wescott.

Continuation of cross-examination of Mr. Moore by Mr. Wescott.

The counsel for the defendant, William T. Benner, re-

quests the Master to state that the Master's statement on page 131 of the printed testimony is true only so far as it goes; that the real reason for Mr. Wescott's withdrawal from the examination before the Master was that the record did not speak the truth; the truth being that Mr. Moore answered the last question at the bottom of the printed page 130 and stopped; and that a considerable interval of time intervened when Mr. Wescott put the question: "Hammell did all that didn't he," and the witness made a demonstration as if to answer, but suddenly said "hold on, I haven't finished that, what have you got there; I haven't answered all that yet; now read the question again if you are through;" and the Master was reading the answer as requested by the witness when Mr. Wescott requested the Master to put down the matter just as it occurred, and because the record does not show the matter as Mr. Wescott states it, and because there had been previously during the cross-examination of Mr. Moore similar requests on the part of the witness, and similar compliances on the part of the Master, Mr. Wescott concluded to withdraw from the Master's chambers. Mr. Wescott now objects to all testimony taken after his withdrawal.

Mr. Drake requests the Master to state that the question, "Hammell did all that didn't he," was interposed by Mr. Wescott the instant the Master ceased to write, and before the witness had time to go on with his answer; the only demonstration made by the witness was to lean forward in his chair and say "hold on, et cetera," as stated by the Master.

Mr. Drake also states that request by the witness to repeat questions before the answer was finished, and compliance by the Master if they have occurred at all, of which he has no special recollection, have been very seldom and as is usual and common in all examinations of this sort. Mr. Drake further says that so far as he

recollects, this was the first instance where the witness requested and the Master repeated the answer to the witness or was doing so; in the other cases requests were as he, Mr. Drake, has stated for the repetition of the question and not of the answer.

Mr. Wescott requests the Master to state further, that in pursuance to notice from the Master himself, he repaired to the Master's chambers on the 11th inst., for the purpose of continuing the cross-examination of Mr. Moore; found the Master's office closed, and then went to Mr. Drake, who informed him that the Master was engaged in a cause; that Mr. Wescott then endeavored to induce Mr. Drake to produce his witness for cross-examination on the 12th and 13th insts., but he declined for two reasons—1st, that he had some engagement, he couldn't tell what, and felt somewhat indisposed; 2nd, because Saturday was a very busy day with him.

Mr. Drake states that when Mr. Wescott called on him, on Thursday afternoon, the 11th inst., it was nearly four o'clock; at most, within seven minutes of that time; that Mr. Drake's engagement on Friday morning was the taking of testimony in another case.

LEHMAN MOORE, being still upon the stand, and being further cross-examined by Mr. Wescott, saith:

Ques. Did Hammell buy horses of anybody besides Brooks & Bros?

Ans. I think he did.

Ques. During the partnership?

Ans. Yes, sir.

Ques. Who?

Ans. I couldn't name all the parties; he bought one horse of a man by the name of Bendler, that I know of.

Ques. How did he pay for them? (Objected to as immaterial.)

Ans. I don't know how he paid for them.

Ques. In buying horses to put into the partnership, did he pay cash, give a check, or a note? (Objected to as above.)

Ans. I don't know how he paid for them.

Ques. Did you ever hear Hammell use "we," meaning you and himself, in his talk to your patrons?

Ans. Yes; I have heard him say "we" often.

Ques. State to whom he said it, and when he said it.

Ans. I couldn't tell the name of the person he said it to; I didn't think anything about it at the time; if a 10 person would come to the door, or come in the office and request anything to be done, he would say "we will attend to it."

Ques. Do you do business at the same places, employ the same men, and conduct your business in the same manner, since the 6th of December, 1881, as before?

Ans. I do business the same way, but in my name, and employ mostly the same men.

Ques. Did the manure go on the farm before the lease? 20

Ans. I couldn't say; I think it did.

Ques. Did you go to the stables, in Camden, after January, 1879, for the same purposes as before January, '79, namely, to see about getting the horses shod?

Ans. I never went there before January, '79, to see about getting them shod.

Ques. Did Hammell have Martin, his employee, at the stables, in Camden, to cart the manure to the farm just the same after January, '79, as before?

Ans. He did cart some there; not much that I know of. 30

Ques. Were charges made to your customers on bills, and settled on bills, the same after January, '79, as before? (Objected to as already testified to.)

Ans. They were the same, except that I was interested in it afterwards.

Ques. Did your interest appear in any way in the bills themselves?

Ans. My name was not on the bills.

Question repeated.

(Both objected to as already testified to.)

Ans. My name was not on the bills.

Question repeated.

(Objected to as above.)

Ans. My name was not on the bills.

10 Ques. Will you, or will you not, state whether your interest appeared in any form upon the face of the bills themselves?

(Objected to as above.)

Ans. It appeared on the name of the bill; the name of the bill called for my name, so far as what the bill claimed.

Ques. Then your name did appear on the bills?

(Objected to as above.)

Ans. No, sir; my name did not appear on the bills.

Ques. What do you mean, then, by the answer before

20 the last?

(Objected to as immaterial.)

Ans. I mean that under the name that was on the bill, I had a claim on the bill, or what the bill called for.

Ques. Why did you always allow Hammell to do all the outside business, and receive all the cash?

Ans. Hammell preferred the outside business, because he said he didn't like to be confined in the office; the money was paid to him for one reason, because he was always in the office on Saturday, and somebody had to

30 receive it and count it, and it generally fell to his lot to do that.

Ques. Weren't you in the office on Saturday, sometimes?

Ans. Yes; I was there sometimes.

Ques. About how large a sum was the aggregate of the Saturday payments?

(Objected to as not best evidence.)

Ans. It would be impossible to come at that—at what the aggregate would be; it might be from $300 to $900.

Ques. What evidence have you of it besides your memory?

Ans. The papers that the Master has will show what was received and what was paid out.

Ques. What did Mr. Hammell do with these large sums of money thus collected on Saturday?

(Objected to as already testified to.) 10

Ans. He paid wages and bills that would be presented; the balance would be charged to him.

Ques. What would he do with this balance?

(Objected to as immaterial and as already testified to.)

Ans. I don't know what he would do with the money he kept.

Ques. From 1879 down to the time the business passed into your hands did you receive more than your weekly allowance of $15? If so, how much more, what is your evidence of it, and when did you receive it? 20

(Objected to as multifarious, involved, and as already testified to.

Ans. I only received $15.

Ques. Hammell used his own judgment about going to sales of horses, how many to buy, what to give for them, and whether they should go in the business?

(Objected to as multifarious, involved, and already testified to.)

Ans. I don't know anything about that. Hammell bought horses at all these sales for himself personally, 30 and after the time of the purchase, probably a week, and sometimes three or four weeks, some of the horses would be tried, and he would ask me what I would think of them, and if we both agreed on horses and price they were then taken into the business, but not until then.

Ques. Didn't you say in your testimony in the Brooks

case, that Hammell would use his own judgment in attending sales and buying horses?

Ans. I might have. I couldn't say now.

Ques. When he bought horses at various sales for the business, did it not require quite a large sum of money—several hundred dollars?

(Objected to as containing an incorrect statement of fact and as immaterial.)

Ans. He never bought any horses at any of the sales
10 for the business; he bought the horses for himself.

Ques. Do you know where he got his money?

(Objected to as immaterial.)

Ans. No, sir.

Ques. Where did he get his money to pay firm debts?

(Objected to as already testified to.)

Ans. He got it from the firm.

Ques. Where did the firm keep it?

(Objected to as already testified to.)

Ans. Mr. Hammell took the money and was charged
20 with it.

Ques. Do you know where he kept it?

(Objected to as above.)

Ans. No, sir; I don't know where he kept it.

Ques. After he received the money and it was charged to him, it made no difference to you, did it, where he kept it, or what he did with it?

Ans. Not if he paid me what was due me when I asked for it.

Ques. But he didn't pay you before the 6th of De-
30 cember, 1881, did he?

(Objected to as already testified to.)

Ans. He gave me credit for what was due me at the 1st of January, 1880, and the 1st of January, 1881.

Question repeated.

Ans. No; he didn't pay me before that time.

Ques. Do you know that Mr. Hammell did not use the firm money to buy horses with for the business?

(Objected to as immaterial and already testified to.)

Ans. Mr. Hammell bought horses for himself and I suppose used his own money to buy them; but that part I don't know anything about, how he paid for horses he bought; the firm paid him personally for horses taken of him for the business.

Question repeated.

(Objected to as already testified to.)

Ans. I don't know any other answer than that I have already given to that question. 10

Ques. Did you not know that Hammell was going to sales from time to time, buying horses for the business or for the firm, of people who believed there was no firm?

(Objected to as already testified to, and as immaterial, and as containing an incorrect statement of fact.)

Ques. Sometimes I knew he went to a sale; very often I didn't know anything about his going to a sale; but I never knew of his going to a sale to buy horses for the business, and what the people knew or thought for what 20 purpose he was buying the horses, or whether they knew there was any firm in connection with Hammell or not, I cannot say.

Ques. You knew your horses came through purchases by Hammell, at sales, did you not?

(Objected to as immaterial, and as already testified to.)

Ans. I knew that the firm got their horses through Hammell; and he bought them, I suppose, to do whatever he thought would be to the best advantage for himself. 30

Ques. You paid Hammell for these horses by giving him credit, did you?

(Objected to as above.)

Ans. Mr. Hammell took the money out of the money collected and paid to him on Saturday, for whatever horses were not paid for at that time.

Ques. How many horses did you buy during the three years of the partnership?

(Objected to as already testified to.)

Ans. I couldn't say; probably 12 or 13.

Ques. Did you say on the Brooks trial that you did not supply your horses in the way indicated by my questions—by any understanding with Hammell?

(Objected to as not the best evidence.)

Ans. I don't recollect how I might have answered
10 those questions; so far as I recollect, I said that Hammell bought horses for himself and the firm took them of him, such as after a trial would be thought suitable for the business.

Ques. Your defence in the Brooks case was, that Mr. Hammell didn't buy the horses for which suit was brought for the firm, but on his individual account, was it not?

(Objected to as not the best evidence.)

Ans. I contended that he bought all horses on his
20 individual account; those and all others.

Ques. That defence failed, did it not, and judgment was given against the firm, was it not?

(Objected to as not the best evidence.)

Ans. No, sir.

Ques. How much money did you have in the Tradesmen's National Bank of Philadelphia during the partnership?

(Objected to as already testified to.)

Ans. Not any.

30 Ques. Did you keep firm money in any bank during the partnership, and if so what bank?

(Objected to as already testified to.)

Ans. No, sir; the firm kept no bank account.

Ques. Have you tried to get Hammell to testify in this case?

Ans. Yes, sir.

Ques. What did you do, and when did you do it?

Ans. Mr. Drake wrote to the prison physician at different times, I think, to get the state of Mr. Hammell's health and always got in reply that he was not in fit condition in either mind or body to give testimony.

Ques. Is that all you have done to get him?

Ans. Then we sent a man to Trenton and he returned with about the same information.

Ques. Is that all you did?

Ans. That is all I know of. 10

Ques. Why haven't you done more to get him?

(Objected to as improper.)

Ans. I wouldn't know what else to do, unless I could make a new man out of him.

Ques. Did you not know that people who had dealt with Hammell for years as a sole partner, upon the faith of his business establishment, property, reputation and credit, would still act and deal with him upon the same faith, they not knowing of any change in the firm?

Ans. No, I didn't know anything about that. 20

Ques. Do you know when Hammell got money from Benner for which Benner now has judgment?

Ans. No, sir; I didn't know that he owed Benner a dollar.

Ques. When you first visited Hammell, to get the papers fixed, you had no suspicion that Hammell was about to have financial difficulty, had you?

(Objected to as already testified to.)

Ans. No, sir; not the least.

Ques. Did not Hammell's request not to have the firm name changed—not to publish the change in the firm— 30 his failure for three years to execute papers of partnership—his repeated efforts, at the end of the three years, to defer giving you the papers after they were executed —his receiving all the cash income of the business for three years, except the $15 a week wages, and his doing

simultaneously, several other businesses—ever make you feel uneasy, or arouse any suspicion in your mind?

(Objected to as multifarious and involved, and as containing incorrect statements of facts.)

Ans. There is so much of that question I hardly know how to get at it. He never requested that the partnership should not be published; he merely said he saw no reason why it should be published, as we intended to do a cash business; the $15 a week that I received were not as wages, but I had to have some money to live on, and Mr. Hammell took $15 a week for himself, so I thought I would just make it the same, then the business would be square between him and me, except the half that was due me from him, that he owed the concern; the papers were merely delayed after their execution and delivery, to secure Mr. Hammell a copy; in any respect, relative to the business, I had no suspicion of Mr. Hammell being anything but a straightforward, honest man, and did business with him on that basis.

Ques. You have found different since?

Ans. Yes, sir; I think I have.

Ques. Your weekly allowance of $15, during the partnership, was the same sum you received for wages before the partnership, was it not?

(Objected to as already testified to.)

Ans. Yes, sir; but it was not considered as an allowance.

Ques. Did Mr. Hammell have a specific weekly allowance before the partnership, or did he take all the income just as he did during the partnership?

Ans. He took all the income, but not as he did after the partnership; he took all the money there was before.

Ques. Except the $15 wages weekly?

Ans. My wages were paid with the rest of the men before the partnership; my name was on the wages list before the partnership like the rest of the men.

Ques. Before the partnership he took the whole of the income after paying wages and expenses; now didn't he do the same thing exactly after the partnership, except the $15 you got weekly?

(Objected to as already testified to.)

Ans. No, he would put in the drawer $20 or $25, and sometimes $35. I would get my $15 out of that amount; the balance would be used to give men money during the week who were working and to buy ferry tickets with; you might say two-horse tickets. 10

(Objection withdrawn.)

Ques. I believe you said the money drawer was open before the partnership?

(Objected to as already testified to.)

Ans. I don't recollect saying anything about the money drawer before the partnership.

Ques. Wasn't it?

(Objected to as above.)

Ans. No, sir; Mr. Hammell carried all the money himself, unless at some time he would give me some 20 money to pay freight with, or pay some one that he knew was coming after money, and then I would account to him for it as soon as I would see him.

(Objection withdrawn.)

Ques. Then before the partnership Hammell not only kept the money drawer locked but absolutely allowed you to handle no money except a few dollars, and that you had to account to him for as soon as you saw him?

Ans. He had no money drawer before the partnership, and I handled no money for him, except I should collect 30 a bill, or occasionally make a deposit in bank.

Ques. Did he keep a pretty heavy bank account before the partnership?

Ans. I never knew anything about his balance in bank.

Ques. Didn't see his bank book, of course ; the figures in it?

Ans. Yes ; I saw his bank book when I took it to bank, and saw some middling large deposits in it, but I could tell nothing by that, as he might have given checks to draw all the money as soon as deposited, for what I know.

Ques. And he might not?

Ans. Yes, sir.

Ques. Now, if I understand, before the partnership, 10 Mr. Hammell received the entire income of the business, after paying wages and expenses, in which were included your $15 weekly wages, and the few dollars that you expended for different purposes, as he gave it to you ; after the partnership, Hammell received the entire income, after paying wages and expenses, except your $15 weekly allowance, and the difference between the $15 thus received by you, and the $20, $25 and $30 that might be left from time to time in the drawer?

(Objected to as involved, and as already testified to.)

20 Ans. He received, before the partnership, all the money as I stated before, and after the partnership, he received all the money as before stated, except what was put in the drawer, and paid to men working through the week, ferry tickets, &c., and was charged with it, and I was credited after the partnership with my share of the proceeds over the expenses, and he was charged with the whole amount as he had it all in his possession. Before 30 the partnership there was no charge made to him.

(Objection withdrawn.)

Ques. I do not ask you about charges and credits. I ask you the simple question, whether Hammell did not actually receive and dispose of, at his own will, the income of the business just the same after the partnership as before it?

Ans. He received it but not as his own money when

he received it. He received it as his to be used in the business only. Before the partnership he received it and did what he pleased with it. After the partnership, all over and above what was necessary to pay whatever bills might be incurred, wages or other expenses, was charged to Mr. Hammell. Then it was his to do as he pleased with, but he was considered as owing the concern that much money. Before the partnership there was no account kept of it.

Ques. You and Mr. Hammell were confidential with each other, were you not? 10

(Objected to as immaterial and obscure.)

Ans. I had full confidence in Mr. Hammell; whether he had in me or not I can't say.

Ques. You were thoroughly acquainted with his business habits and ways, were you not?

Ans. I thought I was. It seems not.

Ques. If you had no suspicion of Mr. Hammell's difficulties, how do you suppose it happened that you urged the execution of the partnership papers just at the time you did? 20

Ans. On account of Mr. Hammell's health.

Ques. After the papers were actually executed and put in Mr. Taylor's possession their legal effect was accomplished and the papers were secure, except so far as Mr. Hammell could control Mr. Taylor; under these facts I ask you why you were so solicitous to get possession of the papers?

(Objected to as containing an incorrect statement of fact, a conclusion of law, a reflection upon Mr. Taylor, and generally improper.) 30

Ans. I considered the papers mine, and during the delay that had been occasioned by getting the copy for Mr. Hammell, things had taken a different aspect, and Mr. Taylor claimed to be counsel for Mr. Hammell and not for me, and of course I preferred having my own

papers in my own possession in case I should need them, as Mr. Taylor could not act for Mr. Hammell and for me too.

The Master would state that during the occurrence, a statement of which is made by the Master on page 231, and a further statement of which is made on page 239, et seq., by Mr. Wescott and Mr. Drake. Mr. P. V. Voorhees was present, he having entered the Master's
10 chambers just previous thereto.

Adjourned until Tuesday, January 16th, 1883, at 2½ P. M.

Tuesday, January 16th, 1883, adjourned until Wednesday, January 17th, 1883, at 2½ P. M.

Wednesday, January 17th, 1883, at 2½ P. M., examination continued in the presence of Mr. Drake and Mr. Wescott.

20 Lehman Moore, being still upon the stand, upon his cross-examination by Mr. Wescott, saith:

Ques. Do you keep a bank account?
(Objected to as immaterial.)
Ans. Yes, sir.
Ques. Where?
(Objected to as above.)
Ans. Corn Exchange Bank of Philadelphia.
Ques. How long have you kept it there?
30 (Objected to as above.)
Ans. Since sometime in June, 1882, I think.

Counsel for Mr. Benner requests the witness to produce at the next meeting all books of account kept by him and Hammell, or both of them together, with any bank or any bank book since the witness went into Hammell's employment, and during the alleged partnership and since.

Ques. You designed, during some part of the alleged partnership, to conceal its existence, did you not?

(Objected to as already testified to.)

Ans. No sir.

Ques. Then why didn't you give it publication?

(Objected to as last above.)

Ans. Because Mr. Hammell thought it was not necessary, as we were going to do a strictly cash business.

Ques. You knew that the world supposed they were dealing, from January, '79, to December 6th, '81, with Hammell as sole partner, did you not? 10

(Objected to as last above.)

Ans. No sir.

Ques. There being no publication of the partnership, why didn't you suppose so?

(Objected to as last above.)

Ans. I didn't do anything to keep people from knowing it.

Ques. That answer is a full and complete reason is it?

(Objected to as improper.) 20

Ans. So far as I know.

Ques. Where was the receipt for your first payment of $500 made, when was it made and who was present when it was made?

(Objected to as already testified to.)

Ans. It was made at 104 Dock street, Philadelphia, on the tenth of January, 1879. I was present and Mr. Hammell was present.

Ques. You are sure nobody else was present, are you?

Ans. Yes, sir.

Ques. What did you do with it? 30

Ans. Put it in my pocket book.

Ques. And did you keep it there from that time until you gave it to your counsel?

Ans. Yes, sir.

Ques. Nobody saw it or handled it from that time until you gave it to your counsel?

Ans. Not that I recollect of.

Ques. Where did you keep your other receipts?

Ans. On file.

Ques. You preserved all your receipts by filing them, except this one?

Ans. Until the end of the week, and then I would put them with the other papers, whatever they might be.

Ques. And where would you keep them with the other papers?

10 Ans. Hang them up in the office until they got in the way, and then burn them, or give them to a boy who was hunting waste paper, or something of that kind.

Ques. You were careful to preserve all your receipts in this manner until they got in the way, were you?

(Objected to as already testified to.)

Ans. We generally kept the most of them until they got troublesome.

Ques. Now state when you had your last burning of receipts, or the last giving away of them to boys, as waste paper?

20 Ans. I couldn't tell you when the last was; they are torn and thrown in a waste basket, under the desk, and if a boy happened to come along he would get them, whatever they were.

Ques. Didn't you begin to answer the last question by saying, "I can't tell when it was—it was within a few days," and then stopped, and state the answer that the Master has down?

(Objected to as immaterial and improper.)

Ans. I can't say what I said then; I say it might hap-
30 pen any day or two; that was the sense of it.

Ques. When do you think you had the last burning or giving away?

(Objected to as immaterial.)

Ans. It might have been on Monday of this week; I don't know.

Ques. How many have you had since January 1st, '79.

(Objected to as last above.)

Ans. I couldn't tell you anything about it.

Ques. Why didn't you burn the Hammell receipt for $500?

Ans. Because I considered that of a different nature altogether; unsettled business.

Ques. Did you ever speak to Hammell more that once about changing the firm name? 10

(Objected to as already testified to.)

Ans. I don't think I ever spoke to him at all about changing it.

Ques. Did he speak to you about changing it more than once?

(Objected to as last above.)

Ans. I don't think that he spoke to me about it at all; I don't recollect that he did.

Ques. Did you ever speak to anybody about changing it, or did anybody ever speak to you about changing it? 20

Ans. I don't think there was ever anything said about that except in Mr. Taylor's office. Mr. Taylor suggested that we make the name Hammell & Co. I said I had no objection if Mr. Hammell had none. I think the matter was just mentioned in Mr. Hammell's house afterwards by Mr. Taylor to Mr. Hammell. I don't remember that Mr. Hammell made any reply.

Ques. It never occurred to you to have the firm name changed from Horace Hammell to something else did it?

Ans. Yes, I thought about it often. 30

Ques. Why didn't you mention it to Hammell?

Ans. I don't know just why I didn't; I didn't.

Ques. You often had talks together about the business, its present and future success, and whether to do thus, that or the other didn't you?

Ans. Yes, we had talks sometimes, but not about anything like that.

Ques. How long has Mr. Hammell been entirely unable to testify?

Ans. I don't know that, but he hasn't been able since this testimony has been being taken.

Ques. Did you know of Hammell's selling two horses to Campbell, the canning man in Camden, a short time before Hammell's failure?

(Objected to as immaterial.)

Ans. Yes, sir.

10 Ques. How did Campbell pay for them?

(Objected to as last above.)

Ans. I don't know.

Ques. How much did he get for them?

(Objected to as last above.)

Ans. $450.00.

Ques. Do you know what Hammell did with the note Campbell gave him for these horses?

(Objected as last above.)

Ans. No, sir; I didn't know he gave him a note.

20 Ques. Don't you know that Hammell assigned that note to Callahan and Benner?

(Objected to as last above.)

Ans. No, sir.

Ques. Did either of them ever say anything to you about it, or to Hammell in your presence?

(Objected to as last above.)

Ans. I think that is different from the way he asked that question before; from the way he first asked it. I 30 don't know from that question whom he means; he doesn't mention anybody.

Mr. Wescott requests Master to read the last three questions and answers to the witness, and then to repeat the last question to him that the witness may understand.

Mr. Drake objects to this form of examination, and objects also to the reading over to the witness so much of his testimony during the examination.

Mr. Wescott's request is complied with.

Last question repeated.

Ans. Mr. Benner at one time asked me if Joseph Campbell was all right, saying at the same time that Mr. Hammell had either offered or gave him a note for some amount; I don't remember whether that was mentioned or not, with some fifty dollars more of cash in payment to him for some money that Mr. Hammell had borrowed at some time; I think that was all that passed in reference to it as I remember. 10

Ques. You are very sure that is all that was said by either of you?

(Objected to as immaterial.)

Ans. No, sir; I am not sure. I say that is all I recollect of at present.

Adjourned until Monday, January 22nd, at 2 P. M.

Adjourned until Monday, February 26th, 1883, at 2 P. M.

Monday, February 26th, at 2 P. M., examination continued in presence of Mr. Drake and Mr. Wescott. 20

LEHMAN MOORE, being still upon the stand, upon his cross-examination by Mr. Wescott, saith:

Ques. Were any of the judgments set out in your bill and supplement for money that went in the business?

(Objected to as already testified to.)

Ans. No, sir. 30

Ques. How do you know that?

Ans. Because the concern didn't owe any money that any judgments were got for.

Ques. Didn't it owe money when it bought horses, wagons, feed or other material for the business?

20

Ans. It didn't owe any money for horses; the concern never bought any horses. It might have owed something for repairing wagons, or something of that kind. It might have owed something for feed, but nothing for horses.

Ques. You bought no horses or mules from 1879 down?

(Objected to as already testified to.)

Ans. There were horses bought but they were all paid
10 for.

Ques. The knowledge that you have that they were all paid for was Hammell's statement that they were all paid for, was it not?

(This and all the above objected to as immaterial.)

Ans. Mr. Hammell said that he had paid for all horses, and also put it on his weekly statement to that effect.

Ques. He couldn't have put horses in the business and
20 taken money out of the business to pay for them without your knowledge could he?

