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CHAPIN



A REPORT

OF THE EXAMINATION OF

MESSRS. AMASA CHAPIN, LORENZO CHAPIN,
LYMAN COLE, WILLIAM H. HOLLAND,
AND WILLIAM KISSANE,

(OF CINCINNATI,)

CHARGED WITH A CONSPIRACY TO BURN THE

STEAMBOAT MARTHA WASHINGTON

ON THE MISSISSIPPI RIVER, IN JANUARY, 1853, WITH INTENT TO DEFRAUD
CERTAIN INSURANCE COMPANIES.

BEFORE P. B. WILCOX, Esq.,

A COMMISSIONER OF THE CIRCUIT COURT OF THE UNITED STATES.

AT COLUMBUS, OHIO,

From December 29th, 1852, to January 15th, 1853.

CINCINNATI GAZETTE'S REPORT.

CINCINNATI:

CINCINNATI GAZETTE COMPANY PRINT.

1853.

1. Insurance, - Administrative U.S.
2. Martha Washington (Steamship)
3. ~~Lesson~~ - ~~Lesson~~ U.S. - ~~Class~~
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WILCOX v. WILCOX - LOUIS: CIRCUIT COURT (6th circ)

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LENDY

REPORT OF EXAMINATION.

On the 14th of December, 1852, the following affidavit was made by Mr. Sydney C. Burton, of Ohio City, before P. B. Wilcox, Esq., at Columbus:

UNITED STATES OF AMERICA, }
DISTRICT OF OHIO. } ss.

Before me, P. B. Wilcox, a Commissioner appointed by the Circuit Court of the United States for the District of Ohio, according to the acts of Congress in such case made and provided, personally came Sidney C. Burton, of lawful age, who, being by me duly sworn, according to law, deposes and says, that on or about the fifteenth day of December, A. D. 1851, at Cincinnati, within the District of Ohio aforesaid, Lyman Cole, Lewis Choate, John A. Cummings, William Kissane, G. P. Stevens, J. G. Nicholson, Adam Chapin, Amasa Chapin, Rufus Chapin, Lorenzo Chapin, James G. Chandler, and William H. Holland, did wilfully and corruptly conspire, combine and confederate among themselves and with divers other evil-disposed persons, within the United States, to burn and destroy a certain steamboat, called the Martha Washington, with intent to injure certain Insurance Companies, being bodies politic, who thereafter did underwrite policies of insurance on said steamboat, and on goods on board thereof. And in pursuance of and according to said conspiracy, combination, confederation, and agreement had as aforesaid, did afterwards, to wit: on the sixth of January, A. D. 1852, at Cincinnati, aforesaid, cause and procure the said steamboat and certain goods on board the same to be insured by said Insurance Companies, to wit: the Phoenix Insurance Company, of St. Louis, Missouri, the Fireman's Insurance Company, of Cincinnati, the Detroit Insurance Company, of Detroit, Michigan, the National Insurance Company, of Cincinnati, the Fireman's and Mechanic's Insurance Company of Madison, Indiana, and did cause and procure other goods on board said steamboat to be insured in other Insurance Companies. And in further pursuance of and according to said conspiracy, combination, confederacy and agreement had as aforesaid afterwards, to wit: on or about the fourteenth day of January, A. D. 1852, on the Mississippi river, while the said steamboat was on a voyage, or pretended voyage, from Cincinnati aforesaid to New Orleans, did cause and procure the said steamboat to be burnt, with intent and design then and there to sink and destroy the said steamboat, and the goods in and upon the same, and with intent and design then and there wilfully and maliciously to injure, defraud and prejudice the said Insurance Companies, who had so made insurance as aforesaid—and further he says not.

Sworn to and subscribed before me at Columbus, in the District of Ohio aforesaid, this fourteenth day of December, A. D. 1852.

S. C. BURTON.

P. B. WILCOX, a Commissioner of the United States for the District of Ohio, appointed by the Circuit Court of the United States for the said District of Ohio.

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Upon this, warrants were immediately issued by the Commissioner for the arrest of all the accused parties, and at about the hour of noon, on Monday, the 20th of December, Messrs. James G. Chandler, Amasa Chapin, Lorenzo Chapin, and William Kissane were arrested in Cincinnati by different deputies, under the direction of G. W. Jones, Esq., the Marshal of the District of Ohio. Mr. Cole was arrested on the same day, at Oxford, Butler County, Ohio, where he has an estate on which he frequently resides, and Wm. H. Holland, a few days afterwards, at Cincinnati. Mr. Choate was pilot of the steamboat Sam. Cloon, and at this time absent from the city; Captain Cummings was on Red River; Messrs. Adam and Rufus Chapin in Wisconsin, and Mr. Nicholson on a journey, and they were not arrested, though officers were sent for them. The arrested parties were taken to Columbus immediately, and brought before the Commissioner forthwith, who appointed Wednesday, the 29th of December, at 2 o'clock P. M., for their examination, and required them to give security for their appearance on that day in the sum of \$10,000 each, which they did.

Accordingly, upon the day appointed, the arrested parties appeared, accompanied by their respective counsel. Messrs. Timothy Walker and John Kebler, of Cincinnati, appearing for the Messrs. Chapin; Messrs. N. H. Swayne and Samuel Galloway, of Columbus, for Mr. Cole; Mr. Ex-Governor Morehead, of Covington, Ky., for Mr. Chandler, who resided in that city; and Messrs. Geo. E. Pugh and Geo. H. Pendleton, T. J. Gallagher, O. Brown and R. H. Stone, of Cincinnati, for Messrs. Kissane and Holland.

Henry Stanbery, Esq., of Columbus, authorised by Sampson Mason, Esq., U. S. Attorney for the District, and Thos. C. Ware, Esq., of Cincinnati, appeared on behalf of the United States, to conduct the prosecution.

The examination was held in the U. S. Court Room, which was thronged by a large audience from the beginning.

The Testimony for the Prosecution.

Robert McGrew was first called, and having been sworn, testified as follows: In 1851 and 1852 I kept a boarding house in Cincinnati. Wm. H. Holland boarded with me during the winter of '51, '52; began the latter part of October, and kept on till early in January. Capt. Geo. B. Stephens, a son of Lyman Cole, and John Edwards, boarded with me the same winter; have seen Wm. Kissane there, and also a member of the firm of Filley & Chapin, at my house with the persons I have named: Mr. Chapin may have called. A member of this firm at one time ap-

plied to me for board. Knew Capt. Cummings by sight; he came with Holland to my house:

Questioned by Mr. Stanbery:—What was the appearance of a Mr. Edwards, who called to see Stephens?

After a long discussion, the Commissioner decided that it was proper to prove the acts of a person not on trial for the purpose of showing a conspiracy with others who were on the trial.

Mr. McGrew continued.—Mr. Edwards was an old gentleman who came with G. P. Stephens when the latter took board with me; seemed to have no regular business; they used to walk out together; Stephens paid the board of both; Edwards appeared to have no means. Think I should have known if Edwards had any business calling: Stephens and Edwards came first to board with me, young Mr. Cole next, and Holland last. Stephens and Edwards left my house together, and Cole afterwards: Stephens and Edwards left a few days after the sailing of the Martha Washington; Holland left a few days before. Sometimes Kissane came to my house to see Stephens and Holland. They used to sit by my fireside, or would go out together. They did not disclose their business to me. I heard of the burning of the Martha Washington about the time of the occurrence; Edwards and Stephens quit boarding with me a day or two after that.

Holland and Stephens returned to board with me after the burning. Stephens stayed about three weeks after the burning, and Holland later. Stephens afterwards went down the river, and Holland went to board at the Walnut street House. Edwards never came back to my house after the burning of the Martha Washington.

Mr. Holland desired to pay his addresses to one of my daughters. I wanted a reference. He offered to refer to Kissane, Cummings, Cole, and others. I told him I did not want a reference to any person who had known him in Mexico: I requested Holland to leave my house.