(Objected to as immaterial.)

Ans. I hardly think he could.

Ques. By the settlement of the 6th of December, you got credit for $1,483 too much, did you not?

Ans. Not that I know of.

Ques. Had you any knowledge of the Brooks notes or of Hammell's business outside of draying?

30 (Objected to as already testified, as immaterial, and as of a double irreconcilable aspect.)

Ans. No, sir.

Ques. It was possible, was it not, for Hammell to have

got Benner's money into the business, in some such way as he got Brooks Brothers' money into the business?

(Objected to as predicated upon what has been proven as a fact.)

Ans. He didn't get either Brooks Brothers' money or Benner's money into the business.

Ques. Did Hammell attend to the business any time after January 1st, 1879?

10

(Objected to as already testified to.)

Ans. Yes, he was there as a general thing once a day for four or five days in the week up to November 12th, I guess, 1881.

Ques. How do you show the history and profits of the business from January 1st, 1881, to December 6th, 1881?

(Objected to as already testified to.)

Ans. On the weekly statements the same as before.

20

Ques. Didn't you know, when you made the agreement set out in your bill, that Hammell, in all probability, would never be able to contribute time, labor, skill or money to the business?

(Objected to as obscure and immaterial.)

Ans. No, sir.

Ques. As a matter of fact, he didn't contribute any of these things after he signed the agreement?

Ans. No, sir.

30

Ques. How did it happen that Hammell's interest in the business at the time of this agreement was exactly to the cent what he owed you?

(Objected to as already testified to.)

Ans. I didn't consider that it was equal to it.

Ques. Did you give Hammell a discharge according to the agreement?

Ans. I gave him a copy of the bill of sale and a copy of the agreement which were all he asked for.

Ques. All of the property was to be used in the partnership, for the purpose of doing business with the public, but was not to be partnership property; did Hammell arrange to pay you anything for this extraordinary privilege?

10 Ans. No, there had been no arrangement made for any pay; there would have been if the thing had continued.

Ques. Did it occur to you that there would be any advantage taken of anybody, by your owning all the property, and taking a sick man in the business with you to assume half of the liabilities, he being bankrupt?

(Objected to as not predicated upon facts.)

Ans. The sick man was already in with me and I 20 didn't want to push him to any change at that time on account of his sickness as he expected in a short time to be able to do something, and he was not bankrupt at that time that I knew of.

Ques. You could have carried on the business just as well without Hammell as with him, couldn't you?

Ans. Yes, sir; at that time I could.

Ques. Did you cause the endorsements to be made on the agreement and bill of sale, one of them to the effect 30 that Hammell was the true and lawful owner of all the goods, and had full power to sell and dispose of the same?

Ans. I don't understand what is meant by endorsement on that question. Mr. Hammell agreed willingly to give the bill of sale, and when it was drawn and read to him by Mr. Taylor, he said it was all right and signed his name to it.

Ques. Did you want Mr. Hammell to use this language: "I, the said Horace Hammell, hereby covenant that I "am the true and lawful owner of said goods and have "full power to sell and dispose of the same?"

(Objected to as matter of inquiry of law and not of fact.)

Ans. I had nothing to do with the wording of the agreement. Mr. Taylor worded it I suppose as was right according to law. 10

Ques. Why did you have that covenant put there?

(Objected to as immaterial.)

Ans. As I said before, I did not order or control the wording of the agreement.

Ques. You knew this covenant was put there, didn't you?

(Objected to as last above.)

20

Ans. I suppose I knew it when I heard the agreement read. I didn't know it before.

Ques. You knew it was true, didn't you?

Ans. No, sir.

Ques. Did you know that it was not true?

Ans. No; it was true in one sense, but I already owned one-half of the goods, but had had no agreement to that effect except verbal, and the receipt showing the receipt of $500 on account of one-half of the horses, wagons, harness, &c., used in the business. 30

Ques. Then you knew that you were making yourself party to an instrument which had a deception on its face?

(Objected to as improper and not predicated upon the facts testified to.)

Ans. No, sir; I did not know it.

Ques. When you asked Hammell if he expected any financial difficulties, his answer entirely satisfied you, did it not, on this point?

Ans. Yes, sir.

Ques. Still you importuned him for a settlement did you not?

Ans. I merely asked him if he didn't think that we had better have a settlement, and he said he did think so.

10 Ques. Why did you put it off until you were satisfied that Hammell was to have no financial difficulties?

Ans. That had no reference to the settlement whatever.

Ques. You said in your bill some of the execution creditors were well aware of the partnership when the goods were seized; who were they and how do you know that they knew it?

(Objected to as already testified to and as improper and immaterial.)

20 Ans. Nathan D. Marshall knew it, and I think Callahan and Benner knew it. The way I know is that Marshall told me that he knew it, and I told Benner myself.

Ques. You didn't get Hammell's consent to take his name off the things did you?

(Objected to as immaterial.)

Ans. No, sir; they belonged to me at that time and I 30 thought I had a right to take his name off if I wished.

Ques. Did you change names on the ground that you bought and paid for the goods, or on the ground that the Sheriff dissolved the partnership?

Ans. The thought that the Sheriff dissolved the partnership at that time didn't cross my mind; Hammell had no longer any claim on them so I thought best to take the name off.

Ques. And you took them off while you believed Hammell was still partner?

Ans. No, I did not believe him to be a partner at that time, but he had nothing to do with the goods, whether he was or not.

Ques. State who made the estimates in the schedule, and also when, where and how they were made?

Ans. They were made in Mr. Hammell's house sometime in November between Mr. Hammell and myself, Mr. Taylor being present. They were arrived at by 10 going over the stock, as we knew it, and fixing the price.

Ques. You had no difficulty in making up the schedule had you; I will put the question: you did have difficulty didn't you in making up the estimate?

(Double question objected to.)

Ans. No particular difficulty that I remember of; there was some talk about the value of things being high or low, but all were finally agreed on as satisfactory. 20

Ques. How do the schedule prices compare with the original prices?

Ans. I couldn't say, as I haven't compared them; of course they are lower than the original prices. Horses that were good originally were worn out at that time, and wagons and harness the same way.

Ques. How did they compare with prices at subsequent sales?

(Objected to as immaterial.)

30

Ans. I know of no sales of the same class of goods.

Ques. How did you come at the partnership debts?

Ans. The partnership debts were not brought in question at that time; they were expected to be paid as the business went along.

Ques. They were not, were they, as a matter of fact?

(Objected to as immaterial.)

Ans. No, they were not paid, as the business stopped.
Ques. Have the $2,803 indebtedness been paid yet?
Ans. No, sir.

Adjourned until Wednesday, February 28th, 1883, at 2½ P. M.

10

Wednesday, February 28th, 1883, at 2½ P. M., examination continued in presence of Mr. Drake and Mr. Wescott.

LEHMAN MOORE, being still upon the stand, upon his cross-examination by Mr. Wescott, saith:

Ques. Did you say to William T. Benner in Philadelphia, sometime before the levies were made in this case, in answer to a question from him, as to how you were
20 getting along, (Hammell being sick at home, "very well "but I could do better if I had authority from Hammell "to boss the men," and did you say the same thing to Mr. Diament or Mr. Coles?

Ans. No, sir; I have no recollection of any such conversation.

Ques. Did you know of Hammell giving his individual check to different parties, between 1879 and 1881?

Ans. Yes, sir; I have seen him pay different parties with his check.

Ques. Very large amounts?

30 Ans. I couldn't say that part.

Ques. Did you ever give checks of the firm during that time?

Ans. No, sir.

Ques. When did you get the cards, like Exhibit No. 3, out?

Ans. I think it was sometime in February, 1882; I don't remember for certain.

Ques. Why didn't you do it before?

(Objected to as immaterial.)

Ans. No particular reason, except that I just thought, at that time, that I ought to have some.

Ques. In entering into so important an arrangement as this partnership, why didn't you make an estimate of the partnership property, &c.? 10

Ans. Because it wouldn't have amounted to anything if I had, as Mr. Hammell said he would take no less for one-half of the stock on hand and what he considered good will of the business. He didn't think himself that one-half of the goods were worth that much money, but he considered the good will, including the advantages of going into a business already established, was worth considerable in comparison to what it would be to undertake to start the same business without any trade or acquaintance to commence with, and besides that he had another 20 customer ready, if I said no, to step right in which I thought probably would result in getting me out altogether.

Ques. Who was it?

(Objected to as already testified to.)

Ans. Nathan D. Marshall. He is dead.

(Objected to.)

30

Ques. You were anxious to get into the business then?

(Objected to as above.)

Ans. I was not overly anxious, but I didn't want to be thrown out entirely, as from what I had seen I thought we could make a little money, and it was a hard matter

to get hold of a business, either then or now, that there was any money in.

Ques. You were particularly fortunate then, after being a clerk for ten or twelve years, to get control of so important a business in such an unusual way in three years?

(Objected to as above and as immaterial.)

Ans. No, I didn't think I was very fortunate. I didn't
10 expect to get anything more than what I paid for.

Ques. Did you ever suggest to Mr. Hammell, during the three years of partnership, while all the profits were being received by him, the advisability of occasionally paying to you something more than $15 a week?

(Objected to as immaterial.)

Ans. No; there was never anything said about that.

Ques. Did Hammell always pay bills during the partnership, and how were receipts given and taken?

20

(Objected to as already testified to.)

Ans. Hammell generally paid all the bills as he had all the money; the feed bills were made out to Hammell and Moore and were receipted Hammell and Moore—other bills were made out to Horace Hammell and receipted the same way. The feed bills Horace Hammell made out himself, because the feed was bought of him.

Ques. Why didn't you put the result of the statements
30 for 1879 and 1880 in the safe?

Ans. The result of the statements was in the safe.

Ques. Why didn't you put all the results of the statements in the safe?

Ans. They were all put in the safe.

Ques. Why did you always give to him the money that you collected?

(Objected to as already testified to.)

Ans. No particular reason, only that he was generally in the office on Saturdays and always counted the money that was brought in by anybody that was collecting.

(Witness being shown Exhibit No. 54a, is asked whether the date purporting to be 1880 was not originally 1881, and changed to 1880 by putting the left hand curve on the "1?")

10

Ans. No, I think it was intended for 1880 because it was the last bill in the year and 1880 would be the proper date.

Ques. Is it in your hand?

Ans. No, sir.

Ques. These were the only bills, the Hammell and Mellor bills, that were made out in the firm's name and receipted by the firm during the three years of partnership?

(Objected to as inaccurate and as already testified to.) 20

Ans. They were the only bills made out in the firm name, but there were other bills receipted by the firm in the firm name.

Ques. What bills?

Ans. All bills were receipted in the firm name.

Ques. Can you produce any bills that were receipted in the firm name?

Ans. I don't know that I can.

Ques. Give the names and places of business of people whose bills were receipted in the firm name? 30

Ans. That would be an endless job if you understand what I mean by the firm name which was Horace Hammell. I would have to give about 200 different names and 200 different places of business. The firm name was Horace Hammell.

Ques. Why did you tell Hammell that if he gave you a judgment bond, you would not push him, if he got in a tight place, so long as no one else did?

Ans. Because I wanted him to know that I wouldn't do anything against him if nobody else did, that was all.

Ques. This was before you had any idea of trouble?

Ans. Yes, sir.

Ques. Why did you propose a judgment bond?

Ans. I didn't propose it; Mr. Taylor proposed it.

10 Ques. Why did he propose it?

(Objected to as immaterial and improper.)

Ans. I don't know why he proposed it; he was anxious to get at the easiest way to settle the business up, as Mr. Hammell said he was short of cash, having been unable to get out and get his money together, but having been sick he was not able to do that, but was willing to try to fix me safe until he was able to do better. I proposed to him then to give me a mortgage anywhere he thought best, so that it was good and all right and we would 20 settle in that way. He didn't seem to agree with that idea so we came back on the bill of sale which he said he was willing to give, and Mr. Taylor was ordered to draw it up.

Ques. You wanted it done as quickly as possible too, didn't you?

Ans. I said nothing about the time. Mr. Hammell asked Mr. Taylor when he would have it done, and he told him the next day or the day following.

Ques. Weren't you afraid Hammell might die before 30 you got the thing through?

Ans. No, I don't think there was any particular fear of his death at that time. I was afraid that he might not be capable of making a settlement if it was left to go too long.

Ques. Then why didn't you want it done quickly, or in the quickest way?

Ans. I didn't say that I didn't want it done, but I didn't feel particularly urgent about it; of course I didn't want unnecessary delay; I wanted it fixed in some way so that it would be off my mind.

Ques. Wasn't it on your mind for the three preceding years or some parts thereof?

Ans. Not particularly so.

Ques. Why was it that it got so particularly on your mind in December, 1881, just before Hammell's failure?

Ans. It got on my mind before December. 10

Ques. How long before?

Ans. Well, it was on my mind from the 1st of October.

Ques. Why didn't you get it fixed then so as to get it off your mind?

Ans. Because Mr. Hammell was sick.

Ques. Did Taylor send the copy of the agreement to Hammell and keep yours until you sent for it?

Ans. I don't know whether he sent Hammell's copy or not. He kept mine until I called for it.

Ques. When was it you called for it? 20

Ans. About the 20th of December, I think.

Ques. Was the order dated?

Ans. I couldn't say.

Ques. Wasn't it on the 21st that this order was made by Mr. Hammell to give you the papers?

Ans. I couldn't say for certain; it might have been the 21st; it was the morning after the night that the goods were seized. The goods were seized after business hours at night and it was the next morning.

Ques. When and where did you first hear of their seizure? 30

Ans. On this same morning, on Market street, Camden.

Ques. Who told you?

Ans. David B. Kaighn, I think his name is, a flour man on Kaighn's avenue.

Ques. Of course you were very much surprised?

Ans. I should think I was surprised, if anybody in Camden or Philadelphia was.

Ques. Don't you know that Mr. Hammell instructed Mr. Taylor, after these papers had been made out, to hold them in order that he, Hammell, might see what turn things would take; and don't you further know that Hammell determined to let you have these papers only after the levy had been made by Marshall, and don't you further know, that, when Hammell gave the
10 order to Taylor, he said I guess that will stop the Sheriff, or something to that effect?

(Objected to as improper.)

Ans. I don't know anything of the kind that Hammell instructed Mr. Taylor after these papers were made out in order that he might see what turn things would take. Mr. Hammell had requested him to hold the papers until he saw me, as there was something he did not understand. I went to see him and asked him what the
20 trouble was; he said there was no trouble, that he would notify Mr. Taylor to deliver to me the papers; I said all right, and asked him when he would give him the notice. He said he would do it the next day. Now what is the second question. (Master read the same to the witness who answers): No, what his determinations were I know nothing about. What is the next question. (Master reads the same to witness who answers): No, sir; I know of no such conversation.

Ques. What did he say?

Ans. He could'nt have said anything. Mr. Hammell
30 did not deliver the order to Mr. Taylor himself.

Ques. What did you say to Hammell?

Ans. I didn't say anything; I didn't see him.

Ques. Whom did Hammell give the order to?

(Objected to as already testified to.)

Ans. I suppose he gave it to his nephew; his nephew gave it to me.

Ques. Where?

Ans. In Mr. Hammell's House.

Ques. Did you go to see Mr. Hammell about the levy or anything else that day?

Ans. Yes, sir; I did.

Ques. What did you say to him and what did he say to you?

Ans. I asked him what he had been doing that caused this trouble, and he said he hadn't been doing anything. I said somebody must have been doing something, otherwise they couldn't have locked the horses up; but he gave me no satisfaction. Then I asked him what he could do to help him out of the scrape. He said he didn't know how he could do anything. I asked him why he didn't let me know that there was any danger of any such seizure or trouble, but he made no reply.

Ques. That is all he said and all you said?

Ans. All that I recollect of.

Ques. Was there anybody present?

Ans. I think there was some three or four in the room.

Ques. Who, just name them?

Ans. I think George Ward was present, Allie Ward and there were one or two women passing occasionally in the room, but I couldn't say who they were for certain.

Ques. The reason you used the printed billheads with Horace Hammell only on them, after the partnership in 1879, was because you had a lot on hand wasn't it?

(Objected to as already gone over).

Ans. I suppose that was partly the reason; the business was already established and there was nothing said about bills or billheads or names on them.

Ques. Didn't you buy a lot of the same sort of billheads after the partnership was formed?

(Objected to as above and as improper).

Ans. Yes; there were billheads printed after the partnership was formed in the same way, but who ordered them I don't know.

Ques. Didn't you buy new wagons after 1879, or have some repainted still with the name of Horace Hammell on them?

(Objected to as already gone over and as immaterial).

10

Ans. There was none repainted. I think there was one new wagon came in afterwards, but I think the order had been given for that before the agreement of partnership was made.

Ques. Why did you go to Mr. Benner and Mr. Marshall and notify them that the goods belonged to you?

Ans. I didn't go to their office for that purpose, I happened in there and in conversation it was brought around.

Ques. When was it, and who was present?

20

Ans. I couldn't say just when it was, but it was very shortly after the arrangement had been made. Mr. Callahan was in and out; whether he paid attention to the conversation or not I couldn't say. Marshall frequently talked about it, but preferred to do so when there was nobody around. I don't know that there was anything said by him to me or by me to him in the presence of anyone else, although there might have been.

30

Ques. The goods being partnership property, and there being no publication of the change in the firm, didn't you know that people would still be likely to deal with Hammell as sole partner as before, and that they might be deceived?

(Objected to as already gone over.)

Ans. No, sir; there was no thought of deception so far as I was concerned.

Ques. The exhibits offered in evidence by you are all correct, are they?

Ans. I believe they are.

Adjourned until Thursday, Feb. 28th, 1883, at 2.30 P. M.

Thursday, February 28th, at 2.30 P. M., examination continued in presence of Mr. Drake and Mr. Wescott. 10

Counsel for complainant gives notice that he is now ready to answer the various notices of calls which have been made during the progress of the cross examination by the counsel of the defendant Benner; that no notice of these calls has been given except upon the record, and the complainant has prepared himself before each succeeding meeting for answer to these several calls, but as the calls, of which has been given, have never been actually made, and as there is no way of ascertaining what they were, except by a search of the testimony, 20 counsel for complainant is unable to repeat what books and papers were called for, but the complainant is ready to answer those calls now, and either produce the papers called for or explain why he cannot produce them, if the counsel for Benner will state what the books, papers and writings which he desires to be produced are.

Counsel for defendant Benner says that Mr. Drake has in his possession here safely done up what seems to be a large quantity of papers, and refuses to permit said 30 counsel to inspect and examine said papers; therefore he announces to the Master that his cross-examination is closed with the exception of one question.

Mr. Drake admits that he has with him certain papers which were brought to him by Mr. Moore, the complain-

ant, in response to one of the notices of Mr. Wescott above referred to, but what these papers are, whether they embrace all or more or only a part of the papers mentioned in any of the said notices he has not examined and does not know, and reiterates what he before stated that if Mr. Wescott will now make the calls which he gave notice of, those calls will be answered at once.

10 Counsel for Benner further states that he requested Mr. Drake last evening to leave this bundle of papers, then in his possession, with the Master that they might be examined in his presence, whereupon Mr. Drake informed said counsel that he could have and examine this bundle of papers on two conditions: one, that he call for them and the other that he offer them in evidence; otherwise he couldn't have them, but said counsel, although he would like very much to see and examine this bundle of papers, knows no way of getting them short of the use of violence or the use of learning that
20 he has not yet attained to.

Counsel for complainant says that Mr. Wescott can have those papers and examine them to his heart's content in the presence of the Master if he will call for them and produce them in evidence in the regular way, excepting of course those papers which we cannot produce.

Lehman Moore, being still upon the stand, upon his cross-examination by Mr. Wescott, saith:

30 Ques. Was Hammell so sick, from October 1st to December 6th, 1881, that you couldn't call upon him, and fix up your partnership matters, as they were finally fixed?

(Objected to as already testified to and as immaterial.)

Ans. He was quite sick in the fore part of October so as not to come out, but rallied again and was seemingly coming around all right when I had determined on a settlement, when he was taken a second time worse, but as soon after that as I thought it would do I went over to see him and asked him about the settlement, and he said he had been thinking a great deal about it.

Adjourned until Monday, March 12th, 1883, at 10 A. M.

10

Adjourned until Tuesday, March 20th, 1883, at 10 A. M.

Adjourned until Monday, March 26th, 1883, at 11 A. M.

Monday, March 26th, 1883, at 11 A. M., examination continued in presence of Mr. Drake, Mr. P. V. Voorhees and Mr. Wescott.

Re-direct:

20

LEHMAN MOORE, being still upon the stand, and being re-examined by Mr. Drake, in his own behalf, saith:

Ques. Before the partnership did Mr. Hammell deduct out of each week's receipts fifteen dollars for himself as a part of the expenses of the week?

(Objected to as irrelevant.)

Ans. There was no account of anything of that kind.

Ques. What bills beside the bills of Hammell and Mellor were receipted for in the firm name of Hammell and Moore?

30

(Objected to.)

Ans. None other.

Ques. When you stated, in your cross-examination by Mr. Wescott, that bills, beside these of Hammell and Mellor, were receipted for in the firm name, what firm name did you mean?

(Objected to.)

Ans. The firm name of Horace Hammell. I never gave checks in the firm name during the partnership.

Ques. Is Callahan a partner of Benner, the defendant?

10

(Objected to.)

Ans. Yes, sir.

On the night of the seizure some horses were left in Philadelphia. (Objected to.) There were two horses that came over here that night; the driver found there was something wrong and took them back to Philadelphia. (Objected to.) At the time of the seizure four teams belonged at the stable in Philadelphia. (Objected to.) Those and the one that came over there on the
20 night of the seizure were not permitted to come to Camden after the seizure.

(Objected to.)

Ques. At the time of the settlement, why was it that the property equaled Hammell's debt to you?

(Objected to.)

30 Ans. It didn't exactly equal it, according to his estimation, but we figured it up, making a difference I think of about twenty-seven dollars, but I said I would give no more for it, so we agreed to fix it at that price.

Ques. What question or fear, if any, did you have or make about Hammell's paying you back your share of the firm proceeds, as he took the whole proceeds every week?

(Objected to as irrelevant.)

Ans. I had no fear about it. I supposed he was all right.

Ques. What was Hammell's reputation at that time, and during all the time of the partnership up to the seizure, among people whom you know, for responsibility, honesty and fair dealing?

(Objected to.) 10

Ans. Mr. Hammell's reputation, ever since I knew him, and up to the time of the seizure, was number one; Mr. Taylor made the remark that he had known Mr. Hammell for years, and he considered him worth $30,000 of real estate or more in Camden, and that his word was as good as his bond in his estimation; that was when I spoke to him about the settlement; it was before the seizure.

LEHMAN MOORE.

Sworn and subscribed this 26th of March, A. D. 1883. 20

C. V. D. JOLINE, M. C. C.

Adjourned until Thursday, March 29th, 1883, at 10 A. M.

Thursday, March 29th, 1883, at 10 A. M., examination continued in presence of Mr. Drake, Mr. P. V. Voorhees and Mr. Wescott.

GEORGE W. MOORE, a witness produced on the part of the complainant, being duly sworn, deposeth and saith: 30

I live at Shoemakertown, Montgomery county, Pennsylvania. I am a carriage builder at Shoemakertown; I lived there twelve years last fall; I have carried on this business these twelve years last October; I am 45 years old; I am a brother of the complainant, Leh-

man Moore; I am older than he is; I knew Horace Hammell to some extent; the last time I saw him was in the jail here in the custody of the Sheriff; next before that I saw him at his home in Camden; the length of time it was before that I can't tell, but it was a year ago last fall, but I can't tell the month; it runs in my mind that it was in September or October, but I can't tell the month.

Ques. How often did you see him at his house, in the
10 fall of 1881?

Ans. I only recollect of seeing him once.

Ques. Who were there at the same time?

Ans. A lawyer by the name of Taylor and my brother; I have only one brother living.

I went there in company with Mr. Taylor and my brother. The idea of my going there was to assist my brother in some way in making a settlement of his accounts with Mr. Hammell. We saw Mr. Hammell there in the second story room; it was a sitting-room.

Ques. What conversation did you have with Mr. Ham-
20 mell?

Ans. My brother stated to Mr. Hammell that we had come for the purpose of trying to make a settlement in some way and Mr. Hammell said that he was anxious to have a settlement made, asked my brother what he proposed, what way he proposed to make a settlement; my brother said that he would be willing to settle it in any way that would make him safe, and if he would pay him the balance that was due him that was all he wished.
30 Mr. Hammell said that he wasn't prepared to do that—wasn't able to get out much. My brother proposed that he would give him a judgment. Mr. Hammell refused to do that, preferred not to do it. Then there was a general conversation between Mr. Hammell, Mr. Taylor and my brother as to the best way to settle it. Mr. Taylor proposed a chattel mortgage. I said that I didn't

think a chattel mortgage would hold good in Pennsylvania. I think Mr. Taylor then proposed a bill of sale. They then drew up a schedule of the horses, wagons, harness, &c. By "they" I mean Mr. Hammell and Mr. Moore; Mr. Hammell wrote down the articles. My brother then proposed to Mr. Hammell that he buy him out; that is that Mr. Hammell buy out my brother's interest in the business. Mr. Hammell said that he couldn't at that time do it. They then talked over the amount that Mr. Hammell owed my brother; their papers showed the amount to be something like $4,000. My brother offered Mr. Hammell that amount for his interest in the business. They didn't decide upon any plan positively while I was there.