Cross-examined:—I would not admit a person to board with me whose character was bad. I have no bitter hostility to the parties on trial. I have never spoken to my son-in-law, Mr. Temple, against Mr. Holland. I have not spoken to my son-in-law for more than a year. Have never used harsh terms to or about Mr. Holland. I requested Mr. Holland to leave my house; did not like his attentions to my daughter. He has been in the house once since. I do not keep books. No one has ever spoken to me about my testimony. I never saw Mr. Burton (who made the affidavit,) till a moment since. Mr. Carter, an insurance agent, had some conversation with me about this matter. I know that Holland was with me in November and December. Kissane would call to see Stephens and Holland; don't know whether he called before Holland came. Heard Kissane talk with them about the purchase of some steam tanks.

Lyman Cole's son was under twenty years of age. Said he stayed in his father's store, and that his father's family lived in Oxford, Ohio.

I refused to allow Mr. Holland to pay his addresses to my daughter, unless he could prove himself a gentleman; I refused to permit his addresses, because his references as to character were not satisfactory to me. I could give my reasons for declining to accept references to Mr. Kissane and Capt. Cummings.

At this point the Commissioner adjourned the examination to the next morning at nine o'clock, taking security for the appearance of the parties arrested, at that hour.

SECOND DAY.

At the opening of the Court this morning, Judge Walker rose, on behalf of counsel for the defence, and said that it was rumored that, whatever might be the result of this examination, the Commissioner might not consider himself authorized to discharge the accused, but might still hold the parties to bail for their appearance at another Court, even though the evidence was insufficient to fix guilt upon them.

Mr. Stanbery, for the United States, said he had never supposed the Commissioner must hold the accused to bail, although the evidence might be insufficient to justify him in holding them for a final trial.

The COMMISSIONER said he had entertained no doubt of his power to discharge the parties from custody, or to hold them for trial, as the circumstances might demand. He should by no means hold the parties to bail, if the evidence against them would not warrant him in holding them for their trial.

Motion to Dismiss for Want of Jurisdiction.

The District Attorney was about to call a witness, when Judge Walker again rose and claimed the attention of the Court to an important motion he was about to make.

The Commissioner. What is your motion?

Judge Walker. My motion is, that this whole proceeding be dismissed, and the defendants in this case discharged, for want of jurisdiction in the case.

In making this motion, Judge W. rested it upon the following propositions:

The act of Congress under which this proceeding is instituted applies only to the *high seas*, and *not* to the internal rivers and lakes of the United States.

And should the Commissioner refuse to recognize this doctrine,—should he hold that this act of Congress *does* apply to the internal rivers of the United States—then we contend that the act is unconstitutional.

These propositions were argued at great length by Judge Walker. He insisted that the act of 1825, providing for the punishment of the crime of casting away, of burning or destroying a ship or a vessel, could apply only when these offences were committed upon the high seas. The first and principal offence, named, viz: "casting away," is exclusively a nautical phrase, and points significantly to the meaning of the law makers.

But if the act was held to apply to fresh water or internal rivers, it must be unconstitutional, for Congress had no power thus to legislate.

SEC. VIII., Art. 1., of the United States Constitution, declares that Congress shall have power to define piracies and felonies on the high seas, and offences against the laws of nations.

He asked the District Attorney if Congress could provide for the punishment of the crime of murder committed on the Ohio river?

Mr. Stanbery. Yes, if the crime connected itself with the commerce of the United States, or interfered with the regulation of commerce; just as Congress may punish offences against the coin or postal arrangements.

Judge Walker. Yes, if you can succeed in connecting it with the power to regulate commerce. But Congress cannot punish the crime of murder or arson as a distinct offence. This question of the extent of Federal powers as against the power of the several States was as old as our government, and had given rise to the division of the people into two great parties; therefore authorities for his position would the more readily be found. The Supreme Court had, from the first, resisted the usurpation of extensive powers by the Federal government. There never was a power given to punish a lesser crime, which leads to a greater, where no power is given to punish the greater when committed.

If it should be held that the power of Congress extends to punishing the crime of conspiracy to defraud Insurance Companies, where will the doctrine lead? Suit cannot be brought in the Federal Courts on Policies of Insurance except when they concern *maritime* risks—in the latter case it is an admiralty contract.

Congress has no power to punish any offence committed upon the internal rivers of the country, *per se*. A contrary proposition would grant to Congress power to regulate insurance contracts; once leave the "high seas," and you must give Congress power over commerce on Canals and Railroads.

Mr. Galloway suggested the question, "Has Congress the power to punish the crime of forging a Policy of Insurance?"

Mr. Stanbery. As the question has no concern with the present case, I will decline answering till the gentleman tenders the fee for the information. (Laughter.)

AFTERNOON (THURSDAY) SESSION.

Thomas Ware, Esq., assisting the District Attorney, resisted the motion to dismiss the case.

The offence charged in the warrant is within the twenty-third Section of the Act of 1825; and is precisely the crime therein defined and made punishable.

The offence now charged against these parties is not the *burning of the steamer Martha Washington*, but the *conspiracy* entered into to destroy her by fire, with intent to defraud certain underwriters who had underwritten, &c.; it is therefore immaterial where the burning or other destruction of the vessel takes place, whether upon the high seas or elsewhere. The offence may be complete without the actual destruction of the vessel in pursuance of the conspiracy. The conspiracy is alleged to have been formed and entered into in the State of Ohio; but the burning of the vessel in furtherance thereof, was on the Mississippi river, within the jurisdiction of the State of Arkansas. The present proceeding is not under the 11th Section of this Act for the burning of the boat, for which the penalty is death; the Act does not give jurisdiction to the U. S. Courts in that case, but the offence charged is *conspiring to burn the boat*, for which the penalty is very different.

The twenty-third Section designates two places where the conspiracy may be formed, viz.: on the high seas, and within the United States; but it does not designate where the burning or other destruction of the vessel shall take place, leaving that, as it ought to be, immaterial.

That the above Section is applicable to the present proceedings, and was intended by Congress to embrace such, may be strongly inferred from the language of other Sections of the same Act, wherein many crimes are defined and made punishable, such as murder, robbery, assault with intent to kill, rob, &c., and *burning or destroying* any ship or vessel, &c., upon the high seas or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United States, and "*out of the jurisdiction of any particular State.*"

The offence of burning or otherwise destroying any ship or vessel upon the high seas or in any arm of the sea, or in any river, haven, creek, basin, or bay, within the admiralty jurisdiction of the United

States, and out of the jurisdiction of any particular State, is defined and made punishable with death, by the 11th Section of this Act.

In the Section under discussion, the careful language above quoted, as applicable to other Sections, preserving the jurisdiction of the several States over crimes committed within their jurisdiction, is omitted undoubtedly *by intention*.

This diversity of language in different Sections, being general in one and specific in another, has not escaped the attention of elementary writers; and the 23d Section has been referred to by Chancellor Kent as an exception to the specific language of the other Sections of that act.

The terms "ship or vessel" are not exclusively appropriated to the high seas, or to vessels propelled by wind, but include boats, whether propelled by wind or steam, upon the high seas, or upon our lakes and rivers. The Supreme Court of the United States so held in *Gibbons vs. Ogden*, 9 Wheat. 1, viz: that a steamboat was a vessel within the meaning of the acts of Congress.