Ques. What did Mr. Hammell say to your brother's offer?

Ans. He thought that it wasn't enough.

Ques. What, if anything, was said about the amount that Mr. Moore owed Mr. Hammell, and when it was made up?

Ans. I understand that to mean when they first went into partnership?

Ques. Yes.

Ans. They spoke about the amount that my brother was to pay Mr. Hammell, and the understanding that I had from the conversation was that my brother was to pay him $5,000, and that he paid $3,000, when he first went in there, and $2,000 were made up during the year.

Ques. How?

Ans. I didn't understand that—how it was done. I understood the business that they were talking about all the time to be hauling.

Ques. What relation did Mr. Moore and Mr. Hammell bear to the business that they were talking about there?

Ans. They were equal partners.

Ques. What, if anything, was said in this conversation,

relative to or explanatory of, Mr. Hammell's indebtedness to Mr. Moore, and how that indebtedness arose?

Ans. They had accounts, slips of papers, narrow slips of paper, which appeared to show balances all the time and brought Mr. Hammell in debt to my brother to that amount.

Ques. Out of what business transactions between Mr. Hammell and Mr. Moore did that indebtedness appear to have arisen?

10 Ans. The hauling business that I have spoken of.

Ques. Did Mr. Lehman Moore ever consult you about going into that business with Mr. Hammell?

(Objected to.)

Ans. Yes, sir. I think that these consultations took place four years ago this winter; that is last winter.

Ques. This past winter you mean?

(Objected to.)

20 Ans. Yes, sir.

Ques. State if you please the substance of these consultations and interviews with your brother on this subject?

(Objected to.)

Ans. My brother told me that Mr. Hammell wanted him to go into partnership with him, and asked my advice about it. I refused to advise him one way or the other.

30 Ques. After that what further conversation, if any, did you have with your brother on the subject?

(Objected to.)

Ans. We had several conversations over it at different times afterward. He told me that he had entered into partnership with him.

Ques. Immediately before the interview of last fall a year, what request did your brother make of you, which induced you to come over here and go to Mr. Hammell's house with him and Mr. Taylor?

(Objected to.)

Ans. He stated to me that Mr. Hammell was sick and that he owed him a good bit of money; that he was very anxious to get it into better shape so that there would be no trouble in case Mr. Hammell should die. 10

Ques. During the conversation above described, what reference, if any, was made by anybody, while Mr. Hammell was present, to any present or future financial difficulties of Mr. Hammell?

(Objected to.)

Ans. None.

Ques. Was there any intimation of such a thing?

Ans. Not the least.

Ques. Before the request made to you by your brother 20 to go with him to see Mr. Hammell in the fall of 1881, which you complied with, had your brother spoken to you on the same subject?

(Objected to.)

Ans. Yes, sir.

Ques. What was said?

(Objected to.)

Ans. He stated to me that Mr. Hammell was sick, and 30 that he had been sick for some time, and that he owed him a good bit of money, and he was anxious to have it settled for fear of trouble in case of Mr. Hammell's death.

Ques. What reference, if any, in the conversations which your brother had with you, prior to December

1881, on the subject of this settlement, or on any subject, what reference was made in any of them to Hammell's financial condition?

(Objected to.)

Ans. He always spoke as though he considered him well off.

Ques. What was Hammell's physical and mental condition on the day when you had the conversation above described, to the best of your judgment?

10

Ans. He appeared to be quite active physically and mentally—seemed to be all right. I had seen Mr. Hammell before this partnership was formed, at their offices in Dock street and in Delaware avenue.

Ques. Did you have any conversations with him?

(Objected to.)

Ans. Yes; just general conversations.

Ques. When did you go to the office oftener before or after the partnership?

20

(Objected to.)

Ans. I don't know that there was any difference.

Ques. Whom did you find there the oftener Mr. Moore or Mr. Hammell?

(Objected to.)

Ans. Mr. Moore.

Ques. When Mr. Hammell wasn't there whom did you find in charge conducting the business?

30

(Objected to.)

Ans. Mr. Moore, both before and after the partnership.

Ques. At the conversation at Mr. Hammell's house above described, what if anything, was said by Mr. Hammell as to whether Mr. Moore had paid him?

Ans. He said that the amount had been fully paid sooner than he thought for.

Ques. Those statements which you have spoken of, slips of paper from which these partners ascertained the balances and the indebtedness from Hammell to Moore at the time of this interview, would you or would you not recognize them if they were produced before you? 10

Ans. I couldn't recognize them positively; I never saw them but that once.

(Witness being shown Exhibits No. 54 and 54a, saith:)

Ques. Could you say whether that is one of them?

Ans. I couldn't say positively; they have the general appearance.

Cross-examination:

By Mr. Wescott: 20

Ques. Does your brother owe you anything?

Ans. Yes. sir.

Ques. Have you any interest in the business?

Ans. No, sir.

Ques. You have no interest directly or indirectly in this controversy?

Ans. No, sir.

Ques. Of course you haven't talked to your brother about your testimony given? 30

Ans. No, sir.

Ques. Nor any one else?

Ans. No one outside of Mr. Drake.

Ques. Didn't even know that you were going to come over here to testify did you?

Ans. I knew it night before last, that is the first I knew of it.

Ques. You have never repeated the conversation, between your brother and Hammell, as you have above detailed it, to any one before to-day?

Ans. I don't recollect of it.

Ques. Your memory is very good isn't it?

Ans. I don't know that it is especially so.

Ques. There was no special reason for your remembering this conversation was there?

10 Ans. No, I don't know of any. I might say that I was interested in my brother's welfare of course, and that perhaps made me remember it.

Ques. But I thought you said you had no interest in the matter?

Ans. Pecuniary interest I meant.

Ques. In what way were you to assist your brother in this settlement?

Ans. Only by advice.

Ques. What was the particular object in your going

20 there?

Ans. The object was to assist my brother in making the settlement.

Ques. What did you do?

Ans. Conversed with Mr. Hammell, Mr. Taylor and Mr. Moore upon the best plan of making my brother secure.

Ques. Where were you the day before?

Ans. I can't remember.

Ques. Where the day after?

30 Ans. I can't remember.

Ques. What did you do or say and what persons did you meet the day before and the day after?

Ans. I haven't any recollection particularly about it.

Ques. You are sure that you have not talked to your brother about the testimony that you have given here this morning?

Ans. Do you mean as the testimony I have given here

this morning. We have talked over this matter for the last year, but as testimony it has never been mentioned.

Ques. State the language of your conversation with your brother, Taylor and Hammell and the order in which the conversation occurred?

Ans. I can't state the order in which it occurred. The beginning of it is something like this. I will have to tell you as I remember it. My brother mentioned to Mr. Hammell that we had come to try to have the matter settled and that he had brought Mr. Taylor with him as they had agreed on before, and Mr. Hammell seemed to be anxious that it should be settled and so stated and I think asked my brother what proposition he had to make in regard to it. My brother told him that if he could pay him the balance due to him that would be satisfactory and I think named the amount. Mr. Hammell said that he wasn't prepared to do that at that time; my brother then proposed a judgment note and Mr. Taylor a chattel mortgage. Mr. Hammel refused to give the judgment note and I said that I didn't think a chattel mortgage was good in Pennsylvania. A bill of sale was then talked of, and my brother proposed to give Mr. Hammell the amount that Mr. Hammell owed him for his interest in the business. Mr. Hammell thought it wasn't enough and they then went to making a schedule; my brother and Mr. Hammell enumerated the articles and Mr. Taylor wrote them down; that is about all of it; you might say all that I recollect of it.

Ques. Can you state the order of these occurrences backwards as well as forwards?

Ans. I don't understand that; I don't understand the question I mean. I was not giving the conversation in the order that it occurred.

Ques. How do you know that there was an equal interest partnership between your brother and Mr. Hammell?

Ans. I only know it through the conversation with my brother at various times and through the inference that day.

Ques. I suppose you advised your brother about the business at various times?

Ans. Very little.

Re-direct as to Mr. Wescott's cross-examination:

Ques. Was the conversation at Mr. Hammell's house, 10 between those present, at that time, and especially between the complainant and Hammell, understandable on any other theory than that of the existence of an equal partnership between those two?

(Objected to.)

Ans. No, sir.

Re-cross-examination by Mr. Wescott:

20 Ques. State the theory.

(Objected to as not responsive.)

Ans. I don't know how; I don't know in what way you mean me to state it.

GEORGE W. MOORE.

Sworn and subscribed this 29th of March, 1883.

C. V. D. JOLINE, M. C. C.

Adjourned until April 4th, 1883, at 10 A. M., witness 30 to be produced for cross-examination by Mr. Voorhees, if desired.

April 4th, '83, adjourned till April 6th, 1883, at 10 A. M.

April 6th, 1883, examination continued in presence of Mr. Drake and Mr. P. V. Voorhees.

Mr. P. V. Voorhees, who was not present at the examination of Mr. George W. Moore, objects, by consent, to all of his evidence relative to conversations and states that he has no cross-examination to make.

William T. Brewer, a witness produced on the part of the complainant, being duly sworn, deposeth and saith :

I live at 222 South Fifth street, Camden. I do business at 107 Dock street, Philadelphia. My business is that of foreign and domestic fruits and produce; I have been there in that business about fourteen years, that is in that neighborhood, but not the same number; I have been about a year in No. 107. I know the complainant. Lehman Moore; I have known him twelve years anyhow. I know Horace Hammell; I have known him for about fourteen years. I have had business relations with Horace Hammell. I have sold produce off of his farm for two or three years, and he has done my carting ever since I have been in the business previous to his troubles. I lived next door to him in Camden. He frequently talked to me about his business.

Ques. What, if anything, has he ever told you about his business relations with Mr. Moore?

(Objected to as hearsay, inadmissible and not evidence.)

Mr. Wescott, counsel for Benner, appeared at this point.

Ans. He told me that he sold out a half interest to Mr. Moore. I am unable to say in what year this was; as nearly as I can tell I should judge this was about two years before Horace's troubles; I have not any way of fixing the time.

Ques. As nearly as you can tell, what led to his telling you about it?

Ans. That is a question I don't know exactly how to answer; he told me how he did it.

Ques. How did he say he did it?

Ans. He was thinking of going into the wholesale grocery business with Evan Brown, of Moorestown.

Ques. Did he say anything else on that subject?

Ans. He said they were looking for a place.

Ques. Did he say anything about the alteration in the firm name, or the name the business was to be conducted under?

Ans. He said for the present it would be under his name on the bill heads. He gave a reason for this; his reasons were that he didn't want to offend N. D. Marshall.

Ques. What reason did he give for wishing to avoid offending Mr. Marshall?

Ans. He had offered to sell out to Mr. Marshall, and since he offered to sell out to him Mr. Moore had made a proposition to buy him out. Mr. Hammell and Mr. Marshall were friendly at that time.

Ques. Did Hammell say that Moore had paid him any money, and if so, what?

Ans. He said that he had paid him some money. I don't know the amount; I don't remember the amount.

Ques. State please how it was that you and Mr. Hammell came to have a conversation on the subject?

Ans. I am unable to state.

Ques. Who broached the subject, you or Mr. Hammell?

Ans. Mr. Hammell.

Ques. Was Mr. Hammell often talking to you about his business?

Ans. More or less.

(Mr. Wescott and Mr. Voorhees object to all conversations with Mr. Hammell.)

(Mr. Drake objects to Mr. Wescott's objection because not taken at the time the questions were asked.)

(Mr. Wescott states that he was not present until after

the examination commenced and therefore reserved his objection until the close of the examination.)

Cross-examination by Mr. Voorhees:

Ques. Who does your hauling now?
Ans. Mr. Moore.
Ques. Did you ever pay Hammell by a note for hauling for you?
Ans. No, sir.
I am unable to answer whether or not Mr. Hammell is alive now. 10
Ques. You and Mr. Moore are friends, aren't you?
Ans. Yes. sir.

Cross-examined by Mr. Wescott:

Ques. Were you subpœnaed to come here?
Ans. No, sir.
Ques. Have you talked to Mr. Moore about what you could testify to? 20
Ans. Yes, sir.
Ques. Did he ask you if you could testify to the things you have already testified to, or did you tell him, of your own volition, that you could?
Ans. I told him.
Ques. Do you owe him anything or does he owe you anything?
Ans. He doesn't owe me anything; I may owe him about a dollar and a half. Horace Hammell and I were very friendly and intimate.
Ques. Did you go to see him while he was in jail or did you go to see him since he came out? 30
Ans. I was to see him while he was in the State prison. I have not been to see him since he was out.
Ques. Did he talk about this matter when you saw him

when he was in state prison, and if he did State what he said?

Ans. He did not.

Ques. Hammell was particularly inclined to talk about his business, wasn't he, to you?

Ans. More or less.

Ques. He told you a great deal about his business didn't he?

10 Ans. No, not so much.

Ques. But what he did tell you you distinctly remember?

(Objected to as intended to mislead.)

Ans. I distinctly remember what he told me about selling out his teams.

Ques. What he did tell you; did he tell because you asked him or did he volunteer it?

20 Ans. He volunteered.

Ques. Did it strike you as peculiar that at least one year after his partnership with Moore had been entered into, he should come to you and state that the reason he entered into such partnership was, that he thought of going into a wholesale grocery business with Evan Brown, of Moorestown?

(Objected to as intended to confuse and mislead.)

Ans. He didn't tell me a year afterwards.

30 Ques. Did it strike you as peculiar that, a long while after the formation of this alleged partnership, Hammell should have volunteered to you the statement that he and Brown were looking for a place?

(Objected to as immaterial and misleading.)

Ans. It was not a long while after; it was at the time.

Ques. Why was it that the new firm was to go under his name for the present?

Ans. Because he didn't want to offend N. D. Marshall.

Ques. When Hammell volunteered this information to you did you ask him any questions?

(Objected to as misleading.)

Ans. I asked him if Mr. Moore's name was going to be on the bill-heads. 10

Ques. State what else was said by Mr. Hammell or by you?

Ans. Mr. Hammell said not for the present; didn't want Marshall to know it.

Ques. State anything else that Mr. Hammell said to you on this subject, that you have not already stated in your direct or cross-examination?

(Objected to as incompetent, too general.) 20

Ans. I know of nothing that I can think at present.

Ques. Of course you have no interest whatever in this matter?

Ans. I have not.

Ques. Then why did you take the trouble to go to Mr. Moore, being an intimate friend of Hammell's, and tell him that you could testify as you have already testified?

(Objected to as improper, incompetent and misleading.) 30

Ans. I was as much a friend to Mr. Moore as to Mr. Hammell, and did it in justice to Mr. Moore, believing it his due.

Further cross-examination by Mr. Voorhees:

Ques. After this alleged conversation with Mr. Hammell, did he continue to do your hauling?

Ans. He did.

Ques. Whom did you make arrangements with, after that, for your hauling, Mr. Hammell or Mr. Moore?

Ans. The same as I had always done. I was at their place of business frequently after that.

Ques. Was there anything different there to show that they had entered into business together; anything to show their partnership or lead you to suspect it, or did
10 their business appear to be conducted as before?

(Objected to as multifarious.)

Ans. I had no way of seeing any difference in the way of doing business.

Ques. At those visits would you have suspected any change in the business, if you had not had this conversation with Mr. Hammell?

Ans. I would not. Mr. Moore appeared to occupy the same position there that he did before I had this conversation with Mr .Hammell. Mr. Marshall's place of busi-
20 ness was No. 107 Dock street, where I am now; that is right across the street from Hammell's.

Ques. Did Hammell say that they intended to conduct the business in such manner that Marshall shouldn't suspect they were in partnership?

Ans. He did. Marshall's business was the produce commission business. Hammell did for him what little carting he had; he didn't have much.

Ques. Did Hammell give you to understand that they intended to keep the business in his name so as to deceive
30 Mr. Marshall?

Ans. He did.

Ques. Do you know whether Marshall was frequently in Hammell's place?

Ans. Yes, sir. They were intimate friends; I knew Evan Brown personally.

Re-direct :

Ques. Was this conversation with Hammell at or about the time of the formation of the partnership with Moore, or sometime afterward ?

Ans. It was at the time.

Ques. After that who did your hauling, Hammell or Hammell and Moore ?

(Objected to.) 10

Ans. Believing what Hammell told me, I should say that Hammell and Moore did.

Ques. Whom did you see the oftener at the office after this, Hammell or Moore ?

Ans. I am unable to say.

Dock street between Mr. Moore's office and my present office is a broad street. Mr. Marshall afterwards knew about this partnership.

Ques. How long afterwards ? 20

Ans. It was previous to the trouble with Mr. Hammell ; that is the first time he made it known to me that he knew it. I do not know how long he had known it then.

Re-cross by Mr. Wescott :

Ques. When was this partnership between Hammell and Moore entered into ?

Ans. I have already answered that ; I don't know the date. 30

Ques. About when ?

Ans. About 1878 I should think ; no about 1879.

W. T. BREWER.

Sworn and subscribed this 6th day of April, 1883.

C. V. D. JOLINE, M. C. C.

Adjourned until Wednesday, April 11th, 1883, at 10 A. M.

Adjourned until April 18th, 1883, at 10 A. M.

Adjourned until April 19th, 1883, at 2 P. M.

April 19th, 1883, at 2 P. M. examination continued in presence of Mr. Drake, Mr. Wescott and Mr. Voorhees.

10

THEODORE B. GIBBS, a witness produced on the part of the complainant, being duly sworn, deposeth and saith:

I am Sheriff of the county of Camden; I have been Sheriff since November, 1881; I know Horace Hammell. (Paper marked Exhibit No. 110, of complainant, shown witness, he saith:) That is a copy of an execution placed in my hands in favor of Nathan D. Marshall, with an inventory of goods and chattels of Horace Hammell annexed. That execution was placed in my hands December 20th, 1881, at 4.40 P. M., and the copy of levy, forming a part of Exhibit No. 110, is a copy of the levy attached to the execution; that execution is still in my hands unreturned. The copy of levy forming a part of Exhibit No. 110 is a copy of all the things levied on under that execution to the best of my knowledge. The goods and chattels levied upon and comprised in that levy were appraised for the purpose of allowing the defendant his exemption of $200, he being a man of family. That appraisement was made by John Campbell, Jr., Stephen Parsons and Joel P. Kirkbride, all of the county of Camden. They were competent men to make that appraisement.

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30

(Paper marked Exhibit No. 111, of complainant, shown witness, he saith:) That is a copy of the appraisement and of the exemption. Mr. John Campbell, Jr.'s business was that of a livery stable keeper. Stephen Parson's was a hotel keeper—a landlord. I think he

also kept horses for private use and for general carting. I think that they were as competent to make that appraisement as any men in Camden county. Joel P. Kirkbride was a farmer and miller. I had these goods advertised for sale for three different days in different parcels.

Paper marked Exhibit No. 112 of complainant shown witness he saith: That is a copy of one of the bills. The sale as advertised in No. 112 was for Wednesday, January 4th, 1882. My impression is that we had the sale at the 10 stable and dwelling-house for one day, and the sale at the farm in Gloucester township on the next day. All three sales were advertised right along. I did not sell all of the goods levied upon and advertised in these three advertisements, because a claim of property was put in by Mr. Lehman Moore. We sold all except those claimed by him. That claim of property was served on me December 27th, 1881.

Ques. Was there an injunction out of the court of Chancery, directed to Nathan D. Marshall and other exe- 20 cution creditors, in executions then in your hands against Horace Hammell served on you, restraining them from selling the goods mentioned in this claim of property.

Ans. Yes, sir.

Paper marked Exhibit No. 113 of complainant shown witness he saith: That is a copy of that claim of property served on me. The originals of which, Exhibits Nos. 110, 111, 112 and 113, are copies, are all in my office on file with the papers in that matter. I am also the receiver in this case appointed by the court of Chancery in this case. I did not deliver Mr. Moore the possession of 30 these goods on his claim of property. I did not permit him to use them until I got an order from the court of Chancery directing me as receiver to do so.

Cross-examination by Mr. Wescott.

I knew Horace Hammell while he was in the State prison and saw him several time while he was there.

(Objected to as irresponsive, immaterial and not cross-examination.)

Ques. Before he became entirely imbecile, did you have any conversation with him in the State Prison in relation to Mr. Moore's claim; if so state what it was?

10 (Objected to as above and as hearsay.)

Ans. I did. I don't know as I can state the exact words. It was something to this effect that if Mr. Moore had any interest in that stock he didn't know it.

I had no further conversation with him on the subject. I don't know any of the language he used. I had several conversations with him up there, and that part struck me very forcibly.

20 Cross-examination by Mr. Voorhees:

When I levied upon those goods I found out that they were Horace Hammell's from the men working there; they pointed the goods out to me.

(Objected to as hearsay and immaterial.)

They were men employed in and about the stables. The stable boss, Martin, I think his name was, pointed the goods out to me.

30 (All above objected to as not cross-examination.)

This man did not, at that time, say anything about Mr. Moore having any interest in them. I told him I was the Sheriff. He pointed them out as goods to be levied upon under this execution against Hammell.

(All above objected to as hearsay, immaterial, irresponsive.

Re-direct, subject to above objections:

This was about nine o'clock in the evening of December 22d, 1881. If I had known Mr. Moore had an interest in these goods I should have seized Horace Hammell's interest in them.

THEODORE B. GIBBS.

Sworn and subscribed this 19th of April, A. D. 1883. 10

C. V. D. JOLINE, M. C. C.

Adjourned until Thursday, April 26th, 1883.

April 26th, 1883, adjourned until Monday, April 30th, 1883, at 10 A. M.

Monday, April 30th, 1883, examination continued in presence of Mr. Drake, Mr. Voorhees and Mr. Wescott.

WILLIAM MARTIN, a witness produced on the part of the complainant being duly sworn, deposeth and saith: I live 20 at 438 Division street in Camden; my business is that of taking care of horses, and the stable for Lehman Moore, and keeping the stable in order. I remember the evening the Sheriff came in December, 1881, to this same stable. I don't remember anything particular that occurred through the day. It was in December, 1881. I don't remember the day of the month. There was nothing that I had that day to charge my mind on to exactly remember the day of the month. The Sheriff came about seven o'clock I think; maybe a little later, maybe at half past, but I 30 don't think later; the Sheriff was not there any other time that day; he waited till about eight o'clock for the other two teams to come in. One came in while he was there and the other didn't. Mr. Joseph Nichols was with the Sheriff; the Sheriff told me he came to take an ac-

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count of that stock; I looked at him a bit and he said didn't you know that your boss had gone up. I said no, sir, I didn't; he said "well he has," and he wanted me to hold the light while he took an account of the horses; he took the name and color of each horse, then he took account of the wagons and asked me if there weren't some carriages and sleighs, and he took account of the carriages, sleighs and harness, and carriage harness. He asked me if the teams were all in and I said "no, sir, there are two out yet." While we were talking about it one of those teams came in and he took account of that team. He waited awhile and said how long before the other would be in, and I said I didn't know, that I expected it in every minute. He waited awhile I suppose till after eight o'clock for the team to come in, but it didn't come it went back to the city again. Then he took account of the harness of each team that was in the stable. Then he said he guess he would go home and come down in the morning, and that he would leave them in my charge, and wanted me to take care of them. So he told me not to let any of them go out in the morning until he came down and saw me.

Ques. Did the Sheriff ask you to point out the horses of Horace Hammell?

Ans. No, sir, I don't think he did; I don't think he asked me anything about it. I believe he asked me if there was any stock in the stable besides Horace Hammell's. I told him no, for he had nothing else in there only his stock. He told me to lock the gates and take good care of them. I believe that is about all that passed that night about it that I can recollect of.

Ques. Before that time what directions, if any, had Mr. Moore given about the care of these horses, about the shoeing of them?

Ans. Well he would send word over by the driver,

the horse would be lame after being shod, that if Frank La Pierre couldn't shoe them to take them somewhere else, and I used to take some of these horses to Joseph Hanley, on Pine street.

Ques. Did Hammell ever tell you to take any of these horses to Hanly?

Ans. Yes, sir; I took them there before this shop was built.

Ans. After this shop was built ?

Ans. No, Hammell never told me to take them. He 10 told me he built that shop for his own use and he wanted the work done there. That is the shop he built at the stable—right at the stable gate.

Ques. What was the occasion of his saying this; how did Hammell come to say this?

Ans. Well, he said he built the shop there for his own use, and he wanted the work done there; he furnished the iron.

Hammell knew that I took some of the horses to Hanley after the shop was built, I told him that they couldn't 20 travel the way they were being shod there, and they would have to be shod somewhere else. Hammell found no fault with that, and finally he quit saying anything to me about it and I got them shod at Hanley's, some three or four of them.

Cross-examined by Mr. Voorhees.

This execution that the Sheriff had was against Horace Hammell. At least the Sheriff's talk; he said he wanted 30 account of Horace Hammell's stock. The Sheriff never said anything to me concerning Mr. Moore. Horace was my boss at that time; Horace had employed me; I took care of the horses at that time the same as I do now in the stable; I was stable boss.

Ques. How long had you been working in the stable for Horace before this 21st of December?

Ans. A little over five years. I had known Mr. Moore three or four years, when I saw him over in the office. I don't recollect of seeing Mr. Moore around the stables but once. I think he was there centennial year on a Sunday, although he may have been some other times, as gentlemen often came in with Horace, sometimes three or four of them.

Ques. What was Mr. Moore's position with Mr. Hammell before this 21st of December, as you understood it?

10 (Objected to as incompetent.)

Ans. A clerk in the office. I was first employed by Mr. Moore the last of January, I think, 1881. This was the January immediately after the levy was made; that would be January of 1882. I didn't go over to the office very often.

Re-direct:

I never got orders from Mr. Moore to take the horses
20 out before December 21st, 1881.

(Objected to.)

WILLIAM his ⋊ mark. MARTIN.

Sworn and subscribed the 30th of April, 1883.

C. V. D. Joline, M. C. C.

Adjourned until 3 P. M. same day.

30 Examination continued at 3 P. M. same day, in presence of Mr. Drake and Mr. P. V. Voorhees.

Marmaduke B. Taylor, a witness produced on the part of the complainant, being duly sworn, deposeth and saith:

I live in the city of Camden; I am practising in the city of Camden; I have been practising law since November, 1856.

Witness being shown paper marked Exhibit No. 101, saith: That paper is in my handwriting. I drew it and am the subscribing witness. It was executed in my presence on the day it bears date, December 6th, 1881, by Horace Hammell.

Witness shown paper marked Exhibit No. 102, saith: This paper was also drawn by me; was executed in my presence on the day it bears date, December 6th, 1881, by Horace Hammell and Lehman Moore. The paper is in my handwriting. The word "sixth" in both papers had been left blank before the execution and inserted by me previous to its execution. The papers were drawn at my office and executed at Mr. Hammell's house.

Letter and envelope shown witness, marked Exhibit No. 104, of complainant, he saith: That letter and envelope are each in my handwriting.

Ques. What was the occasion of your sending that letter to Mr. Moore?

Ans. When papers Exhibits No. 101 and 102 had been executed by the parties, I took the papers by the consent of both parties back to my office for the purpose of drawing a duplicate of the articles of partnership, Exhibit No. 102, which duplicate after being signed by Mr. Moore I was to retain for Mr. Hammell and hand the other papers over to Mr. Moore. Not considering it important to do it immediately and being pressed with other matters, I delayed having the duplicate drawn for a few days, and on the 12th of December I received notice from Mr. Hammell not to deliver the papers to Mr. Moore as he had discovered some error in the items of accounts between them. I immediately notified Mr. Moore as shown by Exhibit No. 104.

Mr. Moore called upon me to draw these papers, or at

least called upon me and stated that Mr. Hammell was very sick and desired to see me about them. Mr. Moore called upon me, but as I was counsel for Mr. Hammell in other matters I considered myself as acting for him.

These were not the first papers I drew up to effect this settlement. About a week previous to the 6th of December Mr. Moore called upon me, as above stated, to see Mr. Hammell, when I drew other papers which were executed but afterwards thrown aside.

10 Papers marked Exhibits No. 114 and No. 115 of complainant shown witness, he saith: These papers were executed on the 2nd day of December. My impression is that, after they were signed, some question arose as to whether Mr. Moore was fully protected by the sale of one-half of the partnership property for the moneys that he had advanced, when it was concluded by Hammell and Moore that he was not made safe and we abandoned these papers, and I believe this was the reason that I did not subscribe my name as witness to them, they being 20 canceled immediately after they were signed. I advised the changing of these papers.

Ques. What was the occasion of the changing of the sum of $3,124.03 mentioned in Exhibits 114 and 115 to $2,958.47 in Exhibits 101 and 102?

Ans. Mr. Hammell discovered some errors in the accounts as first shown, which were admitted by Mr. Moore, which reduced it to that sum.

The figures on the margin of the first page of Exhibit No. 101, partly in lead pencil and partly in ink, are 30 mine.

Cross-examination by Mr. Voorhees:

The papers, Exhibits No. 101 and 102, were delivered to Mr. Moore after I sent another letter, on the 21st day of December, 1881. I received on that day a note from

Mr. Hammell, which I have in my hand, requesting me to deliver the papers to Mr. Moore, in which he stated that he would fix up the difference between them. That is the day the papers were handed to Mr. Moore; Mr Moore came after the papers.

Re-direct:

Witness being shown paper marked Exhibit 116 of complainant, saith: This is the letter I referred to on my cross-examination. 10

M. B. TAYLOR.

Sworn and subscribed this 30th of April, 1883.

C. V. D. JOLINE, M. C. C.

WILLIAM MARTIN reappears upon the stand and desires to make the following correction in his testimony heretofore given:

I said this morning that Mr. Moore didn't give me any orders to send teams; in that I made a mistake. He used to send over a man once in a while for the teams 20 when they were a little short. He would say to let the man he sent over have the team or else to send it over by Alfred Deno, the other stable man.

Cross-examination by Mr. Voorhees:

I have not been talking with Mr. Moore any more than that he asked me if I didn't make a mistake, and I said that I did.

WILLIAM his ⋊ mark. MARTIN. 30

Sworn and subscribed this 30th of April, 1883.

C. V. D. JOLINE, M. C. C.

Adjourned until Wednesday, May 2nd, 1883, at 10 A. M.

Adjourned until Wednesday, May 9th, 1883, at 10 A. M.

Examination continued October 1st, 1883, at 10 o'clock A. M., in presence of Mr. H. A. Drake, and Mr. P. V. Voorhees.

The complainant declares his testimony concluded.

Adjourned until Wednesday, October 3d, 1883, at 10 A. M.

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Adjourned until Wednesday, October 10th, 1883.

Monday, October 10th, 1883, at 10 A. M., examination continued in presence of Mr. Drake and Mr. P. V. Voorhees.

DEFENDANT'S TESTIMONY.

Testimony on the part of defendants, Robert B. S. Diament and the First National Bank of Camden, N. J.

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Counsel for defendant above named offers in evidence a certified copy of judgment and execution of Robert B. S. Diament vs. Horace Hammell, recovered in Circuit Court of Camden county, on the 21st day of December, 1881, and marked by me Exhibit A, of Robert B. S. Diament. This certificate is made by Joseph C. Hollinshead, Clerk of said Circuit Court under his hand and official seal, on the 2nd day of October, A. D. 1883.

Counsel for defendant above named also offers in evi-
30 dence a certified copy of judgment of The First National Bank of Camden, N. J. vs. Horace Hammell, recovered in the Circuit Court of Camden county on the 21st day of December, 1881, and also of execution in same case tested on the same day, which said certificate is given under the hand and seal of Joseph C. Hollinshead, Clerk of said

Court, on the 2nd day of October, 1883, and is marked by me Exhibit B, of said First National Bank of Camden, N. J.

THEODORE B. GIBBS, a witness produced on the part of the defendants, Diament and First National Bank, and having been heretofore sworn, deposeth and saith:

I am Sheriff of the county of Camden, and have been since November, 1881. Executions were issued to me in the two cases of Robert B. S. Diament and The First National Bank of Camden, N. J., against Horace Hammell; each execution was tested December 21st, 1881, returnable to the January term, 1882; I received the Diament execution December 21st, 1881, at nine o'clock and twenty-five minutes A. M.; I received the bank execution December 21st, 1881, at one o'clock and eight minutes P. M.; I made levies under these executions, which said levies are attached to the executions; I have not returned those executions to the Court, but now have them in my hand; I did not return them because I did not consider the case completed; I was stopped by an injunction.

Witness shown paper marked Exhibit C of Diament, saith: This is a certified copy of the execution and levy under the Diament judgment made and certified by me.

Witness shown paper marked Exhibit D of First National Bank, said: This is a certified copy of the execution and levy in the bank case made and certified by me; I sold some of the property mentioned in these levies; I sold all the property mentioned in those levies except the horses, wagons, harness, blankets and other things belonging thereto, for which Mr. Lehman Moore, the complainant in this case, put in a claim of property.

I sold two of the horses mentioned in the levy named General and Fred; I think I went to the stable and got the foreman in the stable to show me the property in the stable belonging to Horace Hammell; he pointed out the property mentioned in the levy as Horace Hammell's; this property that was not sold is not in my possession; it was taken from me by Mr. Moore, under an order of the Court of Chancery in this cause; there were $742.82 paid from these sales on the Diament execution; it was paid April 26th, 1882; nothing has been paid on the bank execution; there are no executions in my hands and unpaid prior to the Diament execution; the execution of the bank was the next one received by me in the order of priority, after the Diament execution; all of Hammell's property, found and levied upon by me, has been sold except such as was taken by Mr. Moore.

Cross-Examination:

I was appointed Receiver.

Ques. Did the order which the court made direct you to permit Lehman Moore to use this property, while you retained possession of it as Receiver, or did the order of the court take the possession of the property from you entirely?

(Objected to by Mr. Voorhees as the order is the best evidence and the answer must be by a conclusion of law.)

Ans. I decline to answer the question until I refer to the order.

THEODORE B. GIBBS.

Sworn and subscribed this 10th day of October, A. D. 1883.

C. V. D. JOLINE, M. C. C.

Adjourned until Friday, October 12th, at 11 A. M.

Friday, October 12th, 1883, at 11 A. M., examination continued in presence of Mr. Drake, Mr. P. V. Voorhees and Mr. J. W. Wescott.

WATSON DEPUY, a witness produced on the part of the defendant, The First National Bank of Camden, N. J., being duly sworn, deposeth and saith:

I am the cashier of the First National Bank, and have been since January 8th, 1878. The bank is a defendant in this suit. The bank recovered a judgment against Horace Hammell about December 21st, 1881. 10

Witness shown paper marked Exhibit B, of bank, saith: That is a certified copy of our judgment. When that was recovered there were due to us $2,939.63. That was for money loaned to Mr. Hammell by the bank. We loaned him money on two notes, only one was made by him which was for $1,800, with collateral attached. The other note was made by G. W. Shallcross & Co., of Philadelphia, for $733.65. The last note was endorsed by Horace Hammell. We never recovered anything on this collateral; it was fraudulent and worthless; it was a forged certificate of indebtedness of the Newton Building and Loan Association for $2,000. I went to see the treasurer of the Association and he told me it was worthless; it appeared to bear the signature of Henry B. Wilson, the treasurer of the Association. Mr. Wilson said that the signature was a forgery, that he did not write it; as treasurer he refused to pay it; the genuine one had been paid the day before. No part of this money has ever been paid to us; not one cent. Horace Hammell was a regular depositor at our bank. He first commenced his deposits there as early as February, 1879; he used to make deposits sometimes almost daily, and then there would be omissions, and sometimes he would make daily deposits for four or five days, and then 20 30

perhaps he would not come there for a day or two. These deposits were made in the name of Horace Hammell. We discounted twenty-eight notes for him all of which were paid but two; three of those notes were made by Jonas Mellor; two by B. H. Davis; three by W. T. Brewer; four by Callahan and Benner; one by Joseph H. Willits; four by Joseph Campbell; one by E. P. Brown and Bro.; one by J. T. Hobson; four by Warner and Merritt; three by G. W. Shallcross and Co.; and two by Horace Hammell. I understood that these were ordinary business notes, except one given by Warner and Merritt, which was for horses and was renewed. The Jonas Mellor notes he told me were given to settle the dissolution of partnership, the Horace Hammell notes with a collateral attached were not business paper, but he told me he was borrowing the money for his business, and it went right into his bank account. The other notes were business notes and he so stated it to me. All of these notes went to his credit in the bank, and the money was drawn by check. By business notes, I mean notes received by him in payment for hauling. Mr. Hammell had a bank-book in which all credits were entered. When we discounted a note it was entered in the bank-book; the drawer of the note, the amount less the discount, the net amount being carried out.

Ques. I find on the 3rd of September, 1879, you discounted for him a note of Joseph Campbell at two months; how would that be entered in the bank-book?

Ans. The amount of the note; $200 less the discount with the name Joseph Campbell; the net amount being extended.

I do not know of my own knowledge whether Mr. Moore ever made any deposits in the bank himself; I never saw Mr. Moore before in my life that I know of; these deposits were principally made at our office in Philadelphia; I don't know of any exceptions. That

office is at 216 Market street, on the corner of Strawberry street. Thomas S. Nekervis has charge over there.

Ques. Did you understand that you were doing the banking business of Horace Hammell?

Ans. I did.

Ques. Did he continue his account with you up to the time of his failure?

Ans. Up to within about a mouth of the time of his 10 failure I think. Paper shown witness marked Exhibit E of Bank, he saith: That is a copy of his account in the credit book giving the date that the notes were discounted, the names of the drawers and amounts of the notes, and when due; it was made by me; those notes were discounted at intervals between February 12th, 1879, and October 15th, 1881. I did not know that Hammell claimed to have any one in partnership with him.

Ques. Did he ever make any statement to you about his business or about having any one in business with 20 him?

(Objected to as incompetent.)

Ans. He told me that no person was interested with him, that he owned everything himself; this was about the latter of November 1881, and in the presence of Edmund E. Reed and Albert Merritt.

Ques. If you had known that he was in partnership with anyone, and that Mr. Moore claimed to own the whole or any material part or interest in the horses, 30 wagons and harness that Hammell used in his draying business, would you have made these discounts and advances to him in the way you did?

(Objected to as incompetent.)

Ans. No.

Ques. How came you to give Hammell credit; was it

because he held himself forth and was reputed in business circles to be the owner of the business of draying individually, and not in partnership with anyone?

(Objected to as incompetent and leading.)

Ans. It was.

We estimated Mr. Hammell's credit upon his business
10 reputation; his business reputation was good.

Ques. Was he reputed in the business world to be the owner of these horses and wagons in controversy in this matter?

(Objected to as incompetent.)

Ans. He was; or yes.

I first heard that Mr. Moore claimed to be partner after we obtained our judgment; it was after the proceedings were commenced in this cause; it was from these pro-
20 ceedings.

Ques. Was the credit given by your bank to Hammell based upon the belief that Hammell was the individual owner of the business and property which we have been talking about?

(Objected to as leading, incompetent and already testified to.)

Ans. Yes.

Ques. Did he represent to you that he was such owner?
30

(Objected to as already testified to.)

Ans. Yes.

Mr. Moore never gave us notice that he claimed to be the owner of these goods at any time before our judgment.

(Objected to as immaterial.)

Cross-examination, subject to the above objections:

There were two other notes of G. W. Shallcross & Co. presented besides the unpaid one included in this judgment; they are marked on Exhibit E as Nos. 17 and 21; the unpaid one is marked No. 25; Nos. 17 and 21 were paid at maturity. The business of G. W. Shallcross was produce and commission, in Philadelphia; Shallcross failed just before this note came due and the firm went 10 up.

Ques. What had been the reputation of this firm before? (Objected to as immaterial and not a matter of controversy in this cause.)

Ans. Its credit had been fair.

Ques. At the time of and before you recovered judgment in this case, was not Horace Hammell the owner or reputed owner of a large amount of real estate besides the personal property in controversy in this suit?

Ans. Of real estate under mortgage but not of real 30 estate clear.

Ques. When you took this collateral of $2,000 had you any doubt about its genuineness?

(Objected to as immaterial.)

Ans. No, sir.

Ques. You have stated in your direct examination that the business reputation of Horace Hammell was good; was it not unusually good?

Ans. No; none of his papers had ever gone to protest 30 at our bank, that I know of; he was reputed to be careful in the meeting of his business engagements.

Ques. Did you ever hear of his making business engagements beyond his ability before that time?

Ans. I never did.

To Exhibit E I have added the numbers of the notes

consecutively, which is an addition to the copy of the books.

WATSON DEPUY.

Sworn and subscribed this 12th of October, 1883.

C. V. D. JOLINE, M. C. C.

BENJAMIN I. DIAMENT, a witness called on the part of the defendant, Robert B. S. Diament, and being duly sworn, deposeth and saith:

I am a brother of Robert Diament, the defendant; I have no personal interest in this cause; I had a conversation with Mr. Moore, in December, 1881, either before or after the 7th; I can't just tell the day; it was before this suit was commenced; Mr. Hammell was sick at his house, and I was to see him on business to get this note that I have in my pocket, the last note I ever took of him; when I got to his house they told me he wasn't in, and they told me they thought he had gone down toward the ferry, and that I would likely meet him returning home; the doctor had told him to go out to walk when he felt like it; instead of meeting him I met Mr. Moore just before I got to the railroad crossing on Fifth street; he was coming to Mr. Hammell's house; I asked him if he was going to Mr. Hammell's and he said "yes;" I said "he is not in;" he said that is strange, for he had just sent for him to come over; I can't give every word exactly of this conversation; he said he is bothering me by sending for me to come over and not being in. This was Mr. Moore, the complainant in this suit; I said "Mr. Moore, Mr. Hammell is a very sick man, or quite sick;" I forget which, and I am afraid if he doesn't get better he is not going to live very long. I said Mr. Moore, you have been in his employ very long; why doesn't he give you charge of his business over there and go off and take a rest somewhere where the people can't get to see him. He says Mr.

Hammell won't tell me any more of his business than he would you; the men know over the river that I am not boss, and everything is getting in a complete muss over there. That was all the conversation of any importance and we walked on to the ferry.

(All above objected to as immaterial.)

10

Ques. Did you understand from Mr. Moore's words and manner at this conversation, that he was but an employee of Mr. Hammell?

(Objected to as incompetent and immaterial.)

Ans. I did.

I have had business with Mr. Hammell. (Objected to as immaterial.) I have sold him flour and feed, cracked corn, oats, bran and horse feed, both for his own horses and to sell. He generally paid me for this with notes 20 signed my himself. I have frequently been to his place of business, and have seen Mr. Moore there.

Ques. Did he appear there as a mere employee or as a partner?

(Objected to as incompetent.)

Ans. An employee.

I never had any conversations at the store with Mr. Moore about partnership matters; I am a manufacturer of flour and feed.

Ques. Do you know what was the business reputation, 30 whether Horace Hammell was conducting business as an individual or whether he was in partnership with Mr. Moore or any other person?

(Objected to as incompetent.)

Ans. He was conducting business as an individual.

Ques. Did you ever see anything at their store on

Dock street, or anywhere else, to lead you to suppose that Horace Hammell was transacting business in any other manner than as an individual?

Ans. I did not.

Cross-examination:

My business is carried on at Alloway, Salem county,
10 N. J. My brother Robert is employed by us working by the week. Our firm is F. Diament & Son.

Ques. What was there about this conversation that caused you to remember it so particularly?

Ans. This note in my pocket and it was the only time I ever saw Mr. Moore in Camden. The note is one given F. Diament & Son for flour and feed, dated December 7th, 1881, for $441.81, made by Horace Hammell and due in three months. This conversation was just a week before or a week after I got this note; I am at a
20 loss there; I wouldn't swear that it was on the day that note is dated. Mr. Hammell's business reputation at that time was good as far as we knew; we were always glad to get his notes; my business when I went over to the office was transacted with Mr. Hammell; this flour and feed that Horace Hammell bought to sell was sold at Jonas Mellor's store; I understood that it was Horace Hammell's store and that Jonas Mellor was employed there by him; I never knew that the firm was Hammell & Mellor.

30 Ques. What made you think that Mr. Moore was an employee when you went over to the office?

Ans. Because I never transacted any business with Mr. Moore in my life; he never had a word to say about the business. If I went in there and Mr. Hammell wasn't in I inquired for him and Mr. Moore said he wasn't in and never said anything to me about what my business was in any shape or form.

Ques. What did Horace Hammell owe your brother Robert for?

(Objected to.)

Ans. It was in this building and loan transaction; it was for money lent; I knew it; I saw some of the transactions; I caused my brother to do it; that is I influenced him to do it. Mr. Hammell spoke to me about it before he spoke to my brother. 10

Ques. What did your brother Robert take as security for the payment of this money?

(Objected to as immaterial and improper at this stage of the proceedings.)

Ans. Horace Hammell's individual note; nothing else. He held the building loan paper, and he took Horace Hammell's note as security for that; he said he knew nothing about the building association, but he did know Horace Hammell. 20

Ques. Then this money which Horace Hammell owed your brother Robert, was money used by your brother in the purchase of certificates of the Newton Building and Loan Association?

(Objected to as not cross-examination, immaterial and improper.)

Ans. Yes, sir.

Ques. State if you can whether your brother purchased these certificates at a discount, or gave the full face value of them? 30

(Objected to as above.)

Ans. It was at a discount; he said this certificate is worth so much if you hold it six months; this man

wants the money; that was what it was worth at that day.

Ques. Why was it that you let your brother take a judgment bond, and you held off on your note above spoken of?

(Objected to as above.)

Ans. My brother had the money to buy the first certificate, and then took Mr. Hammell's note as
10 collateral, as he didn't know the building and loan association and had this note discounted, and when that note was due he surrendered the certificate to Mr. Hammell and deposited the note in bank for collection and the note was paid. Then he bought again and gave a note the same way and then he did it several times. The last time he let the note go to protest, and then made several promises to pay it; my brother becoming alarmed came to Philadelphia while I was in Cape May and told the circumstance to Robert Stretch, in
20 the West Jersey Express Office, my brother-in-law, and he said, Bob, I would be afraid of that, you've got a good deal at stake there; go over and see Sinnickson Chew and tell him to take you to the best lawyer in Camden. Mr. Chew took him to Mr. Voorhees' office; they told him that the safest thing was to get judgment as quickly as he could. They got judgment then, and he telegraphed me at Cape May to come at once to Camden, that there was trouble with Hammell; I came up and saw Mr. Voorhees, and he said that there were so many
30 judgments ahead that he wouldn't pay us to the cost of getting judgment; that is why we haven't judgment.

Re-direct:

Ques. In the copy of your brother's affidavit in "Exhibit A" of Diament, he says the true consideration of

the notes given by Hammell to him was money lent and advanced by him to Hammel; are you not therefore mistaken in saying that he took the notes as collateral security?

(Objected to as improper.)

Ans. That is a misunderstanding between him and me; he took these notes, but I thought he had the paper too. 10

BENJAMIN T. DIAMENT.

Sworn and subscribed this 12th of October, A. D. 1883.
C. V. D. JOLINE, M. C. C.

JOSEPH CAMPBELL, a witness produced on the part of Diament and First National Bank, being duly sworn, deposeth and saith:

I am in the canning and preserving business; I have a great deal of hauling to be done; we have employed Horace Hammell to do quite a large amount of our carting; he did hauling in 1880 and 1881; sometimes he was paid in cash and on some occasions I gave a note. 20

Witness shown paper marked Exhibit E, of bank, saith: The notes given by me marked on that memorandum were given about the times there specified I think; they were given for hauling done by Hammell's teams; sometimes I gave the orders for hauling to Mr. Hammell himself, sometimes through the telephone to his office, sometimes perhaps by a message through one of the carters; I don't remember particularly whether I ever gave any of those orders to Mr. Moore; I think so because Mr. Moore was in Mr. Hammell's office; the orders were quite frequently given to Mr. Harris, who was acting as foreman; they were given by telephone to the office frequently. 30

Ques. Did you understand that Hammell was in business individually or that he had a partner?

(Objected to as incompetent.)

Ans. From the transactions that I had with him I supposed he was in business by himself without having any positive knowledge otherwise. He receipted for those notes that I gave him his individual name.

Ques. What was his business reputation that he was
10 transacting business as an individual or in partnership?

(Objected to as incompetent.)

Ans. I don't know that I have a right to express an opinion there; I don't know what the public opinion was as I was not conversant with the public opinion.

Cross-examination:

Horace Hammell's business reputation, so far as I
20 know, was very good up to the time of his failure.

JOSEPH CAMPBELL.

Sworn and subscribed this 12th of October, A. D. 1883.

C. V. D. JOLINE, M. C. C.

THOMAS S. NEKERVIS, a witness produced on the part of the bank, being duly sworn, deposeth and saith:

I am connected with the First National Bank; I am
30 in charge of its office in Philadelphia, at the corner of Strawberry and Market streets; Horace Hammell kept a bank account at our bank; most of the deposits were made at the Philadelphia office; those deposits were not made on any special days; sometimes there would run four or five deposits on consecutive days; they were brought by some one in the employ of Horace Ham-

mell; I can't say who; they were not always brough by Mr. Hammell; Mr. Hammell's last deposit was made on the 21st of November, 1881.

THOMAS S. NEKERVIS.

Sworn and subscribed the 12th of October, A. D. 1883.
C. V. D. JOLINE, M. C. C.

Adjourned until Wednesday, October 17th, 1883, at 10 A. M. 10

Wednesday, October 14th, 1883, at 10 A. M. Examination continued in presence of Mr. Drake and Mr. Voorhees.

ALBERT MERRITT, a witness produced on the part of the defendants, Diament and the bank, being duly sworn, deposeth and saith:

I am State Senator of the county of Camden; I am in the fruit importing business in Philadelphia; I know Horace Hammell, one of the defendants in this cause; I was present at a conversation between Horace Hammell, Mr. Reed, Mr. Depuy and others; it was a day or two, before he failed; I think it was sometime in December, 1881; I went to his house in company with Edmund E. Reed, Watson Depuy, John Smith, and possibly one or two others; I went there to get a statement of his affairs as we were interested in his affairs; he owed us on borrowed money, and we were on his notes to something like $5,000; in figuring up his assets he figured his real estate of two or three properties in Camden, and a farm somewhere near Camden; then he stated the number of horses and wagons that he owned; I think that there was a driving team and a carriage; he stated the number of horses and wagons he had; I don't know how many; if I remember rightly he said he had some on this side and some in Philadelphia; he included in that 20 30

the horses and wagons he used in hauling in Philadelphia.

(All above objected to as immaterial.)

Ques. Did he say that he was the absolute owner of these?