It has been urged by learned gentlemen that the several States have ample power over the subject of crimes within their jurisdiction, and that there is and has been no necessity for any legislation on the part of Congress on this subject. Whatever may be the necessity of such legislation in general, in the present instance, it is remarkable that there is no provision in Ohio by which these parties could be punished for any offence connected with this transaction. By the 7th and 10th Sections of an Act entitled "An Act to Prevent Fraudulent Practices," provision was made for the punishment by confinement in the Penitentiary for a term of not more than three nor less than one year, of any owner of a steamboat, or any person belonging or attached to said boat, or any person being the owner of any property laden or pretended to be laden on board the same, who should make out and exhibit any false or fraudulent invoice, bill of lading, &c., of goods pretended to be on board, with intent to injure or defraud any insurer of such vessel or property, or with intent to injure or defraud any person, &c. Provision is made in the 10th Section for the punishment of any person who shall accept any such bill of lading with intent to injure or defraud, &c. Such was the law at the time this conspiracy is alleged to have been formed and the false bills of lading made out, &c. On the 9th of April, 1852, an Act was passed and became a law, substantially the same with the law of 1844 and 1846, altering the maximum term of punishment from three years to four, and repealing the 9th and 10th Sections of the Acts of 1844, and the 1st Section of the Act of 1846. It will be perceived by the learned gentlemen, that by the repeal of the law of '44, these parties, if guilty, would entirely escape punishment. It is perhaps fortunate

for humanity and the interest of an extended commerce, that Congress has legislated upon this subject.

The constitutionality of the law was maintained upon two grounds, viz: Art. 1, Sec. 8, of the Constitution, giving Congress power to regulate commerce with foreign nations, and among the several States, &c. Several authorities were cited, showing the construction heretofore given to this clause of the Constitution.

The power of Congress was also claimed to rest upon that clause of Art. 3, Sec. 2, extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction. And the recent decision of the Supreme Court of the United States in the propeller *Genesee Chief vs. Fitzhugh et al.*, as to the construction of the clause was read.

When Mr. W. remarked, in the course of his argument, that in April last the laws of Ohio were so amended that there was now no law of this State to punish a crime like the one with which the defendants in this case were charged;

Mr. Walker said, Do you mean to charge me with changing that law?

Mr. Ware. The reputation of the gentleman precludes the supposition.

Mr. Walker. Do you then mean to insinuate that our clients procured that legislation?

Mr. Ware. That is another thing. I state the naked fact, without extending to inferences or insinuations.

Mr. Stanbery made a finished argument for the jurisdiction of the Commissioner, and for the constitutionality of the act of Congress under which this proceeding is instituted.

He commenced by remarking that it was apparent to all that the great delay caused by this singular motion was wholly chargeable to the defence. He was not surprised that the motion should be made, but he was astonished that it should be made at this time.

Mr. Walker. Counsel for the defence were unanimous in taking this course for several reasons: first, from the course pursued by the Prosecution in going into such details of evidence as must consume much time; secondly, his clients were unable to stand so great an expense as the examination was like to cause, and therefore, if the Court had no jurisdiction, the question had better be settled at once; and lastly, the decision of the Commissioner last evening changing the form of bail bonds.

Mr. Stanbery. Could my friend have taken the ancient advice to a Justice of the Peace, "Give no reasons," it would have been better; for what reasons are presented? Would he compel the government to commence by calling the evidence in the conclusion of the conspiracy in-

stead of the beginning? His clients "are unable—are too poor—to stand this examination!" Certainly his clients do not come into this Court in the form of *paupers*. They have been able to employ an unprecedented number of Counsel—perhaps not less than *twelve!* And the most of them are men who do not work for small fees. (Laughter.) And more, they were able to become bail for each other in the large sum of ten thousand dollars each—swearing they were worth a considerably larger sum.

It certainly would be better for the reputation of the defendants if they did not show this desperate determination to avoid an investigation. If they are innocent of the terrible charges preferred, they have now full opportunity to establish their good characters. The Government is ready, and its representatives will be but too happy to find the accused innocent of the crimes for which they were arrested.

Mr. S. then proceeded to argue that the offence charged was clearly within the jurisdiction of the United States Courts. It was committed upon the Mississippi; there was no law of Ohio to punish the crime, so that if this Court had no jurisdiction, then was there no law—no authority in the world to punish it. Would this alternative be accepted?

After Mr. Stanbery had concluded,

Ex-Gov. Morehead followed in an extension of the argument of Judge Walker.

THIRD DAY.

The Court assembled punctually at the hour this morning, and found the room already thronged by witnesses and spectators, among whom were a large number of lawyers and judicial officers from different sections of the State.

Mr. Commissioner Wilcox said he had given the motion and arguments of counsel a careful consideration. His investigation of the authorities, coinciding with his own opinions, had determined him to decide that the United States *had* jurisdiction in this case; the examination therefore, must proceed.

In announcing his decision, the Commissioner briefly remarked that, sitting as an examining magistrate, it was not for him to pronounce upon the constitutionality of a solemn act of Congress, that had been in undisturbed operation for a quarter of a century. The highest Court of the country itself, approached such a question with the greatest reluctance and delicacy. The only question remaining was, whether the act

of Congress of 1825 comprehended an offence committed on a steam-boat on the Mississippi river. Sec. XXIII of that act reads thus:

“*And be it further enacted*, That if any person or persons shall, on the high seas, or within the United States, wilfully and corruptly conspire, confederate, and combine, with any other person or persons, being either within or without the United States, to cast away, burn, or otherwise destroy any ship or vessel, or to procure the same to be done, with intent to injure any person, or body politic that had underwritten, or shall thereafter underwrite any policy of insurance, &c., &c., every person so offending shall, on conviction thereof, be deemed guilty of felony, and shall be punished by fine not exceeding ten thousand dollars and imprisonment and confinement to hard labor not exceeding ten years.”

The language of this section, said the Commissioner, is conclusive, to my mind, that the offence charged upon the defendants in this case is within the meaning of the act of Congress, and therefore within the jurisdiction of this Court.

J. H. Carter was now duly sworn, and testified as follows: I live in Cincinnati; am Agent of the Ætna Insurance Company of Hartford; know the defendants in this case, though not intimately. We insured the property on the Martha Washington for George P. Stephens.

Here a long discussion arose between counsel, as to the right of the prosecution to introduce evidence in relation to the acts and character of G. P. Stephens.

Mr. Stanbery said he expected to connect Stephens with the conspiracy—with Mr. Kissane in particular.

Mr. Walker, in a close and strong argument, contended that the order of testimony proceeded upon by the Attorney for the United States was unusual and improper; Stephens had not been arrested, and was not on trial, and the testimony offered did not tend to prove the guilt of the defendants.

The immediate question being allowed, Mr. Carter continued—Mr. Stephens made application in the form of a written memorandum, for insurance on goods shipped on the Martha Washington. This was on the 7th Jan., 1852; the amount to be insured was over five thousand dollars, and the articles insured were contained in six boxes. I have here his written application.

Questioned by Mr. Stanbery.—Of whom did Stephens say he purchased the goods?

This was objected to, and another animated discussion ensued.

Mr. Walker contended that the same kind of testimony must be required here as on a final trial—not the same in *amount* but in *kind*. His clients had around them a great constitutional shield. “All courts

shall be open"—and this, thank God, was one of them—not a secret inquisition.

Mr. Stanbery said it was necessary to establish a connection between Stephens and the defendants. The Government sought to prove that these goods were bought of Edwards, who previously had been proved to be a poor man, not able to pay his board, but was now suddenly possessed of several thousand dollars worth of goods—a pretty full stock for a clothing store.

The Commissioner said the evidence might proceed, if counsel for defence were satisfied by Mr. Stanbery's statement of his expectation to connect the defendants with Stephens.

Mr. Carter proceeded with his testimony.—After the burning of the Martha Washington, when Stephens applied for the indemnity of his loss, I asked him for a reference. He referred me to Mr. Kissane; saw Mr. Kissane on Third street; he told me he believed the matter of Stephens's insurance to be all right—said Stephens had frequent dealings with him; had, so far as he was concerned, always met his engagements; he had no doubt but that he was an upright man, and if in my place he should pay the insurance.

Here still another and hotter discussion arose between counsel, as to the propriety of proceeding with testimony regarding Kissane.

Mr. Stanbery said it had been shown that Stephens, Holland, Kissane, Cummings, the captain of the Martha Washington, Holland, the mate of the Washington, and Edwards were all together at different times at the boarding house of Mr. McGrew; that they were frequently seen conversing together; that Edwards had no visible means of getting a livelihood; that his board was paid by Stephens, etc. Here then were some circumstances tending to throw light on this conspiracy.