(Objected to as above.)

10

Ans. The question was asked if he was the owner of these wagons and horses, and these things used in carting, and he said that he was; he stated that he was sole owner; a short time before that he had offered to secure me by giving me a chattel mortgage on all these things; Horace Hammell did more or less hauling for us; he used to do a great deal more than he did a short time before this; I had known him intimately for fifteen years; ever since I had been in business; I saw him
20 very often; several times a week, at his place of business, and at our store also; he came often to us to get accommodation.

Ques. Did you ever see anything at his place to lead you to suspect that he was in partnership?

(Objected to as incompetent.)

Ans. No; I never had an idea that he had a partner.

Ques. Did you ever see Mr. Moore at his place of business?

30 Ans. I never saw him to know him till after this failure; I may have seen him but not to know who he was.

Ques. What was the general business reputation of Horace Hammell; that he was an individual trader, or that he was in partnership with any one in the hauling business?

Ans. The general impression was that he was an individual trader; his bill-heads were simply Horace Ham-

mell; no company, nothing to indicate that he has a partner on them; I never heard any one intimate that he had a partner.

Ques. Were the methods, on which this hauling business was conducted, such as to lead persons to believe that it was a partnership business, or was conducted by Horace Hammell individually?

(Objected to as incompetent.)

Ans. I should say that they were decidedly such as to lead persons to believe that he was conducting business on his own account individually. 10

Cross-examined:

Subject to above objections.

Ques. What was there about the business which you knew leading you to believe that it was not a partnership business?

Ans. One thing that would lead me very strongly to think that it was not a partnership business was that he came to me frequently to borrow money for a short time complaining that people who owed him carting bills were not paying him promptly, and we loaned him sums frequently and took his due bill, which he always signed Horace Hammell; the same with notes; if they came due and he would renew them, he would always give them as Horace Hammell; he always drew his checks too Horace Hammell. 20

Ques. What was the occasion of this visit to Horace Hammell, by Messrs. Read, Depuy, yourself and others just before his failure? 30

Ans. We had heard he was in financial trouble, and being creditors, we went there to get a statement of his affairs, his assets and liabilities.

Ques. Did he give anybody any judgment bonds on that day?

Ans. None that I know of; I heard that he did shortly afterwards.

Ques. Was Horace Hammell in a good deal of trouble that day?

Ans. Yes, he seemed very much distressed in mind. I had lent him cash on his check a short time before this interview; in my opinion it was about six or eight hundred dollars; that is according to my recollection.

Ques. Who was spokesman for this party on your side?

10 Ans. I don't know; I guess that we all had something to say as we were all more or less interested; Horace had promised to take care of us in this matter.

Re-direct:

Ques. Did Horace take care of you?

Ans. I shouldn't say that he did; I should say that he did not.

Re-cross-examination:

20 Horace's business reputation up to the time of his failure had been very good; there was no question about that.

ALBERT MERRITT.

Sworn and subscribed this 17th of October, 1883.

C. V. D. JOLINE, M. C. C.

JOHN M. SPENCER, a witness produced on the part of the bank and Diament being duly sworn, deposeth and saith:

30 I live in Center township, Camden county; I am a trucker. One of Horace Hammell's teams once broke a hind wheel off of my market wagon; that was about the year 1881, between the last of August and the first of September I should judge, as near as I can recollect.

(Objected to as immaterial.)

Ques. What did you do to get pay for that damage; state in your own words what interviews you had and with whom?

(Objected to as above.)

Ans. Mr. Sailer was present at the time the accident happened and he told me to get the axle fixed and present the bill to Horace Hammell, that it would be all right. I had the wagon repaired and presented the bill; Horace Hammell was in at the time the bill was taken to him. Mr. Moore, his clerk, told me that he was clerk for Horace Hammell and I had to call when he was in; I called and found Mr. Hammell in and presented the bill; he said he wouldn't pay it; I sued him then before 'Squire Brown, of Philadelphia, and got judgment against him; he didn't settle up at the time of getting judgment, but let it run on; I issued an execution against him, and attached his teams and he settled the bill.

Ques. What did Mr. Moore tell you about the business, and the ownership of the teams at this time?

Ans. He told me he was clerk; that I would have to see Mr. Hammell; that is all he said.

Ques. Did he tell you that Horace Hammell owned the teams?

(Objected to as leading.)

Ans. Yes, sir.

Ques. When did he tell you that; when you first went to him?

Ans. When I first went to him.

Ques. Did he say anything to you about his having, or not having, anything to do with this business?

(Objected to as above.)

Ans. He said he had nothing at all to do with the settlement of the bills.

Ques. Did he say why he had nothing to do with it?

(Objected to as above and incompetent.)

Ans. He only represented he was clerk; he said he was clerk for Mr. Hammell.

10 Ques. Was this injury done by a pleasure wagon or by a truck?

Ans. I don't know whether they call those big two-horse wagons trucks or not; it was a big two-horse wagon.

Ques. How did you know it was Mr. Hammell's wagon?

(Objected to as immaterial.)

Ans. The watchman of the market told me before I 20 saw the name; to my best recollection now, it had Horace Hammell's name on; it had no number on.

Ques. Did you come here willingly, or because you were subpœnaed?

(Objected to as immaterial.)

Ans. Because I was subpœnaed.

Cross-examined:

30 Ques. Didn't Mr. Moore also tell you that Horace Hammell and Mr. Sailer were looking this thing up?

Ans. No, sir; Mr. Sailer appeared as a witness against me in the suit.

Ques. What did Mr. Moore tell you about Mr. Hammell and Mr. Sailer in regard to this case?

Ans. Mr. Moore didn't mention Mr. Sailer's name; he told me I would have to see Mr. Hammell and present the bill to him.

Ques. Didn't Mr. Moore tell you that he, Mr. Moore, didn't know anything about this damage to your wagon?

Ans. No, he didn't tell me that he didn't know about the damage. He told me to present the bill to Hammell in that case; that I would have to see Hammell.

Ques. Didn't he, Mr. Moore, tell you that he, Mr. Moore, didn't know anything about this case?

(Objected to, as already answered.) 1

Ans. No.

Ques. Didn't he also tell you that Horace Hammell was attending to this case or looking it up?

Ans. No.

JOHN M. SPENCER.

Sworn and subscribed this 17th of October, 1883.

C. V. D. JOLINE, M. C. C.

Adjourned till Wednesday, October 24th, 1883. 20

Wednesday, October 24th, examination continued in presence of Mr. P. V. Voorhees.

CHARLES D. COLES, a witness produced on the part of Diament, being duly sworn, deposeth and saith:

I am Sheriff of the county of Salem; I have had considerable dealings with Horace Hammell, the defendant, since 1879. Those dealings continued up to the time of his failure in 1881. I supplied him with feed for his teams, and also with flour for his store, on Broadway. 30 Mr. Hammell gave me the orders for his feed; he most generally paid me with checks; he did give me a note once or twice, his own individual checks and notes. I was at his place of business in Philadelphia at least once a week for three years; sometimes oftener, but generally once a week. I most generally saw Mr. Moore when I was there, very seldom found him out of his office.

Ques. What did he appear to be doing?

Ans. Bookkeeper.

Ques. Did you ever talk to him about these bills of Hammell?

Ans. I did about a note that I had protested; that was after Mr. Hammell was sick. I asked him if he couldn't see Mr. Hammell and make some arrangement about taking that note up. He told me that he knew nothing about the protested note. I might have said
10 there that he told me he would see Mr. Hammell about it, which he did. I couldn't give all the conversation we had there in reference to it, but he told me at that time that Mr. Hammell kept his business entirely secret from him, and he went on that time to complain to me about so many people running in there at that time with notes and about money matters that he knew nothing about. This was either one or two weeks previous to the failure; I think about one week before.

Ques. Did he say anything about the workmen?

20

(Objected to as leading and immaterial.)

Ans. I don't recollect whether he did at that time, but he did at one time.

Ques. What did he say?

Ans. He was complaining in a general way of his inability to manage the business; he said that the men didn't look upon him as having sufficient authority over them, and he didn't see why Mr. Hammell didn't fix it
30 so that he could have control of his men and business.

Ques. In the last answer you say "his business;" do you mean by that Hammell's business or Moore's?

Ans. Hammell's business.

Ques. From this conversation were you led to believe that Moore was a partner and had any interest in the business, or was an employee managing the business for Hammell?

(Objected to as incompetent.)

Ans. That he was an employee.

Ques. Did you ever see anything at the office or elsewhere that led you to think that Moore had any interest in this business, or was simply an employee?

(Objected to as incompetent and immaterial.)

Ans. Simply an employee.

Ques. What was the general reputation in business circles; that Horace Hammell was doing business individually, or that he was connected with anyone as a partner in the hauling business? 10

Ans. Individually.

Ques. Did everything that you saw about the office on Dock street confirm your belief that Hammell was doing business individually?

(Objected to as immaterial and incompetent.)

Ans. It did. I was very intimate with Mr. Hammell. 20

Ques. Did Hammell ever have any conversation with you in the last two years about Moore?

(Objected to as immaterial.)

Ans. He did at one time. He was complaining to me of Mr. Moore being so slow in the office and said that he would not keep him if it wasn't that he was such an excellent collector.

Ques. Did he speak of him as an employee or as a partner? 30

(Objected to as above.)

Ans. As an employee?

Ques. Did you have a conversation with him about business about the time of his failure?

(Objected to as above.)

Ans. I did. I can't fix the time of that conversation except that it was on the day after he gave a first judgment; it was on a Wednesday morning in December. It was the 20th or 21st.

Ques. Give us the substance of that conversation—what Mr. Hammell said?

Ans. I went up there to get him to give me a judgment. He refused to do it and told me that he had given Mr. 10 Moore a bill of sale of his stock, and that if I would hold off my bill would be paid, as he only gave that to keep the Sheriff off of him to save himself.

Ques. Did he say that that bill of sale was given for the benefit of any one?

(Objected to as before.)

Ans. He said that he gave that bill of sale to enable him to pay certain bills, one of which was ours.

Ques. Did he say that it was for the benefit of his 20 friends?

(Objected to as leading.)

Ans. He did. I have never been paid my money.

Cross-examined:

I am a member of the firm of E. Coles and Son. That firm at the time of the failure was composed of Ephraim Coles, my father and myself. The judgment I tried to 30 get of Hammell on the Wednesday in December was for this firm. Hammell afterwards gave us a judgment, after he was locked up. The members of our firm are defendants in this suit.

Ques. How did Moore come to complain to you that he couldn't manage these men?

Ans. He was talking in a general way about the business, and said that he knew nothing about Hammell's debts until they were presented there, and said that Hammell ought to give him charge of the business.

Re-direct.

Moore has never paid me any of our bills when we presented them there at the office. I think that Hammell has left checks there for me in an envelope. 10

CHARLES D. COLES.

Sworn and subscribed this 24th of October, 1883.

C. V. D. JOLINE, M. C. C.

EDMUND E. READ, a witness produced on the part of the bank, and being duly affirmed, deposeth and saith: I am a director of the First National Bank of Camden, a defendant in this suit. I went to see Mr. Hammell and had conversation with him about his indebtedness to our bank. That was some time before we got our judgment, 20 I couldn't say how long. I went there with Mr. Depuy, John Smith and Mr. Merritt, to converse with him in regard to his indebtedness. Our great object was to ascertain his indebtedness, so that if it wasn't too much we might help him to get out of the scrape, and to find out what property he actually owned himself. He told me that he owned that property where the blacksmith shop was; all these properties were subject to mortgage, I think. I can't locate these properties now, but I think he had two or three frame properties this side of Mr. 30 Sharp's grocery store. Then the house on the corner of Fifth and Stevens he told me he owned at that time and also a farm in Camden county, I think. I don't know where it was located. I asked him whether he owned all of those horses and wagons or teams on the other side of the river personally, himself. He told me that he did. I then asked him who was taking charge of them

forhim and whether he was a good substantial man, a fair man. I don't know whether or not he told who was taking charge of them; I think he did, but I am not positive and wouldn't like to swear to it. Nothing was accomplished by these negotiations, at that time; afterwards there was something accomplished. I went personally, I think, and had a conversation with Mr. Hammell in regard to his indebtedness to the bank and
10 confessing judgment to the bank. He did so. The reason that I didn't do it sooner was that the agreement between us gentlemen was that we were to wait until we knew all of his indebtedness, and then if it was not too much we were to help him out of his difficulty. In the mean time I found that he was confessing judgments to different parties. I then thought it my duty to look after the interest of the bank, and after consulting with Mr. Depuy, I went down and saw him and got him to confess judgment to the bank for the amount of their
20 claim.

(All above objected to as immaterial.)

I have known Horace Hammell for many years, and have seen him frequently before he went to prison. I have been to his place of business in Philadelphia.

Ques. Have you ever seen Mr. Moore there?

Ans. Not to my knowledge; I wouldn't know him if I were to see him.

30 Ques. Did you ever hear that he or any one claimed to be in partnership with Horace before the commencement of this suit?

(Objected to as immaterial.)

Ans. I did not, and I never believed that anybody was.

(Answer objected to as incompetent.)

I knew Horace's business reputation. I am in business now.

Ques. What was the general business reputation of Horace Hammell; that he was conducting the hauling business individually, or that he was associated with some other person as a partner?

Ans. By himself individually. All of his notes and checks that came to the bank came in the name of Horace Hammell.

(Objected to as immaterial.) 10

EDMUND E. READ.

Affirmed and subscribed this 25th of October, 1883.

C. V. D. JOLINE, M. C. C.

Adjourned until Monday, October 29th, 1883, at 10 A. M.

Monday, October 29th, 1883, at 10 A. M. Mr. P. V. Voorhees, counsel for the defendants, Diament and First National Bank of Camden, declares his testimony to be concluded. 20

Tuesday, January 15th, 1884, at 2.30 P. M., examination continued in presence of Mr. A. H. Drake, Mr. P. V. Voorhees and Mr. J. W. Wescott.

Testimony offered on the part of the defendant, Benner.

WILLIAM T. BENNER, one of the defendants, being duly sworn, deposeth and saith: 30

I am a member of the firm of Callahan and Benner, and a defendant in this suit. We are in the wholesale fresh fish business in Philadelphia, at Dock street wharf. I have been on the wharf there 22 years in May; I haven't been in business for myself that long. I have known Mr.

Hammell 6, 7 or 8 years; along there. I have known him very well, very intimately. My place of business was within a square of his place of business. During these six or seven years I was in his office very often. I should say that I was familiar with his way of doing business. He aimed to do a cash business. He made out his bills every Saturday and sent them out with the expectation of getting them, and in a great many cases did. I have seen the slips of paper offered in evidence by Mr. Moore.

10 Ques. Do you know whether, since you have known Mr. Hammell, he always kept his business on slips of paper like those?

Ans. That is what I always saw in his office on Saturday when he was fixing up his accounts. I never saw anything else there, before the year 1879, than similar slips of paper. I saw him use similar slips of paper in the years 1876, 1877, 1878, ever since I knew Mr. Hammell. During the time that I have known him there has never been any change in his way and method of doing business that I knew of; I never saw any change.

20 I happen to know so much about his method of doing business because I suppose there was not a Saturday for the last four or five years of his business, that I didn't go in his office about the time he was fixing up. I have had conversations with Mr. Hammell about his business. During the years I have spoken of, Mr. Moore acted as Mr. Hammell's agent or assistant in his office. I was in his office just as frequently since 1879 as before. I did not notice any changes in their routine or way of doing business since 1879. Since 1879 persons have come

30 in on business while I was there; I should say several, probably more. They would come in and sometimes ask for the price of hauling articles, and ask for a reduction for instance, and Mr. Moore would tell them that they would have to see Mr. Hammell. I have also seen men come in there who have sold goods to Hammell, and Mr.

Moore would seem to know nothing about it, and say that they would have to wait to see Hammell. I have seen parties present bills there and they would be told the same thing. This occurred within the last two or three years that Mr. Hammell was there. During these last two or three years Mr. Hammell was sick some time. I saw Mr. Moore during the time that Hammell was sick; the only conversation he had with me to amount to anything was just before the failure of Mr. Hammell—one conversation; he dropped into our office on the way 10 over from seeing Mr. Hammell. I asked him how Mr. Hammell was and how the business was getting on; he told me it was getting on fairly, but would be much better if Mr. Hammell would fix it so that he could have control of the men. At another time, during or about the time of the sickness, he called in and seemed to want to say something; he then told me about this partnership and that he had been over to Hammell's and Hammell had made the teams over to him. As soon as he had gone I went over to Hammell's house and I said to Ham- 20 mell: "Horace, what have you been doing?" "is it so that you have made the teams over to Moore?" He said yes. I then said to him "you will find it impossible to make anybody believe that you and Moore were partners." He said I am not satisfied myself with the transaction and I will either send or go to Dukey Taylor and stop the consummation of it if possible, which he told me he did the next time I saw him.

I had talked with Hammell during the last two or three years of his business about Moore. During the 30 spring and summer trade, which was the truck and peach trade and very heavy, Mr. Hammell would go to Broad and Prime to take charge of the goods which he had to haul, to see that they were loaded right and to get them in proper shape for delivery. When he would get through with that, which was anywhere from six to

ten o'clock in the morning, he would come into the office, and on Fridays and Saturdays more especially, he would complain about Moore not having the writing part of the work up. The complaints became so frequent that I asked him why he didn't get somebody else, and he said that he had been tempted to do so several times, but that Moore was such a good dunner when people got back in their bills that he hated to discharge him. This was since 1879. Moore knew that we had check trans-
10 actions with Hammell; I couldn't say positively about note transactions. Mr. Moore, since 1879, came to me to get money on Hammell's account, which Hammell repaid. I have a judgment against Hammell for over $1,000; money which he requested me to lend him to put in his business. This judgment represents the last sum of money I lent him that he did not pay. I told Mr. Moore that Hammell owed me money.

Ques. Did Moore know that fact before he came to the office to tell you about the partnership arrangement?

Ans. Mr. Moore knew that Hammell and I had deal-
20 ings in cash. On one or two occasions Mr. Hammell made the arrangements and Mr. Moore came and got the check or cash, whichever it was. This was before Mr. Moore came to my office and told me about the partnership arrangement. I saw the slips of paper offered in evidence by Mr. Moore at Mr. Hammell's some time before he failed. Mr. Hammell was there when I saw them. Mr. Hammell gave them to me to look over. I went over them, and found at that time several of them missing, and found several errors in the addition and subtraction, whichever
30 it may have been. I remember when the Sheriff made the levy upon these goods; it was the day before the date of our judgment, the 20th of December, 1881, I think. I saw Mr. Hammell on the 20th, but didn't learn about the levy until the morning of the 21st.

Ques. State how often you saw Mr. Hammell and the

purport of your conversation with him from the time Moore told you about the partnership up to the 21st of December, 1881?

Ans. I saw him every few days, and I had learned that Hammell was owing some money, and I was talking to him endeavoring to devise some plan to get him on a good footing if the money that he was owing was giving him any trouble. I told him that if he thought he owed more than he could take care of, he should make an assignment, and I was willing to take my share with the rest of the creditors, or that I would loan him, if necessary, sufficient cash to carry him along, but if he would not do anything at all, and was going to allow everybody to close in upon him, he should take care of me. On the morning of the 21st I discovered that Marshall had entered up, and I went to his house and said, "now that you have let the thing start, give me a judgment." After the judgment was given, Hammell returned to his sitting room and I went in there and said to him: "Horace, how about your teams?" and he said, "I guess this will let them out." What I mean by "this" was an envelope; and the substance of the writing upon that was a request to Mr. Taylor to deliver those papers. I left there and went down to Mr. Cassady's with the bond. Mr. Hammell did the writing on the envelope in my presence. I read it. It was a request to Mr. Taylor to deliver those papers either to the bearer or to Mr. Moore. I wouldn't swear positively which, but some one of the household came in and said that Mr. Moore was down stairs. Mr. Callahan was present with other persons when this paper was written. When Moore spoke to me about the partnership I immediately went over to see Mr. Hammell about it. He told just exactly the same story as Mr. Moore did, but he told it in such a way as to lead me to believe that it was no such thing; that it was only done to protect the teams.

It wasn't what he said, but what he didn't say; it was his actions that led me to believe it was no such thing; he seemed as though he wanted to say very little about it.

I never stated to Mr. Moore, as he has testified, that I kind of had an idea about the partnership. Mrs. Hammell told me that after Moore got possession of the partnership property she either called upon or wrote Moore for some money and he refused to let her have it.
10 Both before and after 1879 I have seen Mr. Hammell either hand to Mr. Moore, if present, or put in Moore's drawer, if absent, some money ranging from twenty to thirty dollars. I asked him what it was for, what he did that for, and he told me that Moore took his wages out of that and the balance was used for paying carriers or loaders or any other petty expenses. Mr. Hammell told me that Moore had some little business, some conveyancing or scrivener's business outside of his regular business there which he allowed him to do. I couldn't state
20 distinctly about the time he told me that, whether it was before or after 1879, but I remember he told me it several times. Mr. Moore told me that he knew about the sale of the two horses for $450.00 to Campbell. I am not positive that I saw this on the weekly statements, but I saw it on some statement, where the fact was mentioned of $450.

Papers marked Exhibits 1, 2 and 3 of Benner shown witness, he saith: Those are bills of transactions that we had with Hammell for hauling. Mr. Moore after he
30 took the partnership property has been doing our hauling for us.

Paper marked Exhibit No. 4 of Benner, shown witness, he saith: That is one of Mr. Moore's bills after he took charge.

(The further testimony of Mr. Benner is continued till the next sitting.) Vide p. 234.

WILLIAM CALLAHAN, a witness produced on the part of the defendant, Benner, being duly sworn, deposeth and saith:

I am a partner of Mr. Benner in business in Philadelphia. I know Mr. Moore and Mr. Hammell; I have been in Mr. Hammell's office in Philadelphia quite considerable both before and since 1879. There was no change made in the routine of their business after 1879 that I observed. There was nothing to indicate, that I ever saw, that Moore was a partner of Mr. Hammell's after 1879. Since 1879 I have heard Mr. Hammell complain of Mr. Moore; I heard Mr. Hammell talking to Mr. Benner about Mr. Moore not getting his bills ready on Saturday, not keeping his accounts up, and that he didn't keep things straightened up about the office as he ought to. Mr. Benner said, why don't you discharge him or get some one else, and Hammell then said that Moore was such a good dunner, that he would dun a man to death to collect a bill or something like that. That was somewhere about 1879, I think; I have heard Hammell say Moore was a good collector several times. This was since 1879. I was present at the conversation between Mr. Hammell and Mr. Benner on the 21st of December that has been testified to. It was in the forenoon I heard Mr. Benner say to Mr. Hammell how about the teams? Just at that time there was a call for Mr. Hammell. If I remember right Mr. Hammell stepped outside of his sitting-room and only for a moment or two, and then he stepped back to the table in the middle of the room, and picked a little piece of paper which looked to me like an envelope, or a part of one, wrote something on it, and handed it over to Mr. Benner saying at the same time, that will let them out. Then I asked Mr. Benner what that was.

Cross-examination:

By Mr. P. V. Voorhees:

I am interested in Mr. Benner's judgment. I saw that bond that was given by Mr. Hammell. It was signed by Mr. Hammell while Mr. Benner and I were there. The bond was dated the day on which it was signed. Judgment was entered on the bond the same day the teams had been levied upon at that time.

10 WILLIAM CALLAHAN.

Sworn and subscribed the 15th of January, A. D. 1884.

C. V. D. JOLINE, M. C. C.

Adjourned until Monday, January 21st, 1884, at 3 P. M.

Monday, January 21st, 1884, at 3 P. M., examination continued in the presence of Mr. Drake, Mr. Wescott and Mr. P. V. Voorhees.

WILLIAM T. BENNER, being produced for cross-examination, and being cross-examined by Mr. Drake, saith:

20 Hammell owed us some of this money, for which he gave me judgment, two or three years. I wouldn't positively say the exact time,whether it was prior to January 1st, 1879, or not, without looking at the papers.

WM. T. BENNER.

Sworn and subscribed this 21st of January, 1884.

C. V. D. JOLINE, M. C. C.

The counsel for Benner declares his testimony con-
30 cluded.

Adjourned until Monday, Jan'y 28th, 1884, at 2½ P. M.

Monday, January 28th, 1884, at 2½ P. M., examination continued in presence of Mr. Drake and Mr. P. V. Voorhees.

Evidence of complainant in rebuttal.

LEHMAN MOORE, the complainant, being recalled, deposeth and saith :

I know Benjamin I. Diament. I had a conversation with him in December, 1881, before this case was begun.

Ques. Did you say to Mr. Diament that Hammell would not tell you any more about his (Hammell's) business than he would Diament ?

Ans. I don't know that the conversation I had with him was just in that shape. He asked me why Hammell didn't go away and rest himself for a while. I told him that I didn't know why he did not go, as there was nothing to prevent his going so far as the business was concerned that I was connected with. Hammell's own business I knew nothing about. 10

Ques. Did you say to him "the men knew over the "river that I am not boss and everything is getting in a "complete muss over there?"

Ans. No, sir; nothing of the kind. I did not say anything that would convey any such an idea in any shape. I did not do or say anything that could give Mr. Diament an idea that I was an employee of Mr. Hammell's and not his partner in this business. 20

Ques. Did Charles D. Coles or his firm of E. Coles & Son supply your firm with feed for your teams?

Ans. No, sir; they did not. We bought feed for our teams from the firm of Hammell and Mellor. Hammell kept his business secret from me. I think that I told Mr. Coles that I knew nothing about Hammell's own business; I did not mean to include the business of Hammell and Moore in which I was concerned; I meant the business he was engaged in outside of that; grocery store, feed store and two barns and blacksmith shop. His business connected with any of them I knew nothing about. 30

Ques. Were you complaining to Mr. Charles D. Coles

in a general way of your inability to manage the business?

Ans. No, sir; I had no occasion to; I had no trouble whatever to manage it.

Ques. Did you say to him that the men didn't look upon you as having authority over them and that you didn't see why Hammell didn't fix it so that you could have control of his men and business?

Ans. No, sir; I made no such remark; I did not say
10 anything calculated or intended to convey the idea that you were only an employee and not a partner of Hammell's in this business. I did not say to Diament in my conversation with him that Hammell was bothering me by sending for me to come over and not being in.

I did not say to Mr. Benner that Hammell ought to to give me charge of his business; I did not complain to William T. Benner that I could not control the men; I had no occasion to complain to anybody; I had no trouble with the men whatever.

20 Ques. When Mr. Benner said that he saw Hammell hand you $25 or $30 on Saturdays, was he correct or mistaken?

Ans. He was mistaken in regard to saying that he saw Mr. Hammell hand me that much money before 1879, as he never did. He gave me $15, which were my wages prior to January 1st, 1879; after that time Mr. Hammell would give me from $25 to $30, expecting me to take out of it the same amount of money as he took for himself, being $15, every Saturday; the balance was
30 to pay for help and ferry tickets for the teams.

I think that on one or two instances after the partnership I stopped at Benner's office and got money or a check from him and took it to Hammell after Hammell had made the arrangements, I not knowing anything about what the monoy was for or the use to be made of it.

One of our teams once broke a hind wheel off of a wagon belonging to John M. Spencer. He came to the office and asked me about it; I told him that Mr. Ham-

mell was looking after that and would attend to it; I merely knew that the team had run against the wagon, and Hammell took it in hand to see whether it was our fault or not; I did not want to interfere, as Hammell had charge of the matter and I didn't know what conclusion he had come to. I did not tell this man Spencer that I was clerk for Hammell; I did not tell him that Horace Hammell owned the teams; I did not tell him that I had nothing to do with the settlement of the bill, and I didn't tell him why I had nothing to do with the 10 settlement of the bill; he didn't present the bill to me; he asked me about it, and I told him that he would have to see Horace, because Horace had undertaken that matter to settle it as he thought was right.

Cross-examined:

By Mr. Voorhees:

I am sure I didn't tell Spencer it was Horace's team; quite sure. It was not Horace's team. The team belonged to Hammell and Moore at that time. I knew during the time of the partnership that Hammell was conducting 20 these other businesses I have spoken about.

Ques. He was connected with a good many ventures outside, wasn't he?

Ans. None other than I spoke of that I knew of.

I think that I have most of the men employed before the failure still in my employ.

Ques. How much money have you made out of this business, over and above the legitimate expenses of the business, since the court placed the property in dispute in your hands? Complainant objects to the evidence as irrelevant. Objection sustained. 30

C. V. D. Joline, Examiner,

Jan. 28th, 1884.

LEHMAN MOORE.

Sworn and subscribed this 29th of January, A. D. 1884.

C. V. D. Joline, M. C. C.

New Jersey Court of Errors and Appeals.

IN THE LAST RESORT, &c.

Between LEHMAN MOORE, Appellant, and ROBERT B. S. DIAMENT, THE FIRST NATIONAL BANK OF CAMDEN, AND WILLIAM T. BENNER, Appellees.	ON BILL, &c. PETITION OF APPEAL.

10

To the honorable the Court of Appeals in the last resort in all causes of law, &c.:

The humble petition of Lehman Moore, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery by the honorable Theodore Runyon, Chancellor of New Jersey, bearing date the first day of November, A. D. 1884, as modified by a subse- 20

quent order made on the fifteenth day of December, A. D. 1884, and by a still subsequent order made on the twenty-third day of June last, in a certain cause wherein the said Lehman Moore was complainant, and the said Robert B. S. Diament, the First National Bank of Camden, and William T. Benner were defendants, in this respect, to wit: that the said decree was in favor of the said appellees, who were defendants below, and against the appellant, who was complainant below, and also in this respect, to wit: that the said decree adjudges to the said defendants below affirmative relief. And your petitioner humbly appeals from the whole of the said decree as modified as aforesaid, and every part thereof, upon the ground that the same, as modified as aforesaid, is erroneous *in toto* for that the said decree should have been in favor of the said complainant, and against the said defendants, and also for that the said decree, as modified as aforesaid, if it be rightfully and legally in favor of the said defendants and against the said complainant, should have adjudged to the said defendants only negative relief, by the dismissal of the said complainant's bill and the dissolving of his injunction founded thereon.

Your petitioner therefore prays that the said decree of the said Chancellor, as modified as aforesaid, 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, 1885.

H. A. DRAKE,

Sol'r for and of Counsel with Appellant.

IN CHANCERY OF NEW JERSEY.

LEHMAN MOORE,
Complainant,
and
HORACE HAMMELL, et als.,
Defendants.

10

It appearing to the Court that the decree heretofore made in this cause, on the first day of November last, whereby the complainant was ordered and decreed to pay to Theodore B. Gibbs, the Receiver in this cause and Sheriff of the county of Camden, the sum of four thousand six hundred and eighty-three dollars and fifty cents, the value of the goods, chattels, horses, wagons, blankets, furniture, &c., delivered to said complainant by said Receiver, with interest on said sum from the twelfth day of January, eighteen hundred and eighty-two, to be distributed and paid by said Receiver in accordance with the directions of said decree, was duly served on the said complainant, and on his solicitor, on the twelfth day of November, eighteen hundred and eighty-four, and that afterwards the said complainant filed a petition of appeal from the said decree to the Court of Errors and Appeals, and that said appeal was dismissed by said Court on the sixteenth day of June, instant, and that the said complainant has failed to pay the said sum of money and interest in accordance with said decree.

20

30

It is thereupon, on this twenty-third day of June, eighteen hundred and eighty-five, on motion of Peter V. Voorhees, of counsel with the defendant, Robert B. S.

Diament, ordered and decreed, that the said complainant, Lehman Moore, do, within three days after the service of a copy of this order, return to and deliver to the said Theodore B. Gibbs, Receiver in this cause, the goods and chattels, horses, wagons, mules, harness, blankets and furniture delivered to him by said Receiver under the order of this Court heretofore made in this cause, in accordance with the provisions of said order.

And it is further ordered, that the said Theodore B. Gibbs, Receiver and Sheriff as aforesaid, do forthwith proceed and make sale and dispose of said goods and chattels, under the executions held by him according to law, and that said Sheriff do first cause said goods to be duly appraised by the same persons who heretofore appraised the said goods and chattels when they were first levied upon under said execution, and that the said Sheriff do distribute and pay the moneys arising from the sale of said goods and chattels, in accordance with the decree of this Court, made in this cause on the first day of November last past, and a copy of this order or decree be served on the said Theodore B. Gibbs, Receiver and Sheriff as aforesaid.

THEODORE RUNYON,
C.

Respectfully advised,
JOHN T. BIRD, V. C.

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

Exhibit No 4 of Complt,

PHIL., Jany. 10th, 1879.

Received of L. Moore five hundred dollars, on account of half interest in teams and business, consisting of twenty-four horses, fourteen wagons, and all double heavy harness, &c.

HORACE HAMMELL.

$500.00.

Exhibit No 102 of Complt

Know all men by these presents, that I, Horace Hammell, of the city of Camden and State of New Jersey, for and in consideration of the sum of seventy-nine hundred and fifty-eight and forty-seven one-hundredths dollars to me paid by Lehman Moore, of the city of Philadelphia and State of Pennsylvania, the receipt whereof is hereby acknowledged, hath and by these presents doth give, grant, bargain and sell unto the said Lehman Moore, his executors, administrators or assigns, all the goods and chattels mentioned in the schedule hereunto annexed and by me signed, to have and to hold the same to his and their use forever.

And I, the said Horace Hammell, hereby covenant that I am the true and lawful owner of said goods, and have full power to sell and dispose of the same.

Witness my hand and seal this sixth day of December, eighteen hundred and eighty-one.

HORACE HAMMELL.

Sealed and delivered in the presence of

M. B. TAYLOR.

Schedule of goods referred to in the foregoing bill of sale.

List of horses, wagons and harness, blankets, &c., in the stable situate at Fourth and Division streets, Camden, New Jersey:

Six bay horses.
One roan horse.
Four black horses.
Two black mares.
One brown mare.
Two bay mares.
Two sorrel horses.
Six iron-gray horses.
Two iron-gray mares.

Two brown horses.
One dark roan horse.
One white mare.
Eleven double wagons, no tops.
Two double wagons with tops.
One single wagon, no top.
One single light wagon with top.
Eleven pairs of blankets.
Fourteen sets of heavy double harness.
10 Two sets of heavy single harness.
Lot of corn in crib.
Hay and straw in mow.
Wagon hoisters.
Wagon boards.
Wrench.
Side boards, &c.

List of horses, wagons, harness, blankets, in stable situate Ninth and Carpenter streets, Philadelphia:
Five double wagons.
Five pairs blankets.
20 Five sets double heavy harness.
All the hay, feed and straw in mow.
Wagon hoisters.
Wagon boards.
Side boards.
Two bay mares.
One black mare.
One bay horse.
One brown mare mule.
Two black mare mules.
30 One black mule.
Side boards.
Wrench, &c.

List of goods at office, No. 104 Dock street, Philadelphia:

One iron safe.

Two desks.

Four chairs.

One sofa.

Seven hundred bags on top of office.

One pair of double trees.

One set of wagon poles.

Three hundred bags at J. Barnes & Co., No. 328 North Delaware avenue. 10

Dated December 6th, 1881.

HORACE HAMMELL.

Witness present,

M. B. TAYLOR.

Exhibit No 101 of Compl.

This agreement, made this sixth day of December, A. D. 1881, between Horace Hammell, of the city of Camden and State of New Jersey, and Lehman Moore, of the city of Philadelphia, witnesseth: Whereas, the said 20 parties, on the first day of January, A. D. 1879, did agree to form a partnership in the business of hauling and handling produce and other articles of merchandise, and have since been carrying the same on as partners; And whereas, in the settlement of the accounts of said partnership this day it has been ascertained that the said Horace Hammell is indebted to the said Lehman Moore, over and above his one-half interest in said partnership, to the sum of twenty-nine hundred and fifty-eight and forty- 30 seven one hundreths dollars, and that the said Horace Hammell has not yet transferred over to him the equal undivided half part of said partnership property;

Therefore, for the purpose of definitely settling the affairs of said partnership and paying the said Lehman

Moore the said sum of twenty-nine hundred and fifty-eight and forty-seven one hundredths dollars, it has been and is mutually agreed as follows:

1st. That the said Horace Hammell shall, immediately after the execution of this agreement, convey to said Lehman Moore all the stock, horses, wagons, harness, furniture and personal property now belonging to said partnership absolutely, by bill of sale, bearing even date herewith, the value of each of said party's interest over and above the debts of said partnership being the amount of twenty-nine hundred and fifty-eight and forty-seven one hundredths dollars, one-half of which already belongs to said Moore.

2nd. That upon the execution of said bill of sale the said Lehman Moore shall give to said Horace Hammell a full discharge of said indebtedness of twenty-nine hundred and fifty-eight and forty-seven one hundredths dollars.

3rd. That said partnership shall continue under the name of Horace Hammell as heretofore.

4th. That said Lehman Moore shall suffer and permit the said partnership to use all of said personal property in the business of said partnership, but that the same shall not in any wise be considered partnership property nor taken into account as the assets of the firm.

5th. That said partnership shall continue for the space of one year from this date, unless dissolved by death of either party or by mutual consent of both parties hereto.

6th. That in case of death of either party the partnership shall cease and all accounts up to that time settled with the heirs, executors or administrators of the party so dying.

7th. That each party shall devote his time and skill to the best of his ability toward the business of said partnership, and that all profits and losses shall be equally divided between the said parties and for the purpose of

ascertaining the same; the said parties shall keep or cause to be kept regular books of account of all their dealings and transactions, which shall always be open for either party to examine.

8th. That at the termination of said partnership a general settlement of the accounts shall be had between the parties.

9th. That neither of the above named parties shall become security or bail for any person or persons, or endorse any accommodation paper, or become liable theron unless by the consent of the other party. 10

10th. That both of said parties shall devote his time, skill and energy to the business of said partnership, and do all in his power to advance the interest of the same as herein before stated.

In witness whereof, the said parties have set their hands and seals the day and year first above written.

HORACE HAMMELL, [L. S.]
LEHMAN MOORE, [L. S.]

Sealed and delivered in the presence of

M. B. TAYLOR. 20

EXHIBIT NO. 104 OF COMPLAINANT.

CAMDEN, N. J., Dec. 12, 1881.

LEHMAN MOORE, ESQ.,

DEAR SIR:—Mr. Hammell notified me to-day not to deliver any papers executed by him; that in examination of the accounts he had discovered something he could not understand, and would like to see you about it first. 30

Please see him and arrange matters.

Truly yours,

M. B. TAYLOR.

I will be engaged all day to-morrow before a referee, so do not call.

Exhibit No 114 of Compl.

Know all men by these presents, that I, Horace Hammell, of the city of Camden and State of New Jersey, for and in consideration of the sum of five thousand dollars to me paid by Lehman Moore, of the city of Philadelphia, the receipt whereof is hereby acknowledged, hath and by these presents doth give, grant, bargain and sell unto the said Lehman Moore, his executors, administrators or assigns, all the equal undivided one-half interest of, in and to all the goods and chattels mentioned in the schedule hereunto annexed and by me signed.

To have and to hold the same to his and their use forever.

And I, the said Horace Hammell, do hereby covenant, that I am the true and lawful owner of said goods and chattels, and have full power to sell and dispose of the same.

Witness my hand and seal this second day of December, eighteen hundred and eighty-one.

Signed, HORACE HAMMELL,
and signature torn out.

Sealed and delivered in the presence of

Schedule of goods referred to in the foregoing bill of sale.

List of horses, wagons and harness, blankets, &c., in stable, situated at Fourth and Division streets, Camden, New Jersey:

Six bay horses.
One roan horse.
Four black horses.
Two black mares.
One brown mare.
Two bay mares.
Two sorrel horses.

Six-iron gray horses.
Two iron-gray mares.
Two brown horses.
One dark roan horse.
One white mare.
Eleven double wagons, no tops.
Two double wagons, with tops.
One single wagon, no top.
One single, light wagon, with top.
Eleven pairs of blankets. 10
Fourteen sets of heavy double harness.
Two sets heavy single harness.
Corn in crib.
Hay and straw in mow.
Wagon hoisters.
Wagon boards, wrench, slide-boards, &c.

List of horses, wagons, harness, blankets, &c., in stable, situate Ninth and Carpenter streets, Philadelphia:
Five double wagons.
Five pairs blankets. 20
Five sets double heavy harness.
All hay, feed and straw in mow.
Wagon hoisters.
Wagon boards.
Slide boards.
Two bay mares.
One black mare.
One bay horse.
One brown mare mule. 03
Two black mare mules.
One black mule.
Slide boards, wrench, &c.

List of goods at office, No. 104 Dock street, Philadelphia.

One iron safe.
Two desks.
Four chairs.
One sofa.
Seven hundred bags on top of office.
10 Lot of rope, on top of office.
One pair double trees.
One wagon pole.
Thee hundred bags at I. Barnes & Co., No. 328 N. Delaware avenue, Philadelphia.
Dated December 2, 1881.

Signed, HORACE HAMMELL,
and signature torn out.

Witness present:

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20 Exhibit No 115 of Campbell

This agreement, made this second day of December, A. D. 1881, between Horace Hammell, of the city of Camden and State of New Jersey, and Lehman Moore, of the city of Philadelphia, State of Pennsylvania; Whereas, the said parties, on the first day of January, 1879, did agree to form a partnership in the business of hauling and handling produce and other articles of merchandise, and have since been carrying the same on as partners, without any agreement in writing in reference to the same.

30 And whereas, in the settlement of the accounts of said partnership this day, it has been ascertained that the said Horace Hammell is indebted to the said Lehman Moore, over and above the profits of said business, in the sum of thirty-one hundred and twenty-four dollars and

fifty-three cents, as appears from a statement of account made between said parties.

Therefore, for the purpose of definitely settling the affairs of said partnership, it has been and is mutually agreed as follows:

First. That the said Horace Hammell will, immediately after the execution of this agreement, convey by bill of sale to the said Lehman Moore the equal one-half part of all the horses, wagons, harness and other personal property of said partnership, and that the said partnership shall continue under the name of "Horace Hammell" as heretofore.

That the said partnership shall continue for the space of one year from this date, unless dissolved by death of either party or by the consent of both parties hereto.

That each party shall devote his time and skill to the best of his ability toward the business of said partnership.

That the profits of the business shall be equally divided between the said parties, and for the purpose of ascertaining the same the said parties shall keep, or cause to be kept, regular books of accounts of all their dealings and transactions, which shall always be open for either party to examine.

That all losses in said business shall be equally divided between said parties, and at the end of said partnership a general settlement of the accounts shall be had between said parties.

That in case of death of either party the said partnership shall cease and all accounts up to that time settled with the heirs, executors or administrators of the party so dying.

That the said Horace Hammell shall secure the payment of said sum of three thousand one hundred and twenty-four dollars and fifty-three cents to the said Lehman Moore, in manner agreed upon between them, as

soon as possibly can be done after the execution of this agreement.

In witness whereof, the said parties have hereunto set their hands and seals the day and year aforesaid.

Signed, HORACE HAMMELL,
LEHMAN MOORE,
and signatures torn out.

Sealed and delivered in the presence of

10 Exhibit No 116 of Complts

CAMDEN, N. J., 12-21-81.

MR. M. B. TAYLOR, ESQ.

DEAR SIR:—Will you please deliver to Mr. L. Moore the papers you have in your possession, retaining mine, and Mr. Moore and I will fix the difference between us.

Yours respt.,
HORACE HAMMELL.

EXHIBIT NO. 8.

20 FEB'Y 14th, 1880.

Theodore	$7 00
Andrew	6 00
Shaeffer	3 25
Blange	8 00
Duvall	9 00
Johnson	9 50
Brown	8 00
Jackson	12 00
Gale	10 00
Chick	10 00
Wolfe	10 00
30 Stanton	15 00
Harris	15 00
Martin	10 00
J. Wood	8 00

J. Wood	$3 00
A. Jenkins	10 00
	$153 75

Wages	153 75	L. Moore	5 00
B. & P.	92 14	L. Moore	112 60
Camden	93 25	Sailor	90 53
Carson	46 94	Moore	15 96
H. H.	15 00	Moore	25 88
Atlantic	18 00	Moore	1 50
			$251 47

Stanton	186 13	
	40 69	
		226 82
H. H.		5 50
		$483 79
419 08		419 08
		64 71
Draw		24 71
H. H.		40 00
John		6 00
Due from H. H.		$46 00

EXHIBIT 10.

	Feb. 28.
Theodore	$6 25
Duvall	4 85
Andrew	5 50
Chick	8 00
Johnson	8 50
Brown	7 50

Shaeffer	$5 00
W. T. Harris	12 90
Jackson	12 00
Gale	10 00
Wolfe	10 00
Stanton	15 00
Blange	9 50
Martin	10 00
Wood	8 00
Wood	3 00
Jenkins	10 00
	$146 00

Wages	$146 00	Moore	$200 57
Cuningham	1 50	Saylor	141 00
Discount	1 65	Stanton	229 08
Carson	37 60	H. H.	1 75
Camden	57 27	Stanton	14 69
B. & P	142 94	Moore	11 09
Feed	92 84		
Hay	30 00		$598 18
H. H.	15 00		
	$524 80		524 80
			$73 38
Tickets			12 50
			$60 88
Cash			30 88
			$30 00
Due from H. H			
Less			5 00
			$25 00
Less tickets			$25 00
			00 00

Feb. 28th, 1880.

EXHIBIT NO. 11.

	March 6th.
Theodore	$6 75
Chick	5 75
Harris	13 00
Brown	8 00
Shaeffer	3 10
Johnson	8 75
Andrew	5 75
Duvall	8 00 10
Blange	9 00
Jackson	12 00
W. Gale	10 00
Wolfe	10 00
Stanton	15 00
Jenkins	10 00
J. Martin	10 00
J. Wood	8 00
J. Wood	3 00
	$146 10 20

Wages	146 10	Moore	270 28
B. & P	173 78	Sailor	67 47
C	57 77	John	264 23
Penna	52 83		
Insurance	12 00		$601 98
Ctges	60		
Feed	11 92		
H. H.	15 00		
	$470 00		30 470 00
			$131 98
Hay			20 46

	$111 52
Cash	41 52
Due from H. H	70 00
Due from H. H	8 73
	$78 73
C. F. Eastlack	13 02
10 Due from H. H	$91 75

March 6th.

EXHIBIT NO. 9.

Wages	$148 90	Moore	$267 75
B. & P.	158 15	Stanton	169 60
Camden	54 88		
Carson	57 44		$437 35
Hay	5 04	P. D. H.	3 11
20 George	60		
Discount	60		$440 46
Ctge	2 50		
H. H.	15 00		
	$443 11	All paid in full.	
Seifert	15 00		
	$458 11		458 11
Due H. H.			$20 76
			3 11
30			$17 65
			3 71
			$13 94

Feb. 21st, 1880.

EXHIBIT NO. 7.

Rent	$37 50	Sailor	$71 53
Wages	144 10	Moore	15 00
P. W. & B	99 30	"	25 00
Carson	33 58	"	24 00
Camden	59 28	"	16 00
		"	12 78
	$373 71	"	1 26
H. H.	15 00 (A)		
Feed	76 32		$165 57
		Stanton	155 65
			$321 22
	$465 03		465 03

Due H. H,	$143 81
Less check	26 00
	$117 81
Less tickets	3 36
	$114 45
Less frt	1 75
Due H. H	$112 70

Jan. 31st, 1880.

Due H. H	$112 75
Tickets	12 50
	$125 25
Eastlack	18 16
	$107 09
Garrison	46 47
	$60 61
Alloways	3 80
	$56 81

Less	$40 00
Due H. H	$16 81
Less	6 81
Due H. H	$10 00
	10 00
Cash to H. H	$00 00

Paid in full.

10 Jan. 31st.

EXHIBIT NO. 12.

MARCH 13th, 1880.

Theodore	6 75
Chick	7 75
Andrew	6 05
Johnson	8 50
Shaeffer	1 80
20 Duvall	8 00
Blange	9 25
Brown	9 50
Jackson	12 00
W. Gale	10 00
Wolfe	10 00
Stanton	15 00
Harris	15 00
Jenkins	10 00
Martin	10 00
30 J. Wood	8 00
J. Wood	3 00
	$150 60
1880	18 93
Moore	50 00

			$20 00
			20 00
			57 00
			4 00
			26 54
			196 47
Sailor			50 00
			10 00
			10 50
109 85			39 35
108 94			
			109 85
John			25 25
			107 07
			69 64
March 31st, 1880.			201 96
B. & P	231 84	Moore	196 47
C	60 56	Sailor	109 85
Hay	18 93	Stanton	201 96
Carson	31 89		
Wages	150 60		508 28
H. H	15 00	Moore	27 18
			535 46
	508 82		508 82
Cash			$26 64
		March 13th, 1880.	

EXHIBIT NO. 34.

Wages	308 10	Sailor	289 52
Straw	21 96	Moore	385 47

Ctges	$3 10	John	$335 69
Feed	129 22		
Blacksmith	41 65		$1010 68
P. W. & B	29 66		
Camden	27 89		
Carsons	68 14		
H. H	15 00		
	$644 72		644 72

10 Due from H. H $365 96
Due from H. H 40 00

405 96

Due from H. H. Aug. 7th 2,237 95

Due from H. H 2,643 91
Due from H. H., less Sharp 81 50

$2,562 41

Tickets 25 00

20 Due from H. H $2,537 41
Due from H. H 215 85

Due from H. H $2,753 26
August 14th, 1880.

PART OF EXHIBIT NO. 34.

CAMDEN, N. J., August 2nd, 1880.

MESSRS. HAMMELL & MOORE,
BOUGHT OF HAMMELL & MELLOR,
30 Dealers in
Flour, Feed, Hay, Straw, Lime, Hair, &c.,
Broadway, first door above Ferry Road.

July 8, to 2200 lbs. meal $26 40
" 8, " 674 " Bran 8 15

July 15, to 1500 lbs meal and corn		$18 00
" 17, " 1500 " c and oats		24 00
" 23, " 1100 " c and meal		11 00
" 29, " 1000 " c and meal		10 00
" 31, " 1500 " c and oats		24 00
" 19, " 59 " cut hay		7 67
		$129 22

Received Payment,

HAMMELL & MELLOR.

10

EXHIBIT NO. 54.

JAN'Y 1st, 1881.