Mr. Pugh.—Do you expect to connect Mr. Kissane in a conspiracy to burn the Wartha Washington?

Mr. Stanbery.—I am instructed there will be evidence thus to connect him.

After a long argument, the Commissioner said that as yet there was no evidence showing guilt in the defendants; there might be suspicious circumstances, but no proof of guilt. He thought the evidence was too remote to be admitted at this stage of the case, and that Kissane's guilty knowledge had not been shown.

He should decide that until a larger basis were made for such testimony, the line of evidence proposed to be given by the present witness must be ruled out.

Mr. Stanbery said, the ruling of the Court had somewhat deranged the order in which he had intended to present the case, but he would pro-

ceed with another branch of it, and would call a witness to show a fraudulent insurance by Kissane.

Lewis Clawson called. — I reside in Cincinnati; know Mr. Kissane; am not acquainted with the other defendants. In January, '52, Mr. Kissane was a partner of Mr. Smith, under the firm of "Smith & Kissane." I am Secretary of the Firemen's Insurance Company of Cincinnati. The paper you hand me is an application of Smith & Kissane—handed to me by Mr. Kissane on January 9th—for insurance on eight thousand dollars worth of merchandise from Cincinnati to San Francisco, via New Orleans, on the steamer Martha Washington.

"K. 24,810.

"Insure \$8,000 on merchandise hence to San Francisco, California, to New Orleans, per steamer Martha Washington, thence by good vessel, with the privilege of remaining on board thirty days after arrival at the port of destination. (Signed.) SMITH & KISSANE.

"Jan'y. 9, '52.

"\$8,000a4; \$380.00. Pol. 2373."

I wrote the memorandum at the request of Kissane; the insurance was taken by me, and entered on the open policy of the firm; he did not state the character of the merchandise. S. & K. were manufacturers of star candles, and were engaged in the pork business, and perhaps in the business of lard rendering. Don't know whether the Martha Washington had started on her voyage; no invoice of merchandise was at the time presented; was advised by telegraph of the loss of the steamer some twenty-four hours after she was burned; we paid to Mr. Kissane the amount of his insurance. The bill you hand me is one of the bills Mr. Kissane presented to me when he applied for his indemnity, dated Cincinnati, January 6, 1852. It is as follows:

"K. CINCINNATI, Jan. 6th, 1852.

"Messrs. Smith & Kissane,

"Bought of Lyman Cole, (*the words Filley & Chapin erased,*)

"Wholesale Boot and Shoe Manufacturers, and Dealers in

"Hats, Caps, and Leather.

"Manufactory cor. of Sycamore and Columbia sts., (in Clayton's Building)

"Depot, No. 7 Pearl and 75 Main st.

"TERMS, CASH.

40 Cases Calf Boots, at \$42.....	\$1,680 00
50 do long-legged Hungarian Boots, at \$36.....	1,800 00
32 do do Kip do at \$37.....	864 00
25 do No. 1 do do at \$21.....	525 00
3 do 24 dozen Kossuth Hats, at \$36.....	864 00
3 do 24 do Caps, at \$18.....	432 00
2 do 16 do Rubber Shoes, at \$12.....	192 00
Drayage.....	2 50

\$6,359 50"

The following paper was also adduced, and identified as one of the bills or vouchers presented by Mr. Kissane at the Firemen's Insurance Office, as among the evidence of his loss:

"CINCINNATI, Jan. 1st, 1852.

"Mr. Smith Kissan,

"Bought of C. F. Meyer & Bro.

6 boxes of cigars.....	\$262 80
6 boxes	6 00
	<hr/>
	\$268 80

Also the following :

"Smith & Kissane,

"Bought of A. Duppler.

13 casks Brandy, viz. :

76, 83,	
85, 80,	
84, 82,	
84, 81,	
82, 72,—809 gallons at 70c.....	\$666 30
76, 78, 86,—240 gallons, at 35.....	84 00
13 casks for same, \$2.50.....	33 50
Add per agreement for candles and soap.....	25 00
	<hr/>
	\$708 80

"Received Payment.

"(Signed,)

A. DUPPLER.

"Cincinnati, 5th Jan., 1852."

This bill of lading was then handed to the witness, viz. :

"LOT, PUGH & Co.,

"Beef & Pork Packers, Commission, Produce & Forwarding Merchants
"Corner of Canal and Sycamore street, Cincinnati.

"SHIPPED, in good order and well conditioned, by (*L. Pugh & Co. erased*.) Smith & Kissane, for account and risk of whom it may concern, on board the good steamboat called the Martha Washington, whereof _____ is Master for the present voyage, now lying at the port of Cincinnati, and bound for New Orleans, the articles marked or numbered as below, which are to be delivered, without delay, in like good order, at the Port of New Orleans, (the unavoidable dangers of navigation only excepted,) unto James Connoly & Co., or assigns, he or they to pay freight for the said goods at the rate of two dollars each for casks, and thirty cents for 100 wt. on boxes.

"IN WITNESS WHEREOF, the Owner, Master, or Clerk of said boat, hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished, the other to stand void.

"Dated at Cincinnati, this 7th day of January, 1852:

MARKS.	ARTICLES.
A.	Thirteen (13) Casks Brandy.
W. P.	Six Boxes Cigars.
T. & P.	One Hundred and Fifty-five (155) Boxes Boots, &c. [11,200lbs.]
"Care Jm. Connoly & Co., N. O.	Nicholson, Clk."

I know the handwriting of Mr. Kissane; the filling up this bill of lading is, in my opinion, in the handwriting of Kissane. This was called for in the month of March, and was produced. It was on file with the other papers handed in as proof of loss; Kissane had been asked for it: Do not know who handed it to Mr. Lawrence. Mr. L. showed it to me as part of the evidence of the loss. I have examined the papers, and find no other bill of lading of this shipment. When I first saw the signature to this bill of lading, it appeared to be freshly written. I write a good deal, and observe handwritings. The ink appeared fresh, and not of so deep a color as afterward; its color at first was greenish, but it changed repeatedly, and became black afterward; the fresh appearance of the ink was a matter of remark very soon after it was handed to me by Kissane.

Cross-examined.—Josiah Lawrence, President of our Company, died in June last. S. R. Carter is a clerk in our office, and may have written Smith & Kissane's policy. I know of a boat named the Geo. Washington. 4½ per cent. was considered a fair rate. Smith and Kissane were our regular customers. I put the word "Martha" in before "Washington" before the policy was made out; it was first written "Washington" alone; I do not know whether the mistake was mine or Mr. Kissane's. At the moment I did not know whether it was the steamer "Martha Washington" or George Washington.

Freights were not scarce when the Washington left for New Orleans; freights had accumulated; the river had been closed, and had just opened; there was probably all the freight, or more, than steamers then in port could carry. Freight was then profitable. Think the Martha Washington arrived from Louisville after the breaking up of the ice, and the resumption of navigation: Mr. Kissane's proposition may have been to insure through to San Francisco. The negotiation may have been carried on between Mr. Lawrence and Mr. Kissane. Do not know who suggested the making of the insurance through to San Francisco.

[Mr. Pugh presents a policy of Insurance to the witness—]

The word "Martha" is written over the word "Washington." Mr. S. R. Carter is our clerk. That endorsement is in his handwriting: There are several risks on that open policy; do not recollect the number exactly.

Mr. Stanbery.—Is that policy now in evidence?

Mr. Pugh.—We shall decide on that presently.

Mr. Stanbery.—Not so. When a paper is put in the hands of a witness, it is too late to withdraw it.

[The policy, however, was withdrawn.]