H. H.	$15 00	Moore	$118 16
Allowys	4 85	Sailor	113 30
Cunningham	1 25	John	126 21
Feed	81 10	Shallcross	243 40
Camden	38 99		
Carson	30 17		$601 07
B. & P	66 27		
Draw	218 09		
Draw	19 35		
Draw	5 00	End of 1880 business.	
Ed	4 80		
Cavis	5 75		
D. B. Kaighn	20 80		
Lapierre	54 53		
	$565 95		$565 95

20

Due from H. H	35 12
Due from H. H., Dec. 25th	4,392 51
Due from H. H	4,429 63
Less for tickets	25 00
Due from H. H.	$4,404 63

30

EXHIBIT NO. 54A.

CAMDEN, N. J., Dec. 31st, 1884.

MESSRS. HAMMELL & MOORE,
To HAMMELL & MELLOR, Dr.
Dealers in
Flour, Feed, Hay, Straw, Lime, Hair, &c.,
Broadway, 1st door above Ferry Road.

Dec.	2.	To 1200 lbs.	feed	14 40
	3.	359 "	bran	4 30
	11.	1500 "	c. corn	17 55
	17.	1000 "	feed	11 50
	22.	420 "	bran	4 60
	23.	2500 "	feed	28 75
				$81 10

Rec'd Payment,
HAMMELL & MELLOR.

EXHIBIT 103.

Jany. 1st, 1879, 14 wagons.
" " 26 horses.
Jany. 1st, 1880, 16 wagons.
" " 32 horses.
2 new sets harness and Shallcross single and double harness.
Feby. 26th. Bought 1 horse for Wolfe (sold to H. H. $180 00
Mar. 6th. Sold 1 horse, H. H. 160 00
Note for 6 months from Marters.
Mar. 13th. Bot. 2 gray horses of H. H.
Due fr. H. H. $372
Less 40
$335
March 22d. Bot. of H. H. Brooks 2 gray horses.
" " " 1 black horse.
" " " 1 bay horse.

White legged horse, $165—note sold to H. H.

March 30th.	Bot. of H. H.	$349	50
	2 bay horses.		
	1 Wolfe drives 1 at Bendlers.		
March 5.	Bot. of H. H. brown horse Brooks..	$202	50
Mar. 5th.	Sold H. H. same $135 note.		
	Old Barney sold, $25.00 note.		
Mar. 5th.	Bot. of H. H. 1 black horse Brooks,	247	50
Mar. 17th.	Sold Fox, $95.00 to H. H.		
" 12th.	Bot. of H. H. 1 brown horse Bendler,	190	00
" 19th.	Bot. of H. H. 1 bay horse Brooks..	210	00
" "	Bot. of H. H. 1 roan horse Brooks.	214	00
" 25th.	1 new wagon delivered.		
" 26th.	Bot. of H. H. 1 black mare 179....	179	00
April 1st.	Bendler horse dead.....	00	00
	Bot. pair of small grays of H. H. Brooks.....	430	00
June 18.	Bot. wagon of Bradley for $275.00..	275	00
Oct. 2.	Shallcross horse sold for.....	150	00
Nov. 14th.	Sold Joseph Campbell 1 pair horses, Alley's team, for.....	450	00
	1 horse 184		
March 1st, 1881.	1 horse 159		
	——	343	00

38 horses all settled for.
17 wagons " "
1 wagon with top, single, settled for.

The above number of horses includes Barney, Sam, Fox and the 2 horses bought at Brooks' sale February 26th, at Woodbury.

EXHIBIT 5.

Hanley.....	18	00
Hog.....	122	58

	Lapierre	$32 49	
	"	32 16	
	"	29 39	
	"	29 91	
		$264 53	
		545 03	
		809 56	
10		67 93	
		877 49	
		106 35	
		983 84	
		53 79	
		1,037 63	$5,358 25
		62 82	1,625 37
		1,100 45	3,732 88
		79 92	105 00
20		$1,180 37	3,627 88
		445 00	1,813 94
		1,625 37	
	2,000 00		
	1,813 94		
	186 06	Due H. Hammell,	

December 31st, 1879.

EXHIBIT NO. 100.

Due H. H.	$186 06		$4,404 63
			2,216 56
			2) 6,621 19
	$1,709 37		
Campbell	450 00		3,310 59
R. & H.	32 19	Less,	186 06
	25 00		
			3,124 53
	$2,116 56	Less	166 06
			$2,058 47

10

EXHIBIT NO. 99.

Nov. 12, 1881.

Wages	$262 88	Sailor	$271 01
Draw	40 00	Moore	21 60
Carson	39 40	John	170 72
Camden	139 18		
H. H.	15 00		463 33
	$496 46		$496 46

20

Due H. H.	$33 13
Due from H. H. on 5th	1,642 50
Due from H. H.	1,709 37
Due from	1,642 50
Due H. H.	33 13
	$1,609 37

30

IN CHANCERY OF NEW JERSEY.

Between LEHMAN MOORE, Compl't, and HORACE HAMMELL and others, Defts.	ON BILL AND AMENDMENT. ORDER.

10

Filed January 10, 1882.

This cause being opened to the Court by Herbert A. Drake, of counsel with the complainant, on this tenth day of January, A. D. 1882, it is by the Chancellor ordered, that the complainant have leave to use the goods and chattels, horses, mules, wagons, harness, blankets and furniture now in possession of Theodore B. Gibbs, the Receiver in said cause, and all and any of the said goods, chattels and property until the further order of this Court.

20

And it is further ordered, that the said complainant, Lehman Moore, shall give security to the Chancellor in the sum of six thousand dollars, to be approved by Richard T. Miller, Esq., a Special Master of this Court, for the return of the goods, chattels and property when thereunto ordered by this Court, in as good condition and repair as the same now are, loss by unavoidable accident alone excepted, before he shall be allowed to use and take any of the said property, goods or chattels.

30

And it is further ordered, that the said complainant, Lehman Moore, shall be at the entire expense of keeping, caring for and keeping in repair all of the said goods, chattels and property in condition and repair aforesaid, during all the time of his using the same under this order.

THEODORE RUNYON, C.

West Jersey Press Printing House, Front and Market Sts., Camden, N. J.

IN CHANCERY OF NEW JERSEY.

Lehman Moore,
Complainant,
and
Horace Hammell, et al.,
Defendants.

The defendants in the above stated cause having closed their testimony, and it appearing by affidavit that it will be necessary for the defendant to re-call and re-examine William Callahan and William T. Benner, and also to examine John F. Harned,

It is, on this eighteenth day of March, on motion of Peter L. Voorhees, of counsel with the defendant, the First National Bank, of Camden, N. J., ordered that the said defendants be permitted to re-call the said William Callahan and William T. Benner and to call the said John F. Harned as witnesses in this cause and take their examination thereon.

THEODORE RUNYON, C.

Respectfully advised,
John T. Bird, V. C.

A true copy,
G. S. Duryee, Clerk.

IN CHANCERY OF NEW JERSEY.

LEHMAN MOORE,
Complt.,
and
HORACE HAMMELL, ET AL.,
Defts.

Take notice of the taking of depositions to be used in the argument of the above stated cause before Charles
10 V. D. Joline, Esquire, a Master and Examiner in this court, on Thursday, the third day of April next, at two thirty o'clock in the afternoon, at the office of the said Examiner, corner of Second and Market streets, in the city of Camden.

Dated March 22, 1884.

Your Obt. servant,
P. V. VOORHEES,
Sol. of Diament.

To H. A. DRAKE, ESQ.,
Sol. of Compl't.

IN CHANCERY OF NEW JERSEY.

LEHMAN MOORE,
and
HORACE HAMMELL, ET ALS.

Depositions taken in pursuance of order and notice hereto annexed, before Charles V. D. Joline, one of the Masters and Examiners in Chancery of New Jersey, at his office, in Camden, N. J., on Thursday, April 3, 1884, at two and a half P. M., in the presence of Peter V. Voorhees, solicitor of Diament and the bank, and Herbert A. Drake, solicitor of the complainant.

WILLIAM CALLAHAN, a witness produced for the defendant Diament, being duly sworn, deposeth and saith:

I have been on the stand before in this case; in my former examination, I spoke of having been at Mr. Hammell's house, I think, on the twenty-first day of December; I saw Mr. Hammell then; Mr. Hammell at that time wrote an order or letter that he said would release the teams; I heard Mr. Benner's testimony in this matter; this was the paper spoken of by Mr. Benner in his testimony; this was betwen ten and eleven o'clock in the day; I think after half past ten; I am certain it was not before ten; we left our place after nine o'clock; I think somewhere after half past nine when we looked at the clock; then it would take some time to walk from Dock to Market street, cross the river and walk down to Mr. Hammell's house; we had been at Mr. Hammell's place some time, I can't exactly tell, I suppose twenty

minutes or half an hour, before this paper was given; we stopped at Mr. Cassady's on the way, too, and that would take some time. This paper was written before we had transacted our business with Hammell; it was sent out of the room before we left.

WILLIAM CALLAHAN.

Sworn and subscribed this third of April, 1884.

C. V. D. JOLINE,
M. C. C.

10 JOHN F. HARNED, a witness for Diament, being duly sworn, deposeth and saith:

I delivered the papers marked Exhibits 101 and 102 to Mr. Moore. I am the Mr. Harned spoken of as being in Mr. Taylor's office at that time.

Ques. Were these exhibits delivered to Mr. Moore upon the written order of Mr. Hammell?

Ans. They were handed to him.

20 (Witness being shown Exhibit 116 of complainant, is asked:)

Ques. Is that the order?

Ans. That is the order.

Ques. When were they handed to him?

Ans. My recollection is that it was the day of the date of this order.

Ques. What is that date?

Ans. December 21, 1881.

Ques. Can you tell what time in the day?

30 Ans. About eleven o'clock; I can't say definitely.

I was admitted to the bar at the November term, 1882.

JOHN F. HARNED.

Sworn and subscribed this third day of April, 1884.

C. V. D. JOLINE,
M. C. C.

IN THE COURT OF ERRORS AND APPEALS,

IN THE LAST RESORT, &c.

Between LEHMAN MOORE, Appellant, AND ROBERT B. S. DIAMENT, THE FIRST NATIONAL BANK OF CAMDEN, and WILLIAM T. BENNER, Appellees.	ON BILL, &c. PETITION OF APPEAL.

10

To the Honorable the Court of Appeals in the last resort in all causes of law, &c.

The humble petition of Lehman Moore, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery by the honorable Theodore Runyon, Chancellor of New Jersey, bearing date the first day of November, A. D. 1884, as modified by a subsequent order made on the fifteenth day of December, A. D. 1884, in a certain cause wherein the said Lehman Moore was complainant, and the said Robert B. S. Deament, the First National Bank of Camden, and William T. Benner, were defendants, in this respect, to wit: that the said decree was in favor of the said appellees, who were defendants below, and against the appellant, who was complainant below, and also in this respect, to

20

wit: that the said decree adjudges to the said defendants below affirmative relief. And your petitioner humbly appeals from the whole of the said decree as modified as aforesaid, and every part thereof, upon the ground that the same, as modified as aforesaid, is erroneous *in toto*, for that the said decree should have been in favor of the said complainant, and against the said defendants, and also for that the said decree, as modified as aforesaid, if it be rightfully and legally in favor of the said defend-
10 ants and against the said complainant, should have adjudged to the said defendants only negative relief, by the dismissal of the said complainant's bill and the dissolving of his injunction founded thereon.

Your petitioner therefore prays that the said decree of the said Chancellor, as modified as aforesaid, 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 March 31st, 1885.

H. A. DRAKE,
Sol'r. for and of Counsel with Appellant.

MOORE
vs.
HAMMELL & ALS.

MR. H. A. DRAKE,
Counsel for Complainant.
MR. P. L. VOORHEES,
For First Nat. Bank, Camden.
MR. P. V. VOORHEES,
For R. B. S. Diament.
MR. JOHN W. WESCOTT,
For W. T. Benner.

Bird, V. C.:

This suit is instituted to settle the rights of certain creditors of Hammell to the goods and chattels named in the bill. The complainant claims them under a bill of sale, and the defendants, Diament, The First National Bank of Camden, and Benner, claim them under levies, upon executions issued upon confessed judgment. The dealings between the complainant and Hammell, which ripened into the bill of sale, will appear in the recitals hereafter. It will be quite difficult to so formulate a statement as to fully express all that may be justly implied from the transactions between these parties, Moore & Hammell.

The defendant Hammell was a drayman, owning fourteen drays and generally twenty-four to twenty-six horses and harness, and other things necessary to carry on such business.

Moore went into Hammell's employ in the year 1871. He then had, or he claims he had, $500. This he placed

in the hands of his brother, but when he cannot tell. Hammell paid Moore $15 a week for his services from 1871 to the year 1879. During this interval M. claims that he made $2,400 by investments in Pennsylvania R. R. securities, and $600 out of some oil stock. During all the period, from 1871 to January 1st, 1879, M. made out bills for M. and after the second year, in addition, would take orders to the foreman and occasionally collect a bill. That is all he did. After January 1st, 1879, he says: "I did the same but worked harder because I felt that I had more responsibility, and that I was doing that for myself and not Mr. Hammell only."

Moore says that on January 1st, 1879, he and Hammell entered into a co-partnership in this dray business. He says that he proposed the partnership to Hammell and asked him if it would be agreeable and that H. replied "that it would be agreeable and that he would be very glad too as he had other business to attend to; that he and Mr. Brown expected, if they could get a suitable place, to go into the wholesale grocery business and his time would be so taken up that it would be necessary for some one equally interested to look after the business. So under the former arrangement I agreed to go in with him. I was to pay him $5,000 for the one-half interest in the business. I paid him $3,000 in cash and the balance out of the profits of the business." There was no estimate made of the value of the horses, mules and wagons. M. says that H. said, that they might not be worth that much money but "he considered the business worth some good will, not stating any amount." He produced a receipt signed by H., dated January 10th, 1879, for $500, "on account of half interest in teams and business consisting of twenty-four horses, fourteen wagons and all double heavy harness." He says he paid $1,500 on 13th of the same month, and $1,000 on 18th.

For the last two payments he took no receipts. He says that a little over $1,800 was paid out of the profits of the business for the first year, ending December 31, 1879. The balance, about $186, was paid out of the profits of the business the following year, leaving a balance due him of over $2,000.

It appears that Moore had the whole $2,000, which comprised the first two payments by him, at the time when he made the first payment of $500; he had it in his house and had had it there four or five years; and I infer he also had by him three hundred dollars additional, for he says this too he had had by him three or four years, and had kept it in the cellar. According to his statement, then, he really had in his own possession and unemployed about $2,300 at the time he made the first payment of $500, yet he only paid the $500. Then in a few days he paid $1,500 more and takes no receipt, still retaining $300 of his funds unemployed, and afterwards adds that sum to $700 which he says he borrowed, and paid it to H., without taking any receipt.

This is the substance of the statement made by the complainant, showing how the co-partnership was formed and how he paid the alleged consideration.

According to his statement, he continued to do about the same work after the formation of the co-partnership that he did before, when he only received for the like services $15 per week.

It is important to observe that there was nothing said or done to indicate to the public that the complainant had any interest in the business. The business had been carried on for years in the name of Hammell, and Moore says the agreement was that it should be carried on still in his name. And it was so carried on in every transaction except in five or six cases; and in those, from all that I can gather, the transactions were exclusively with Hammell himself, so that the public was not informed

of the act done. These were dealings between Hammell on the one hand and a firm of which Hammell was a member, by the name of Hammell & Mellor. This firm sold to Hammell certain goods, and the bills were receipted by Hammell in the name of Hammell & Moore. These receipts were given towards the close of the copartnership and after the formation thereof about two years. Moore says that it was agreed that the business should be carried on in the name of Hammell, because H. did not want a neighbor by the name of Marshall to
10 know that he had taken a partner, since Marshall himself had been anxious to be a partner with Hammell, and yet Moore leaves the impression that Hammell told Marshall of the partnership in a few days.

I cannot but conclude if a partnership was formed, or if Moore had any interest whatever in the goods and the business, it was the intention of the parties to keep the partnership, or such other interest as may have been created, a secret. Besides the above fact, that the parties had an understanding that it should
20 not be published, it is very suggestive that they kept no books of account. We have here two men doing business as partners, the profits of which are several thousand dollars a year, carrying it on in the name of one, without the slightest evidence to show Moore's interest in those profits in case of his death, and without the slightest evidence to show his interest in goods and chattels except the receipt for $500. And in case of Hammell's death Moore had nothing by which he could establish any payment or interest beyond the $500.

30 I say there were no books of account; but it is said as between themselves they have the equivalent of books, in the numerous slips of paper produced. Moore says that Hammell kept all the instructions of the concern on slips of paper by which a settlement was made, and the

balance due to the one or the other ascertained and exhibited on the paper. He produces a large number of such slips or bits of paper, some of them being note paper of the ordinary size, while some of them are pieces of blank leaves of day books or ledgers, two or three or four inches in width, while some others are plain bits about three or four inches square. In some instances the whole week's work is presented on a single piece and in many on two or more. It is due to complainant that one or two of these be given. I will copy Ex. No. 8, 10 which was offered to show the transactions for the week ending Feb. 14, 1880. On one side of a half sheet of note is

"February 14, 1880,

"Theodore.....	$7 00
"Andrew.....	6 00
"Shaffer.....	3 25
"Blange.....	8 00
"Dwaull.....	9 00
"Johnson.....	9 50
"Brown.....	8 00
"Jackson.....	12 00
"Gale.....	10 00
"Chick.....	10 00
"Wolf.....	10 00
"Stanton.....	15 00
"Harris.....	15 00
"Martin.....	10 00
"J. Wood.....	8 00
	3 00
"A. Jenkins.....	10 00
	$153 75"

20

30

"February 14,

On the other side is

" Wages.....	$153 75	" L. Moore.....	$5 00
" B. & P.....	92 14	" L. Moore.....	112 60
" Camden.....	93 25	" Sailor.....	90 53
" Carson.....	46 94	" Moore.....	15 96
" H. H.....	15 00	" Moore.....	25 88
" Atlantic.....	18 00	" Moore.....	1 50
			$251 47
		" Stanton.....	186 13
			40 69
			226 82
		" H. H.....	5 50
			$483 79
			419 08
			64 71
		" Drew.....	24 71
		" H. H.....	40 00
		" John.....	6 00
		" Due from H. H.	$46 00"

" February 14,

The statement for the next week being Exhibit No. 9 is on two slips or bits of paper. The general characteristics are like those given above. In the list of items like the one given above, commencing with " wages," is the additional item " hay $5.04," and " discount, 60," and " Seifert, $15.00. The totals are thus used producing such balance as appears:

" Moore.....	$267 75
" Stanton.....	69 60
	437 35

"P. D. H.....	3 11
	440 46
	458 11
"Due H. H.....	20 76
	3 11
	17 65
	3 71
	$13 94."

10

February 21st.

Ex. No. 10 quite similar. Under the list beginning with wages there is an item of "discount, $1.65." The totals are thus used:

	$598 18
	528 80
	73 38
"Tickets.....	12 50
	60 88
"Cash.....	30 00
"Due from H. H.....	30 00
Less.....	5 00
	25 00
"Less tickets.....	25 00
	00 00."

20

"February 28.

Exhibit No. 12 closes thus..... 535 46
508 82

"Cash..... 26 64."

30

without more, not saying to whom the balance is due, or from whom.

On Exhibit No. 13, under the list commencing with "Wages" as above, is this item, "cash, 25.25" additional. The balance due on this paper is expressed thus:

"Due H. H.....	83 87
"March 22d, ticket.	12 50
	$96 37
"Less Benner's ch'k	34 60
	$61 77"

10 Exhibit No. 14 has some characteristics of its own. In the list beginning with wages is "Discount, 1.37" and "cash, 28.00." Then the balance is attained by these figures:

	"827 24
	"490 48
"	336 76
"Seifert.....	100 00
	237 76
20 "Bills.....	71 24
	165 52
"Oct. 2d.....	61 71
	103 75
"Oct. 6th.....	91 75
"Due from H. H...	195 50
"Ridgeway.....	6 98
30 "Due from H. H...	202 48
"Less cash.....	15 00
"Due from Hammell.....	$187 48"

After the first few exhibits, appears in the list with the item "wages" the letter "C," with small items as "15.-

48" opposite, and also the word "Drawer;" in other with items of a few dollars (less than $15.00 up to 30, 40 and still higher.

I have presented these statements and results of statements for the purpose of showing why I have said that it seemed to be the desire to keep the relations of these parties a secret, in case there really was any other relation between than master and servant or employer and employed. I can discover nothing on any of these papers, (except the five or six above referred to,) that in the least distinguishes the complainant from any other man named on them. All inferences and deductions which are sought to be made in favor of Moore can as surely and as strongly be made in favor of Sailor, or Stanton, or Wood, or Martin, or Wolfe, or any other man who is named. The fact that in the footings and balances it is said "due from H. H." or "due to H. H.," raises no presumption whatever that the balance was due to Moore or from Moore rather than to or from some one else. Indeed, the account being with Moore, as he claims, and he being present, as he swears, I think if there can be a presumption of any kind from the papers themselves such presumption inevitably is against the complainant. Moore swears he became a partner in the business, and yet to all the world, as I read the exhibits, amounting to nearly one hundred, he acted simply as an agent or employee, as did Sailor, Stanton, Williams, Coffin, and all the rest. He seems to have been on precisely the same level with them. There is nothing to show that he exercised any other rights or authority than they did. His name always appears on these papers in the same category with theirs, and I think in no instance otherwise. Take, for example, Ex. No. 24 and we have these words and figures:

"Moore 567 97
"Sailor..... 288 72

" John.....	710 82
	1,561 51
	1,527 66
" Due from H. H.,	$39 85
" Due from H. H., May 29th.....	1,097 96
" Due from H. H., May 29th.....	1,137 81
" Less for tickets...	25 00
14th and 17th, H.,	1,112 81
June 5th, 1880, June 12th, due H. H.....	188 71
Due from H. H.,	$924 10

What is there in this to show to whom these sums or any of them were due? Moore was by and often must have seen Hammell write "due H. H.," or "due from H. H.," but he never had him write "due to L. Moore," although his name appeared as given above on every paper as an agent or employee collecting large sums of money every week and paying them over, without protest, to Hammell. If Moore was a partner, or had any other interest in the business such as the above named receipt would imply, there is no reconciling his conduct, except upon the theory that the parties were careful to conceal the fact from public view, for some unlawful purpose.

Again, and on the same point, Moore says that it was part of the agreement that each should have $15 per week for his services. He says that he got his $15 out of the money which Hammell placed in the drawer.

Hammell, however, charged the business with his own $15 per week in a distinct manner, as appears on the papers, while it nowhere appears that Moore was paid one cent. In many instances it appears that different sums, from less than $15 to much above, went into the drawer, whilst in many others it does not appear that any at all did.

All this, perhaps, does not prove that there was no partnership or other relation between Moore and Hammell, beyond master and servant, but it does convince me that there was a studied effort on the part of Hammell to cancel that relation, and that Moore most fully assented thereto. There must have been some design in all this hostile to creditors and obnoxious to good morals. Who can believe that Moore would have allowed Hammell to retain the title to at least $5,000 of property in his own individual name and to deal with it as his own, and also to retain for so long a period of time the entire profits of the business in his own hands, without the slightest acknowledgment that would avail him in law or equity, unless there was a motive underlying all that would not bear the light? It seems to me that every disinterested mind must incline to the conviction that Hammell designed mischief and that Moore was in collusion with him.

Look, again, at one of the five or six bills of goods above alluded to, and I think the conviction of illegal designs will be strengthened. It is true the complainant points to them as full proof of the partnership. I point to them for a different purpose, to show the collusion—to show that Moore knew of the concealment and must have known it was for some unworthy purpose. This bill, Ex. No. 79, is dated June 30, 1881, and reads:

"Messrs. Hammell & Moore,

"Bought of Hammell & Mellor."

Then follows a bill of meal and bran amounting to

$114.95, and the words "Rec'd Payment, Hammell & Mellor."

The names "Hammell & Moore" and "Hammell & Mellor" are in Hammell's handwriting. The financial crisis in Hammell's affairs was approaching. He wanted a partnership, it may be, but for a purpose. He did not want it known. Hence "Hammell & Moore" deal with "Hammell & Mellor" by the hand of Hammell alone; but with all the rest of the world Hammell deals, not as Hammell & Moore, but as Hammell alone.

10 As to the same bills made out by Hammell to "Hammell & Moore" and receipted by him in the name of "Hammell & Mellor," it is quite worthy of attention that they are inconsistent with the fact in this, that Moore swears the business was to be carried on in the name of "Hammell" and not "Hammell & Moore." According to Moore's statement it was expressly agreed that his name should not appear.

It will be seen that I have not sought to determine whether or not a partnership was formed between Ham-
20 mell & Moore, but rather to determine the effect of their relations to each other upon the rights of creditors. I am considering the rights of the respective creditors of Hammell, including Moore as a creditor. And in this case I think it matters not whether Moore be considered as creditor of Hammell as an individual or of Hammell as the representative of Hammell & Moore.

Thus matters stood until the year 1881 was well advanced. Hammell was, to all outward appearances, dealing with the world as he had been for very many
30 years previous. So far as the world knew of Moore he was the servant of Hammell, as he had been for seven years anterior to the year 1879.