Mr. Clawson's cross-examination was continued.—The policy is No. 2373. The risks enumerated on the second page are written subsequent

to those on the first page of the policy. Have been informed that Smith & Kissane made candles. We have insured a pork-house and slaughter-house for them. Do not know that they kept a general commission and forwarding house. It may be the usage of some Eastern merchants to order their shipments in their own names. I do not recollect that Smith & Kissane had any previous losses. Do not recollect that Mr. Kissane told Mr. Lawrence that he would tear a voucher from one of his books and bring it down.

A protest of the loss was once in our office — Mr. Lawrence had it — think it has been delivered out of our office, as other insurance offices were interested in the case, and a good deal had been said about the fairness of the transaction. Do not know that Kissane ever saw the protest.

The first payment we made on the loss was some \$2,000. Think an affidavit regarding the matter was made by a Mr. Earl — this may have been handed to Bates & Scarborough. A drayman's affidavit may have been with Mr. Earl's. Mr. Earl was a clerk of Filley & Chapin: Our Company has employed no lawyers; is not conducting this prosecution. The Firemen's Insurance Company is a member of the Board of Underwriters. Do not know that the Board has employed any counsellor who is directly connected with this prosecution. Think I have seen Mr. Earl's affidavit since the loss was paid.

Mr. Pugh here demanded that the prosecution should furnish the affidavit of Mr. Earl, (Clerk for Filley & Chapin, and who swore to the amount and value of goods shipped on the steamer in question,) or that the witness should state its contents.

Mr. Stanbery.—We have the paper here in Court. Does the counsel for defence wish to introduce the paper in evidence?

Mr. Pugh.—We cannot tell till we see it.

Mr. Stanbery.—The paper will be produced at the proper time.

Mr. Clawson's cross-examination continued.—The bill of lading was produced by Mr. Kissane after at least one payment had been made, and before the last payment. There were three payments — \$4,000 on Feb. 12th, \$2,000, March 5th, \$2,000, April 26th. Think the bills of sale of Cole, Duppler, and Meyer were produced before the affidavit of Mr. Earl — am not sure of this. Mr. Burton (who makes the affidavit in this case,) called at our office twice — both times within the past two weeks; first time may have been a little earlier than this day two weeks.

Direct resumed.—Question by Mr. Stanbery — (handing witness policy of insurance)—What shipments are named there?

All the shipments, but this one to California, are of pork, or products of pork. This is the original policy to Smith & Kissane, and the only

marine policy ever issued to them. We distinguish our policies as fire or marine. This is our only insurance on a shipment to California. All our transactions in this matter were with Mr. Kissane—never saw Smith in the office but once. Mr. Kissane always transacted the business of the firm, so far as our office was concerned. Kissane & Smith had several fire policies from our office at the same time: The rate of insurance on risks to New Orleans was then 1 per cent.; $2\frac{1}{2}$ was the rate from New Orleans to San Francisco.

A. S. Chew called and sworn.—Reside in Cincinnati, and did in January, '52. Do not see any one present with whom I then had transactions. I was Agent for the Phoenix Insurance Company, of St. Louis, and for several other companies. I was applied to during the last winter to issue policies of insurance on goods shipped in the Martha Washington.

Mr. Chew's examination was here temporarily suspended.

James McGregor sworn.—I reside in Cincinnati. In the fall of 1851 owned one-half the Martha Washington; the Irwins owned the other half. In November, 1851, Captain Cummings applied to purchase. I saw his advertisement, headed—"Wanted to purchase a steambot, for cash. Address Box No.—" I wanted to sell, and addressed the advertiser, through the box indicated.

At this time I left for Madison; while gone, a letter from Captain Cummings was received, and opened by my brother, desiring an interview, I think at the Walnut street Hotel; my brother, accordingly, called on Cummings. The Martha Washington was lying near the Marine Railway in Cincinnati. Captain C. was taken to see her by my brother. She was then repairing, a little before the river rose in the fall. Captain C. expressed himself satisfied with her; told him I only owned half. In a subsequent interview with me he said he wanted the exclusive control; he wished to be introduced to the other owners, and was. The Irwins asked \$5,500, but I was very desirous, and got their permission to sell for \$5,000, so Capt. Cummings took her at \$10,000. When I told him the boat was ready, he said that he was disappointed in getting the money—he had agreed to pay cash down. We then proposed that the boat should make a trip under our ownership and captain—this would give him an opportunity to get his money.

He assented, and, at his own request, was allowed to make the trip on her without charge for passage. He went down in her, and came back in a swift boat two weeks before she arrived. The Martha Washington was the first boat that came up after the river was clear of ice; she had been frozen up at Evansville. Capt. Cummings had told me, before her arrival, that he would be ready to complete the purchase, and as soon as she was cleaned after her trip, he was notified, and took her. He

paid us \$6,000, by depositing with Geo. Milne at several times; he paid me on the street, I think, part in cash, and part in a check. I once thought the check was from Mr. Kissane; on referring to my books, find that it was not so. Cummings then told me that Smith & Kissane owed him, and would pay us the balance. Saw Mr. Kissane about it; he said they owed Cummings \$2000, and were requested by him to loan the balance to make up the amount due on the purchase of the Martha Washington. Smith & Kissane offered me a draft on Boston, for \$3,000, which I refused, as I did not know the parties to it, and found I could not sell without endorsing it. Mr. Kissane then showed me a quantity of beef, which, to the amount of \$3,000, he offered to ship to a house in New Orleans, for my benefit. I consented—the beef was shipped, and he gave me the bill of lading—but when sold, did not amount to \$3,000. This was the day before the Martha Washington sailed. I wanted the beef shipped on the Martha Washington, and proposed to Capt. Cummings to take it, but he said he had as much freight already engaged as he could carry. Mr. Kissane told me had seen Capt. C., and the boat was too full to take the beef. The beef was shipped on another boat. I do not recollect the number of barrels; there were three or four hundred. The day before the Martha Washington left, Capt. C. came to me, and said he wanted to borrow \$700, and would give me a policy of insurance on his freight list as security for the loan; I saw Mr. Neville, and he said he would take the risk; Capt. C. then insured with him \$2,500 on the freight list, and I lent the \$700, and took the policy as security. The freight list was worth considerably more than \$2,500; must have been at least worth \$3,000, as freights then were—they were abundant. When I told Mr. Kissane the beef would not sell for enough to pay the balance due on the steamer, he said he understood I had a policy on the freight list which would secure me.

Sometime after the burning of the steamer, I asked Mr. Neville to pay the loss; he said the time had not expired on the policy for the \$2,500 effected on the freight list. Mr. Kissane told me Cummings owed him \$1,000, and he wished I would retain that amount for him when I collected the policy—I declined without the Captain's order. Mr. Kissane got the order. I collected the money, and after deducting certain bills of Mr. Cassilly's brother, paid Mr. Kissane the balance after deducting my own \$700. The balance was \$761, which Cummings said was all that was due him.

I do not know where Cummings got the \$6,000 he paid me. He told me I might hear of him at Filley & Chapin's, or at his own boarding house, of which he gave me the street and number. During the time the negotiation was going on, he gave me this information. I saw him twice at Filley & Chapin's store.

I never knew F. & C. before this, and did not know Filley from either Chapin. When about to prepare the bill of sale, I went to Cummings and asked him his first name. He told me to leave that blank in the bill of sale,—and afterwards told me to put in the name of Lewis Choate. He made some remark as to this reason, but I paid no particular attention to it.

Cross-examined. — Never knew the Chapins to have anything to do with the Martha Washington. First time I ever saw this gentleman, (pointing to one of the Messrs. C.) he offered to sell me a horse.

When Kissane showed me the draft on Boston, it was on 'change. He said something like that it was Saturday, the banks were closed, and I must give him time or take the draft. He told me a shipment had gone forward that belonged to the draft. The Martha Washington would carry from 600 to 630 tons.