Nov. 12, 1881, Moore says he and Hammell had a final settlement, and that his half of the profits was $3,310.59, which was reduced by the discovery of an error to

$2,958.47. This included all the business for the year 1880 to Nov. 12, 1881. Moore had received nothing but his $15 per week. Moore says: "I then told him if he would buy me out I would sell out to him clear and clean for just what money I had in the concern, and would run the business on a salary that might be agreed on between him and me until such time as he was able to take charge of the business himself; if he wanted me no longer, I would step out without hard feelings towards him. He said no, he would prefer to have things continue as they were, and have Mr. Taylor draw up the proper papers of settlement. He did not seem to want to do that. I then wanted him to consent to give me a first-class mortgage for all money that was due me in the place of the bill of sale spoken of. He did not seem to want to do that. I then proposed for him to give me a judgment bond and that I would not push him if he should get in a tight place, as long as no one else did. If no one else ever pushed him I never would. He didn't seem to be willing to do that, so he agreed to give me the bill of sale as before stated." He cannot give the date of this conversation, except that it was the latter part of November. He says: "I was anxious to have this settlement made because Mr. Hammell's health was bad and I thought he was liable to die at most any time."

He also says that he saw Hammell about Nov. 21st, and adds: "It had been intimated to me just the week previous that he had some financial difficulty of some kind. I asked if it was so and he said it was not; that he had no trouble of any kind, either financially or otherwise; that he didn't know of anything to give him any trouble in that direction." However, Moore went to Hammell's physician and enquired about his health and learned that "Hammell appeared to be a man with a terrible weight on his mind of some kind and asked me (Moore) if I knew of anything that would probably

worry Hammell relative to his business, between him and me, or anything else. I told him I knew of nothing that would be likely to cause him trouble." On the 23rd Nov. he went to Hammell's house with Mr. Taylor, and "Mr. Taylor was instructed to draw up an article of partnership and a bill of sale." The parties met again Nov. 28th, Mr. Taylor and George W. Moore, the brother of complainant, also being present. He says that on this day papers were signed and afterwards destroyed. He says Hammell claims to have discovered a mistake. Moore says: "He told my brother that he and I had been in business all this time and he had been receiving all the money. He was sorry it had run so long unsettled and was willing and anxious now to have it settled up at once and was willing to do anything that was right to make me safe." He wanted H. to give him a bond and warrant of attorney, but H. refused. He also proposed that H. should give him a bond and mortgage.

Geo. W. Moore was sworn. He was present at the interview last referred to. He says he conversed with Mr. Hammell, Mr. Taylor and Moore upon the best plan of making my brother secure. He says: "My brother told him that if he could pay him the balance due to him that would be satisfactory and I think named the amount. Mr. Hammell said that he was not prepared to do that at that time. My brother then proposed a judgment note and Mr. Taylor a chattel mortgage. Mr. Hammell refused to give the judgment note and I said I didn't think a chattel mortgage was good in Pennsylvania."

I have given these interviews in detail because Moore says he did not know that Hammell was embarrassed; whereas, I conclude from what appears above, that he did know or had abundant reason for his anxiety. He had trusted Hammell for two years without even the

slightest promise in writing, but at this juncture he insists on a bond and warrant of attorney, or a bond and mortgage, or a chattel mortgage, and accepts a bill of sale of all the goods and chattels used in the business, and would not be content until he was thus secured.

I think that the correctness of this conclusion will be impressed upon every one who considers the foregoing statements in connection with the fact that at this time Hammell's liabilities to others besides Moore exceeded $25,000.00. 10

But following Moore and Hammell further, it appears that on Dec. 2, 1881, H. executed a bill of sale to M. for his *undivided one-half interest* in the horses, wagons, &c. This it was conceived did not sufficiently secure M. and the papers were destroyed and a new bill of sale executed, conveying the *entire property in the horses and wagons to M., with a guarantee that the title thereto was in H.* and that he had the right to sell. At the same time articles of co-partnership were entered into. In these articles is a clause which I cannot understand, except 20 upon the theory that these parties were then and had been willing to lend themselves, each to the other, for illegal and fraudulent purposes. I refer to the clause in these words, viz: "3d. That said partnership shall continue under the name of Horace Hammell as heretofore." Why not let the public know the whole truth, the exact condition of things? Why continue the deception? It seems to me that this is one of those false badges or tokens which the law condemns. Look at it from what standpoint I may, the whole scene is disclosed by the 30 constant effort at concealment. Creditors are to be blinded and put off their guard.

The said business is not only to be carried "on under the name of Horace Hammell as" theretofore, but was expressly stipulated.

"4th. That said Lehman Moore shall suffer and per-

mit the said partnership to use all of said personal property in the business of said partnership, but that the same not in any wise be considered partnership property, nor taken into account as the assets of the firm." The proofs assure me that Moore knew Hammell was in great distress and could not stand the storm, and yet he solemnly aids him in hoisting a false signal. I cannot find, and do not believe, there is a case that gives countenance to such agreements when creditors have
10 been before the court, and especially when the fraud-doer is complainant and invoking the arm of the court to his protection. I speak with reference to all the circumstances of this case. From the beginning, if the complainant is believed, Hammell presented to the world a false front and the complainant for years encourages the delusion.

But the complainant says no creditors were deceived, because none of them traded or dealt with Hammell on account of the partnership. That may be very true,
20 most likely is; for I am not satisfied that any of them knew of the partnership, except Marshall, and to say that he did until after the sixth of December, 1881, is quite inconsistent with Hammell's desire for secrecy. But the real question is not whether the creditors of Hammell dealt with him on account of this partnership business, so called, but whether that part of his business was so conducted as to obtain for him a false credit generally. This business, including good-will and goods and chattels, was valued at $10,000. There can be no doubt but that that went largely to make Hammell's
30 credit good in every one of his transactions with bankers, merchants and all others. It seems to me that if the courts were to sustain this transaction, every man would be justified in doing business in his own name, while the absolute title to all his stock in trade could be secured clandestinely in another. As I have said, I do

not think any of the cases, since Twyne's, go so far as to tolerate the actions of Moore & Hammell. I do not think these transactions were *bona fide.* For proof of this consider Hammell's entire control of Moore and the business, from the commencement to the conclusion.

Moore seemed at no time to have any voice in the concern. If he was a partner at all, he was not only a secret but a silent partner. When the crisis came and Hammell consented to make a settlement, it appears that he dictated the terms, certainly the amount to be allowed Moore. And so potent was his dictation that after one result had been arrived at and the papers executed and *delivered*, as Moore says, Hammell, as I understand, demanded further reduction and obtained satisfaction. Then it is that Moore obtained a letter from Hammell to Mr. Taylor, directing the delivery of the bill of sale and articles of co-partnership. For fifteen days Moore wanted possession of the papers (the bill of sale and articles of co-partnership), but Hammell prevented it. Not once can I find that Moore asserted his pretended rights.

I conclude, therefore, that there was not that *bona fides* on the part of Moore which is called for by the authorities. (Sayer vs. Fredericks, 1 C. E. Gr., 205; Merchants Bank vs. Northrup, 7 C. E. Gr., 58, and 8 Ibid. 582), and consequently that the judgment creditors are entitled to the benefit of their levy on the goods in question. This is my view of the case, even though there was a delivery of the bill of sale at the time of its execution.

Hence it is quite useless for me to determine whether there was a delivery, in fact, of the alleged bill of sale, or not.

I will advise a decree in accordance with these views, sustaining the claims of the judgment creditors by virtue of their executions and levies as against the complainant's claim.

A true copy, G. S. Duryee, Clk.

IN CHANCERY OF NEW JERSEY.

Between LEHMAN MOORE, Complt., and HORACE HAMMELL, ET AL., Defts.	ON BILL, &c. FINAL DECREE.

This cause coming on to be heard at the last regular term of the Court of Chancery, held at the State House, in the city of Trenton, in the presence of Herbert A. Drake, Esquire, of counsel with the complainant; Peter V. Voorhees, of counsel with the defendant Robert B. Diament; John W. Wescott, Esquire, of counsel with the defendant William T. Benner; and Peter L. Voorhees, of counsel with the defendant, The First National Bank of Camden, no person appearing for the defendants, Nathan D. Marshall, John Smith, Junior, Thomas B. Wood, John J. Atkinson, and Charles Stevenson, Randal E. Morgan and David H. Marshall, executors of the last will and testament of David E. Marshall, deceased; Silas Warner and Albert Merritt, trading, &c., as Warner and Merritt; Ephraim Coles and Charles D. Coles, trading as Coles and Company; The National Bank of the Republic, of Philadelphia; The city of Camden, John Sowney, Augustus Seifert, Hugh Le Jambre, Frank La Pierce, Jonas Miller, John Cunningham; and Abram Walker and George Shoemaker, trading as Fulton Walker and Company, and John G. Glover; and the plead-

ings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that as between the said defendants, the judgment creditors, and the complainant, and defendant, Horace Hammell, the sale alleged in said bill is fraudulent, void and of no force and affect; that the partnership alleged to have existed between the complainant and last named defendant did not effect the said creditors' rights to the benefit 10 of their levies upon the goods in question, and that as between the said creditors and the complainant, the said complainant was not entitled to an account and the possession of the goods, as prayed for in said bill of complaint; that the judgments of the defendants, Nathan D. Marshall, John Smith, Junior, and Charles Stevenson, Randal E. Morgan and David H. Marshall, executors as aforesaid, mentioned in said bill of complaint, have been fully paid and satisfied out of the property of the defendant Horace Hammell not mentioned in said bill of complaint, and 20 that the said complainant Lehman Moore has had the use of the goods and chattels, horses, mules, wagons, harness, blankets and furniture, mentioned in said bill, and levied upon by said Theodore B. Gibbs, Sheriff of the county of Camden, under and by virtue of the execution issued upon the judgments of the defendants, Robert B. S. Diament, The First National Bank of Camden and William T. Benner and others, set out in said bill of complaint, and claimed by the complainant from said Sheriff, and held by said Theodore B. Gibbs as Receiver 30 appointed by this Court on the third day of January, eighteen hundred and eighty-two, under an order of this Court made on the tenth day of January, in the year aforesaid, and has disposed of, sold and parted with one or more of said horses, and parts of said goods and chattels; and it further appearing to the Court that the

several judgment creditors of the said Horace Hammell, mentioned in said bill, were entitled to the benefit of their levies on the said goods and chattels claimed by the said complainant, and mentioned in the said bill of complaint;

It is thereupon, on this first day of November, in the year of our Lord one thousand eight hundred and eighty-four, ordered, adjudged and decreed, that the said alleged sale and the said partnership be and they are hereby declared to be null and void as between the said complainant and the said judgment creditors; that the injunction heretofore granted by this Court enjoining and restraining the said Theodore B. Gibbs, Sheriff of the county of Camden, from making sale of the property, goods and chattels mentioned in said bill of complaint, levied on by said Sheriff under and by virtue of the execution issued on the judgments of the defendants, the said Robert B. S. Diament, The First National Bank of Camden, William T. Benner, and others, mentioned in said bill of complaint, be dissolved and for nothing holden, and that the said complainant and his sureties do pay to the said Theodore B. Gibbs, the Receiver in this cause, and Sheriff of the county of Camden, four thousand six hundred and eighty-three dollars and fifty cents, the value of the goods, chattels, horses, wagons, blankets, furniture, &c., delivered to the said complainant by Theodore B. Gibbs, Sheriff of the county of Camden and Receiver as aforesaid, as appraised by the appraisers duly appointed by the said Theodore B. Gibbs, Sheriff as aforesaid, as appears from the testimony in this cause, with interest on the said sum of four thousand six hundred and eighty-three dollars and fifty cents, to be computed from the twelfth day of January, eighteen hundred and eighty-two, the time when said goods were delivered to the said complainant as aforesaid,

until the same be fully paid and satisfied under this decree.

And that the said Theodore B. Gibbs, Receiver and Sheriff as aforesaid, do pay and satisfy in the first place out of the moneys to the said Robert B. S. Diament, the money due and unpaid on his said execution, and the Sheriff's execution fees thereon, as commanded in said execution, and do pay and satisfy in the second place to the defendant The First National Bank of Camden, the moneys due and unpaid on its said execution, and the Sheriff's execution fees thereon, as commanded by his said execution, and do pay and satisfy in the third place unto the defendant William T. Benner, the moneys due and unpaid on his said execution, and the Sheriff's execution fees thereon, as commanded in said execution.

And it is further ordered, adjudged and decreed, that the said complainant, Lehman Moore, do pay to the defendants, Robert B. S. Diament, The First National Bank of Camden, and William T. Benner, respectively, their costs in this cause to be taxed, and either of the parties are to be at liberty to apply to this court as occasion may require.

THEODORE RUNYON, C.

Respectfully advised,

JOHN T. BIRD,
V. C.

A true copy,
G. S. DURYEE,
Clk.

IN CHANCERY OF NEW JERSEY.

LEHMAN MOORE, Complainant, and HORACE HAMMELL, ET AL., Defendants.	ON BILL, &c. PETITION OF LEHMAN MOORE.

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To Honorable Theodore Runyon, Chancellor of the State of New Jersey:

The petition of Lehman Moore, of the city of Philadelphia, Pennsylvania, the complainant in this cause, respectfully shows to this court, that the bill filed in this case by him was to restrain the sale of certain partnership goods of himself and the defendant Horace Hammell, then lately trading as Horace Hammell, and at the time of the filing of said bill owned by your petitioner, as claimed by him in his said bill, under certain executions of the defendants, Robert B. S. Diament, William T. Benner and the First National Bank of Camden;

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That the said sales were about to take place under the executions of the said defendants when the injunction prayed for in the said bill was issued;

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That the cause came on for hearing and argument, on bill, answers, replications and proofs, and that the sole issue before the Court for decision, and to which the opinion of the Court solely related, was the sustaining or the dissolution of the said injunction; that pending the said suit an order was made appointing the Sheriff of the county of Camden, into whose possession the said part-

nership goods had been taken by virtue of the said executions, the Receiver in this cause; that a further order was made in this cause, directing that pending the suit the complainant should be allowed to use the said goods, the same to remain in the possession of the said Receiver; the object of said order being to save the expenses of the keep of the said goods and chattels, the same being in large part horses and mules, and to prevent the same from taking damage pending the suit; that under the said last mentioned order the complainant has used the said goods and chattels from about the date thereof, the 12th of Jan'y, 1882, on the condition that the complainant should give up the use of the same according to the terms of said order, in the event of this suit resulting against him, to which said last mentioned order and to the bill, answers and proofs taken in the case, your petitioner now refers as a part of this, his petition.

And your petitioner further shows, that under the hearing of the cause, upon the argument thereof aforesaid, and under the opinion of the Court, the sole scope of the order to be made was a direction dissolving the injunction and leaving the Sheriff to proceed with his sales under the said executions; that on the 1st day of November inst., an order was made in this cause, under the said opinion of the Court, to which reference is also hereby made as a part of this petition, in and by which said order it was, among other things, after dissolving said injunction ordered, that the complainant and his sureties (who are not parties to this cause) do pay to the said Theodore B. Gibbs, the Receiver in this cause, and Sheriff of the county of Camden, the sum of $4,683.50, the value of the goods, chattels, horses, wagons, blankets, furniture, etc., delivered to the said complainant by Theodore B. Gibbs, Sheriff of the said county of Camden, and received as aforesaid as appraised by the appraisers duly appointed by the said Gibbs, Sheriff as aforesaid, as appeared from

the testimony in this cause, with interest on the said sum, to be computed from the 12th of January, 1882, the time when the said goods were delivered to and received by the said complainant as aforesaid, until the same be fully paid and satisfied.

And the petition of your petitioner further shows, that the said order, after directing what disposition the said Sheriff, Receiver as aforesaid, should make of the said last mentioned sum of money, further directed, and it
10 was in and by the said order adjudged and decreed, that the complainant, Lehman Moore, do pay to the said defendants, Diament, Benner, and the Bank, respectively, their costs in this cause to be taxed; and further, that either of the parties are to be at liberty to apply to this Court as occasion may require, to which said order for greater certainty your petitioner refers as a part of this, his petition.

And the petition of your petitioner further shows, that under the liberty granted to said parties in this cause by
20 the last clause of the said last mentioned order, your petitioner now files his said petition, and states that it is not true, as stated in the recital of the said order, that your petitioner has disposed of, sold and parted with one or more of said horses and parts of the said goods and chattels, and your petitioner states the truth to be that your petitioner exchanged one of the said horses, which was balky and was taking damage by reason of disuse and standing in the stable, for another horse of greater
30 value, your petitioner paying an additional sum of fifteen dollars to boot for the said horse received by him in exchange; that the horse received in exchange by your petitioner has died, and that before the making of the said order your petitioner purchased back the said balky horse so exchanged away by him, and that he is now in the possession of the said Sheriff, Receiver as aforesaid, in as good order and condition as

when your petitioner commenced to use him, on or about twelfth January, 1882; that there was no intention on the part of your petitioner in the exchange of the said horse to take possession of the said goods, or to do anything in violation of the order of the Court permitting your petitioner to use the said goods and chattels, your petitioner having simply, after the fullest consideration for the rights of the parties and with the advice of counsel, made the said exchange or substitution, and he has now made re-substitution by purchasing back the said balky horse as aforesaid; that your petitioner has not exchanged or substituted, or otherwise disposed of any of the said goods or chattels, with the single exception that in one case a mule which was appraised at the sum of $10 00 or $25.00, and was practically useless, had become sick and was, as your petitioner believes, on the point of dying, he being unable to get up and down in the stable without assistance; that your petitioner, under the advice of his counsel, sold the said mule and now has the proceeds of the sale, about sixteen dollars, ready to hand to said Sheriff; that two in number of the said horses have since died; that in other respects the said horses, mules and other goods and chattels are in as good condition, ordinary wear and tear and unavoidable accident only excepted, as when your petitioner was given the leave of the Court to use the same under said order, for the purpose of saving the expense of the said keep as aforesaid, pending the suit as aforesaid; that the wagons and harness, parts of the said goods and chattels in use by the petitioner, have been repaired and kept in repair by your petitioner, and are now in better condition than when taken for use by your petitioner.

And the petition of your petitioner showeth, that it is not true, as stated in said petition, that the said goods and chattels were delivered to the complainant and re-

ceived by him as aforesaid as appraised by the appraisers duly appointed by the said Sheriff; and your petitioner states the truth to be that all the said goods and chattels have always and at all times since the said 12th day of January, 1882, been in the possession of the said Sheriff, Receiver as aforesaid, and that your petitioner has only had the use of the same under the said order, for the purpose of saving the costs and expenses of said keep pending the said suit.

10 And the petition of your petitioner further shows, that if it were true and did appear in the proofs that your petitioner had received possession of the said goods and chattels, and had exchanged or had disposed of one of the said horses, or any other parts of the said goods, the said proof was utterly and entirely irrelevant to the said hearing and arguments, and for the purposes thereof, and had no force or bearing upon the same, and that no order of this Court could be made thereupon touching the same against this petitioner, or more especially 20 against your petitioner's said sureties (without your petitioner's right to be heard thereon in some subsequent proceeding), under the proper scope of the order predicable upon the said hearing, arguments and opinion, and that a judgment or judgments have been recovered against your petitioner, and a levy or levies made subject to the levies of the said defendants, Diament, Benner, and the Bank, that the sureties of your petitioner, if they are to take the said goods and chattels freed and discharged from the said levies, under executions of the said three defendants, 30 must take the same subject to the said subsequent levies, under the judgments and executions against your petitioner, which will render it difficult if not impossible for your petitioner and the said sureties to realize on the said goods and chattels for the purpose of paying and satisfying said judgments and executions of the said

three defendants; that the Sheriff is entitled in large part to his execution fees under the said executions of the said three defendants, Diament, Benner, and the Bank, and that in order to realize on the said goods your petitioner will be obliged to go to the further expense of another sale when the sale by the Sheriff with a first lien in favor of the three defendants has in large part been paid for by the said execution fees already due to the Sheriff under the said execution of the said three defendants.

And the petition of your petitioner further shows, that the ascertaining of the value of the said goods by the said order is largely in excess of their true value, and has been made without consultation with your petitioner and without a hearing or investigation thereof in which your petitioner had any part; and that the said order was made against your petitioner's consent, and that your petitioner is in no way bound by the said order beyond its proper scope and purview as hereinabove stated and set forth.

And your petitioner submits, that a sale under the said executions of the said goods and chattels, now, on the dissolution of the said injunction in the possession of the said Sheriff, under said executions of the said three defendants, is necessary to the preservation of the equitable rights of your petitioner and his sureties in this cause.

And the petition of your petitioner further shows, that a large amount of irrelevant and incompetent testimony was taken pending the said suit, and incorporated into the said proofs subject to the objection at all times duly made by your petitioner, at the hands of his counsel, whereby and by other means appearing in the proofs the said suit was unnecessarily and unwarrantably delayed, hindered and postponed by the said defendants, and that your petitioner has the right to have the said incompetent and irrelevant testimony struck out, and

to have the said defendants disallowed and precluded from all costs thereon or therefrom, and to be entitled to the benefit and advantage of all the delays caused by the defendants as aforesaid, as the same may appear in the printed testimony and upon the record of this cause.

Your petitioner therefore prays, that under the leave given to him under the said order, as one of the parties to the cause for liberty to apply to the Court as occasion may require, that the said order directing your petitioner to pay to the said Sheriff, Receiver as aforesaid, said sum of $4,683.50 may be so modified as to bring the said order within the proper scope and purview of the said pleadings, proofs, bearing and opinion in this cause, as herein above stated, without reference to any irrelevant matter; that the said Sheriff may be directed to proceed with the sale of the said goods under said levies by virtue of the executions of the said three defendants, Rob't B. S. Diament, Wm. T. Benner and the First National Bank of Camden; that an investigation under a reference of this Court in this cause, and of which your petitioner shall have due notice, may be made for the purpose of ascertaining the difference between the value of the said goods and chattels at the time your petitioner commenced the use thereof, on the said 12th day of January, 1882, and the present time, and that your petitioner be required to pay to said Sheriff, Receiver as aforesaid, only the said difference, and that your petitioner be allowed on account of the said difference the value of the said horses that have died during the pendency of this suit as aforesaid, and the ordinary wear and tear of the said goods and chattels, and that your petitioner may have such further and other relief in the premises as he may be equitably entitled to and as to the court shall and may seem meet, including relief from costs for the

taking incompetent and irrelevant testimony. And your petitioner, as in duty bound, will ever pray, &c.

Dated November 24, 1884.

H. A. DRAKE,
Sol'r for petitioner.

STATE OF NEW JERSEY, }
CAMDEN COUNTY. } ss.

LEHMAN MOORE, of full age, being duly sworn, on his oath saith, that he is the petitioner mentioned in the foregoing petition, and well acquainted with the facts, matters and things therein set forth; and that the same is true. 10

LEHMAN MOORE.

Sworn and subscribed at Camden, in the county aforesaid, this 24th day of November, A. D. 1884, before me, a Master in Chancery of New Jersey.

S. D. BERGEN,
M. C. C.

STATE OF NEW JERSEY, }
MERCER COUNTY. } ss. 20

H. A. DRAKE, of full age, being duly sworn, on his oath, saith:

That no cross-bill or cross-bill, and no answers in the nature thereof, or by way of cross-bill, were filed by any of the defendants mentioned in the foregoing petition of Lehman Moore, namely by William T. Benner, Robert B. S. Diament and The First National Bank of Camden, said three defendants.

H. A. DRAKE,

Sworn and subscribed this 26th day of November, A. D. 1884, before me, a Master in Chancery of New Jersey. 30

CHAS. J. RUTGERS,
M. C. C.

A true copy.

G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

Between LEHMAN MOORE, Complainant, and HORACE HAMMELL, AND AL., Defendants.	ON BILL, &c. UNDER PETITION OF LEHMAN MOORE, OF NOVEMBER 26, 1884.

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Lehman Moore, the above named complainant, having filed his petition in this cause, setting forth that the order of the first day of November instant, in this cause, grants relief to which the defendants, William T. Benner, Robert B. S. Diament and The First National Bank of Camden, in whose favor it is made, are not entitled, with a prayer that said order be so modified as therein prayed for; It is on this twenty-sixth day of November, A. D. 1884, on motion of Herbert A. Drake, the solicitor of the petitioner, ordered, that the said defendants do show cause before this Court, on the tenth day of December next, at Camden, at ten o'clock in the forenoon, why the prayer of the said petition should not be granted; and it is further ordered, that copies of this order, and of the said petition, be served on each of the said parties, or their respective solicitors, within five days from this date, and also upon George W. Bailey and Charles F. Eastlack, the sureties of the petitioner mentioned in said petition, in like manner.

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THEODORE RUNYON,
C.

Respectfully advised,
JOHN T. BIRD,
V. C.

A true copy,
G. S. DURYEE,
Clerk.

IN CHANCERY OF NEW JERSEY.

LEHMAN MOORE, Compl't, AND HORACE HAMMELL, ET AL., Def'ts.	ON BILL, &c. ORDER AMENDING FINAL DECREE.

It is, on this fifteenth day of December, A. D. eighteen hundred and eighty-four, on the application of Peter L. Voorhees, solicitor of the defendant The First National Bank of Camden, ordered, that the words "his sureties," in the fifth page of the final decree in this cause, be expunged and erased from the said decree, so that the said 01 decree shall read that the said complainant do pay to the said Theodore B. Gibbs, the Receiver in this cause and Sheriff of the county of Camden, four thousand six hundred and eighty-three dollars and fifty cents, the value of the goods, chattels, horses, wagons, blankets, furniture, &c.

THEODORE RUNYON,
C.

Respectfully advised,
JOHN T. BIRD,
V. C. 20

A true copy,
G. S. DURYEE,
Clk.