To Mr. Stanbery.—Cole, L. Cole, I think, was the name of the drawer of the draft on Boston; Kissane's name was on the back, either alone or Smith & K. The draft was on a house in Boston; I think it was Jas. Lee & Co. The bill was not accepted; I think it was for just \$3000; am not positive, Showed the bill to Mr. Daniels, a Boston Merchant; he said he knew the parties on whom the bill was drawn, and they were very responsible. If they accept, said he, the bill is good. There were between 200 and 300 barrels of beef; I think they said it was Mess. At New Orleans it was examined, and would not pass inspection; there were some imperfect pieces in it.

To Mr. Walker.—Do not remember Cummings said to me they might calaboose the boat at New Orleans. Do not remember what he said when he asked to have Choate's name put in. The boat made a trip to New Orleans between the agreement for the sale and the actual delivery. The river froze during the trip. It was three or four weeks that she was absent.

The Martha Washington would carry about 600 tons down stream. Do not know that this steamer was ever on fire while I owned her. She might have been on fire.

Mr. Stanbery.—What do you mean by this question.

Mr. Walker. — Why, sir, as there seems no probability of *your* proving a burning by *design*, we thought we might show *some* burning. (Laughter.)

Mr. McGregor resumed.—The advertisement of Capt. Cummings for a steamer, referred to, was published in November, 1851. I do not know whether the draft offered me by Kissane was predicated upon a shipment of pork and lard—think he told me it was. Don't think Captain Cummings told me the precise amount Kissane & Smith owed him. If he had taken the steamer when she first left the dockyard, he would have

paid \$10,000. We having the benefit of her first voyage, we afterwards sold her for \$9,000. Her first freight list down the river after she was repaired, must have been over \$3,000.

I had known Mr. Kissane for a number of years. Captain C. said, after he returned from New Orleans, after his first trip on the Martha Washington, that he had deposited some money with Messrs. Kissane & Smith.

Mr. Kissane said he knew Mr. Cole, the drawer of the draft he offered me, (in payment of Captain Cummings' debt for the steamer,) and that he lived near Oxford, O., where he owned a fine and valuable farm. The property that had been shipped belonged to the drawer of the draft. He also showed me a letter from the drawees, stating the terms on which they would accept; and not sure the letter was addressed to Mr. Cole. I returned the draft to Kissane.

Mr. Stanbery.—Where is the draft?

Mr. Kebler.—As soon as the letter can go to Oxford and back, the draft will be in Court.

Mr. McGregor resumed.—Capt. Cummings said that he had deposited \$2,000 with Kissane & Smith. Kissane said the same thing, and that he was requested to loan the Captain another \$1,000. After the news of the burning of the steamer, Mr. Kissane called on me, and wanted me to hold on to the policy of insurance on the freight list, to assist him to secure the \$1,000 he had loaned Capt C.. Early packed beef hardly ever turns out perfect after arriving at New Orleans. I told Mr. Kissane so. His beef turned out as well as could be expected. I owed Kissane & Smith for a lot of bacon, and requested to defer payment until I should get returns from the beef shipped on my account. James Connoly & Co. are a commission house in New Orleans.

We always insured the boat for as much as we could get; she had been insured for \$9,000 on the hull alone. Captain C. insured the boat for \$4,500. Do not know what sum he may have endeavored to get her insured for. He had a policy of \$2,500 on freight list, in addition to insurance on her hull. I have no doubt the Martha Washington would have paid for herself the first season, had she not burned.

The steamer was probably five years old. Boats are pretty well out of service after five years. She had about "run her course," and that was one reason why I wanted to sell her. (Laughter.)

Believe that Mr. Cole bought the pork and lard (on the shipment of which the draft of \$3,000 was predicated,) of Kissane & Smith. Don't know whether or no Mr. Cole is a pork dealer. The banks had not closed on the day Mr. Kissane offered me the draft, for I afterward went to the bank to see if I could negotiate it without endorsing it myself.

I believe Mr. Kissane took the first opportunity to ship the beef, from

the proceeds of which my \$3,000 was to be paid. He did not show me the evidences of the shipment of pork and lard on which Mr. Cole's draft was predicated.

Capt. Cummings told me that Kissane & Smith were good friends of his, and were helping him to pay for the steamer. The first I knew of Kissane's connection with Cummings, was when Mr. K. asked me if I had sold the Martha Washington.

To Mr. Pugh.—I do not know where the beef shipped on my account was insured. Money was very "tight" in Cincinnati last November and December—"tighter" than ever I knew it. This may have been the reason why Kissane offered me a draft.

A. S. Chew re-called.—Lewis Choate and Capt. Cummings applied to me in Jan. '52, for an insurance on the Martha Washington. I had not seen Cummings before. Had long known Choate well by reputation as a pilot, and had a slight personal acquaintance with him. Choate said, "we have purchased the Martha Washington, and have called to know for how much we would insure her." I told him she was very old, and we could not insure her for more than \$ths of \$7,000. She was set down by the Inspectors as worth \$7,000. Capt. Cummings said this was hard, as he had just paid \$9,000 cash for her. Asked me if I would insure her for \$4,500, saying he only wanted it for six months. I told him I would make inquiries as to parties and the boat. I did so, and then said I was willing to insure the steamer for \$4,500. Cummings asked me to prepare the application for the insurance.

I did so. It was substantially as follows:

"CINCINNATI, Jan. 6, 1852.

"Insurance is wanted in the sum of \$4,500 for six months, on the steamboat Martha Washington, Class B, No. 2, 298 tons burthen—whole value, \$7,000; owned by Lewis Choate, and the whole value here insured. Built in July, 1847; having two engines built in 1847, four boilers. Commander, ———, and designed to navigate the Ohio and Mississippi rivers. Warranted well manned and found."

The parties having used the expression, "we have purchased," etc., I, at first, wrote in the name of J. N. Cummings and L. Choate, as owners, but Cummings said he was not an owner, and the boat was owned by Choate alone. When upon my inquiry, I was told that Cummings was to command the steamer, I objected to insuring, because I did not know him. Choate said, "you know me, and I shall be on her while your policy lasts."

By agreement the policy was to be called for the next day. When they called on the next day, I had the policy drawn up in the name of Lewis Choate. Cummings asked if I would add, after Choate's name, "for account of whom it may concern." I objected, and said I had no

recollection of ever having inserted those words in a hull policy, but both Choate and Capt. Cummings said it would be conferring a particular favor if I would insert the words, and said it was a practice with other insurers. They gave no reasons. I went out and consulted the officers of the Merchants' and Manufacturers' Company and others, found it was their occasional practice to do so, and finally consented to insert the words "for account of whom it may concern."

Some two weeks, possibly a month after receiving a telegraph dispatch of the burning of the Washington, which dispatch was received on the day after the occurrence, Choate and Cummings called at my office and said the boat was burned. Both then went on to give a long and detailed account of the voyage of the steamer and her destruction. They were at the office two or three hours. I asked them for the "protest." They said there was one though they had it not with them: they promised to bring a copy of it when they received it, but never did. The insurance money was never paid or demanded in person by the insured. I received a summons to appear in Court and answer in this regard. T. D. Lincoln, Esq., once called upon me, in behalf of Cummings, and asked, "do you intend to pay the insurance on the Washington?" I said that if he pressed me for an answer, I should say No, if, however, he would wait a few days until I received advices from the Home Office, he might get a different answer. I told him I had stated the facts to the offices at St. Louis. Choate said to me one day "I have told Cummings you are not going to pay him his loss, and I do not believe you are." I made the same answer to him that I had to Mr. Lincoln.

Unless this be considered as a demand on the part of Choate and Cummings for the amount of their insurance, they never made any application or demand. The premium note was signed by Cummings and endorsed by Choate, the payee.

Mr. Stanbery handed the witness the bill of lading, the date of the signature of which was called in question.

Mr. Chew. In March, '52, Mr. Lawrence handed me their bill of lading, the ink, or "Arnold's Writing Fluid," was of a greenish blue color—it looked fresh, and as though recently written. I first saw the bill on Saturday; on Tuesday next, the same bill was handed me by Mr. Clawson, and I noticed the fact that the ink had become black.

When I first saw the signature, it had the appearance of having been written half an hour, or possibly two or three hours before. I believe the fluid is of the same kind with some that I have used for sixteen or seventeen years. I have known it, when taken from a fresh bottle, to turn black in twenty-four hours, but generally it does not turn black so soon, when fresh from the bottle, as it does after having been for some

time in the inkstand. This bill purports to be dated on the 7th of January; I think that when I saw it on the 13th of March, the signature was freshly made.

Here the Court took a recess; when it again opened.

Mr. Chew resumed.—It was on the evening of the 7th of January that Choate and Cummings came to my office, at 4 or 5 o'clock, P. M., for the policy. Capt. Cummings said they had on board 450 tons of freight; that the boat could carry more, but they would take on more below the falls of the Ohio; that they should leave Cincinnati at eight in the evening. Cummings and Choate called at my office again three or four weeks after the burning and detailed the particulars. I inquired if any on board had returned to Cincinnati. They replied that some had. Holland, the mate was sent for, and three deck-hands of the boat, and they came to the office.

The deck hands, three of them, were brought to my office by Mr. Holland—gave me an account of the burning of the steamer, which confirmed the statements of the mate, who had been brought in by Capt. Cummings. I had reason for endeavoring to ascertain the cause of the fire. I asked the hands, in the presence of Choate, Cummings, and Holland, about the manner in which the boat was loaded—the stowage of the cargo.

Judge Walker objected to the statement of conversation with the deck hands.

The testimony was decided to be in order.

Mr. Chew.—I asked the character of the cargo—the hands told me, the cargo consisted of pork, lard,—I think beef,—candles, red oil, a large quantity of brooms, and a quantity of dry goods, boxes of hats and clothing. They said the dry goods were stowed on the boiler deck or in the engine room, and some on the guards, round the cabin; part of the light boxes in the Social Hall, and the brooms, round the chimneys. I enquired if they saw any leather or sheepskins. One of them recollected in the after part of the engine room, a few rolls of leather. I asked if he saw any sheepskins. He replied, that he called it all leather. He said there were six or seven rolls in all.

There were a few rolls of leather or sheepskins on board; they thought there were six or seven rolls of leather. One of the hands said he helped take in all the cargo; the other helped take in a portion only. One having shipped the day before the boat left, and the other on the last day. One of them thought there was no leather at all on board, and the other had an impression that there was a small quantity.

This is my recollection of the account of the destruction of the boat, given me by the deck hands. One of them said he was off watch, but not asleep at the time of the alarm. The two others were on watch.

It was late, in the coldest night of January, when the *Martha Washington* stopped at a wood-yard, on the Arkansas side of the Mississippi, between the Arkansas and Mississippi shores. After taking in wood, the boat dropped out into the stream, and was rounding or had already got her head down stream, when the cry of fire was raised. One of the hands said the fire caught in among the brooms, near the pipe; and he could have put it out, and would, but the mate ordered him to take the line ashore. All of them said the night was very blustering and extremely cold—the thermometer being several degrees below zero.

Two of the deck hands [my informants] were ordered ashore to fasten the hawser to a tree or stump. The boat was run to the bank, and the hands sprang ashore, one of them dragging the hawser up a perpendicular bank, which, on viewing it the next day, he declares that he could not, to have saved his life, have got up again. They may have said that the rope was froze so as to be partly unmanageable; the hawser was made fast on shore, but the other end was not secured on the capstan or otherwise on the boat, and so she swung out again into the river and then drifted over to shore, where she burned to the water's edge. All the hands united in a representation of their extreme suffering from the cold; they being all imperfectly clothed. There were some thirty persons on the bank; deck hands, firemen, and passengers; nearly if not quite all were saved. Some of the passengers were saved, but not all. One of the hands told me that the common remark among the hands of the boat, was, that the mate had set her on fire. I asked why they said so; the only reply was: "That's what they all said." The night was very stormy, or "blustering," as they termed it. The destruction of the boat occurred about midnight.

Cross Examined. I insured at the request of Choate and Cummings. At the time that they wanted the policy altered, it was not said that there was a judgment against Cummings in New Orleans. After Cummings' name was erased, and the words "on account of whom it may concern" inserted on the 7th of January, Mr. Choate said that Capt. Cummings was in debt in Cincinnati, and they feared the Sheriff would not let the boat leave the dock. On this account he wanted his name erased, though he (Cummings) owned a part of the boat. Capt. Ross was present when they first applied for insurance, but I think not at the conversation last mentioned. He was one of their references. My impression is that I first became acquainted with both Capt. Ross and Mr. Choate in 1845, on a passage to New Orleans on the "*General Pike*," of which Ross was master and Choate pilot.

At the time of making the insurance, my office was at No. 15 Front street, opposite the landing where the *Martha Washington* lay, at the

foot of Sycamore street. I did not go to her at all. Cummings told me he had 450 tons of freight, and said Choate said he could carry the boat over the Falls with that.

I have not employed counsel in this prosecution — nor any agent farther than this, that Mr. Scarborough was employed by the several offices concerned, with authority to make inquiry respecting the subject— Mr. Scarborough was our attorney in the civil suit brought by Captain Cummings against us. I have contributed no money for the expenses of the prosecution; have not been called upon to do so.

The policy was for six months only. I got a memorandum of the tonnage and condition of the boat from Mr. Joseph Pierce, the officer employed by the underwriters of Cincinnati to make surveys of boats. Have no recollection of having been told that Choate and Cummings intended to use the Martha Washington's machinery for a new boat to be built by them. Choate said he was to be pilot of the boat as long as our policy lasted. The hands came to the office about a month after Choate and Cummings first called on me. I never saw the original protest;— saw a copy of what purported to be one. Lawrence or Clawson had what purported to be a copy, and I got it from them. About three weeks after Choate and Cummings called to inform me of the loss, Mr. Lincoln called to inquire if I meant to pay the insurance, I think, in the latter part of February. I had not said I would not pay. I never heard the subject of the loss of the Martha Washington mentioned in the Board of Underwriters as connected with any charge of fraud, till after the arrest of the defendants. I was called on one occasion to a meeting of certain persons interested in the insurance on the Martha Washington. Messrs. Lawrence, Cassilly, Neville, Whitney, Burgoyne, Carter, Robbins, and Frost were present, Captain Choate, Captain Ross, Judge Coffin, and Mr. Scarborough, as counsel for different offices, and Mr. Mason, who appeared as the Agent of the Union Office of New York.

Capt. Ross was then employed by the Insurance Companies as a surveyor of boats—not that he inspected hulls—but to report overloading, or insufficient manning, or equipment in any case; for this he received a regular salary. He was also frequently employed to proceed to wrecks and the like, for the protection of the interests of insurers, and for this he was paid by the Companies concerned in the particular risk. He said Captain Choate would tell all he knew about the destruction of the steamer, and he was, I believe, sent for. This was about the 20th of February.

Mr. Lincoln was often in my office about that time, in a friendly way. I had never given out that I would not pay before the suit was brought against us. The process in that suit was served, I think, in May.

Here the following paper was handed to Mr. Chew (the same of which a copy is before given:)

"SHIPPED, in good order and well conditioned, by (*L. Pugh & Co. erased*.) Smith & Kissane, for account of whom it may concern, on board the good steamboat called the Martha Washington, whereof _____ is master, etc., bound for New Orleans, the articles marked below, etc.:

MARKS.	ARTICLES.
A.	Thirteen Casks Brandy.
W. P.	Six Boxes Cigars.
T. P.	One Hundred and Fifty-five Boxes Boots, &c. [11,200lbs.]
	"Nicholson, Clk."

This bill of lading was shown to me on the 13th of March—on a Saturday. I looked at the ink with which the body of the bill is filled up; it seemed fresh, but was a different ink from that used in the signature. It is a common ink, black ink—at all events it was black when I saw it. I see no reason for thinking blotting paper had been used, and the bill shut up in a book: The body of the bill was probably written in common, or American ink. The signature was in another kind of ink or fluid, that looks green or blue when first used. This looked a sort of greenish blue when I first saw it. On Tuesday following, the ink was as black as it now is. The speed with which it turns black depends on its exposure to the air somewhat, and on the state of the atmosphere. If it was written in a book, and the book closed at once, it would take about twice as long for it to grow black as it would if left exposed. In many instances it turns black in a day. When Holland came to see me, he said Capt. Cummings told him the proceeds of the wreck were to come into my hands as adjustor, and that he wished the hands to be paid such sums as would be justifiable. I asked Holland where the deck hands were. Said he could bring them, and did so in some 20 minutes. Think one of them was named Hand. Think he was the one who was present at the time of the stowage of the cargo. The three were probably deck hands. Think so because they all said they were engaged in stowing the cargo. They were at my office many times for three to five weeks, in the hopes of getting some money for their services on the steamer. All three took part in the conversation, as did the mate. The narration of their exertions to save the property was gone into in detail. They were left by the Captain to preserve as much freight as possible. They said the boat lay sideways on a stump in the river, so that much of the freight rolled out into the river after the steamer burned. They said that the inhabitants of the vicinity were thieves and robbers, and at night would steal what they (the hands,) would save during the day. They averred it was impossible to induce steamers to stop and take the freight they had saved. To avoid "the

thieves and robbers" of the country, the remainder of the freight got out of the wreck was piled upon the wreck itself, but eventually a very inconsiderable amount was saved. What came out of the hold was spoken of as rolling freight—barrel freight—lard and red oil were frequently spoken of.

The cargo was said to consist of pork, beef, lard, red oil, boxes of hats and of shoes, and some brooms: One of the men said there might have been six rolls of leather. The fire was first discovered near the chimney—near one of the state-rooms—they said, I think, that the chimneys ran up near the state-rooms. One of the hands said they could have extinguished the fire, had they not been sent ashore to make the boat fast. They jumped ashore from the steamer. Do not remember that the rope was said to be frozen. Lewis Choate was at the wheel. The officers of the boat and hands were all saved. A number of passengers perished. It was designated as the coldest night of the winter. Holland was at my office during most of this conversation with the hands—from half to two-thirds of the time. After Holland left my office, one of the hands said that it was the general remark on the river-bank that night that the mate set fire to the boat. I did not ask him if he did so, for the idea had not occurred to me.

To Mr. Pugh. I do not think I sent Choate after the mate of the steamer, before the meeting of the insurers. Think Capt. Cummings was in town at the time of this meeting. Think Choate told me at that time Cummings was in Deposit, New York.

An attack was made (on Saturday) by Capt. Cummings on Mr. Mason, the Agent of the Union Mutual Insurance Co. of N. Y. Do not think the attack was made on the day of the insurers' meeting. Mr. Mason was at the meeting.

To Mr Stanbery. I have often seen Mr. Nicholson, Clerk of the Martha Washington, on the street, but did not know his name, 'till within the last few weeks, when he was pointed out to me. Think Capt. Cummings told me he had lived on the Red River—had been up the Rio Grande during the Mexican War, and that he was (at this time of making application for insurance,) a resident of Cincinnati.

I cannot remember why the name of the commander of the boat was at first left in blank in the application. I filled it out after they left. Was surprised when I saw it the next day to find the name not there. Suppose I wanted to enquire what Cummings' full name was.

To the Commissioner. The boat was burned in a "chute" of the Mississippi River, near Island No. 66, between the Arkansas and Mississippi shores.

To Mr. Pugh. Lewis Choate's reputation has been that of a very honest and very skillful pilot; it has been of the very first character.

Have never heard a word against him, and have heard very much in his favor. I supposed I was insuring Choate when I took this risk; supposed so for some time.

I have had a conversation with Capt. Ross with regard to Choate's interest in the steamer. The first time that I ever saw Mr. Burton (the maker of the affidavit) was in the month of October or November last at my office—have never spoken to him five times since.

To Mr. Walker. Do not think that I ever mentioned what the hands said of the burning of the boat by the mate, till I came here.

To the Commissioner. Nothing was said as to the reason why the hawser was not made fast on the boat. It is not generally fastened to the boat, but I suppose it is always made fast by a turn around the capstan, or in some such way, after the other end was secured on shore.

Wm. S. Scarborough called. Live in Cincinnati. The Detroit Fire and Life Insurance Co. had an agency in Cincinnati, last year—Frost & Foster, Agents. The agency has been withdrawn, and its papers placed in my hands, as attorney for the Co. Lyman Cole has made a claim on them for insurance on goods on board the Martha Washington. These papers were produced in proof of that claim.—I received them by letter from Detroit.

These papers are as follows, viz :

K.

CINCINNATI, JAN. 6th, 1852.

Mr. HORACE COLE,

Bought of (*Filley & Chapin erased*.) L. COLE,

Wholesale Boot and Shoe Manufacturers, &c. (as in the bill of L. Cole, first copied.)

40 cases Long Leg Hungarian Boots,	a \$36	\$1440.00
12 “ “ “ Calf “	a 42	504.00
2 “ 12 doz. Kossuth Hats,	a 21	252.00
Drayage,		1.00
		<hr/> 2,197.00
12 Linen Shirts	\$42.00	
2 Coats,	60.00	
1 Cloak,	40.00	
2 pr. Pants, a \$10	20.00	
3 Vests, a 5	15.00	
Scarfs, Cravats, and Sacks, &c.	10.00	187.00
		<hr/> 2,384.00

CINCINNATI, JANUARY 7th, 1852.

Mr. S. M. COOLEY,

Bought of LYMAN COLE, (*Filley & Chapin crased*)

Wholesale Boot and Shoe Manufacturers, &c. (as above)

3 cases	180 pr.	Ladies' Strap Shoes,	a	85	\$105.40
3 "	180 "	Mens' Kip Brogans,	a	110	180.00
2 "	120 "	" " "	a	105	126.00
1 "	60 "	" Thick "	a	100	60.00
1 "	60 "	Boys' Calf "	a	75	45.00
1 "	50 "	" " "	a	75	37.50
1 "	60 "	" Goat "	a	80	48.00
1 "	60 "	Women's Calf Lace Boots,	a	100	60.00
1 "	60 "	" Polk Calf Boots,	a	105	63.00
1 "	60 "	Boys' Kip Brogans,	a	85	51.00
1 "	60 "	Womens' Calf Lace Boots,	a	100	60.00
1 "	60 "	Men's Kip Brogans'	a	110	66.00
1 "	75 "	" Pumps,	a	75	56.25
1 "	120 "	Stout Cacs,	a	48	55.60
11 "	132 "	Men's Kip Boots, Long L.	a	25.00	275.00
5 "	60 "	Men's Kip Boots,	a	23.00	115.00
2 "	24 "	Long Kip Boots,	a	25.00	50.00
3 "	36 "	Kip Boots No. 2,	a	20.00	60.00
5 "	60 "	Men's Fine Calf Boots	a	40	240.00
37 "		Men's Kip Boots,	a	21	777.00
10 "		" Calf "	a	35	350.00
5 "		Men's Kip Brogans,	a	60	300.00

97 cases.

\$3180.75

Mr. Scarborough. \$5,458 was insured for Mr. Cole by the Detroit office. This paper was also on file, (presenting the following affidavit:)

" HAMILTON COUNTY, }
" STATE OF OHIO. } ss.

" Personally came before me, Shattuck Hartwell, a Notary Public in and for said County, Mr. Lyman Cole, of Cincinnati, and having been duly sworn, said that on the 6th day of January, 1852, he shipped to Horace Cole a bill of goods amounting to (\$2,197) twenty-one hundred and ninety-seven dollars; also, on same day, a bill of goods amounting to (\$187) one hundred and eighty-seven dollars; and on the 7th a bill of goods to S. M. Cooley, amounting to (\$3,180.75) thirty-one hundred and eighty 75-100 dollars, all of which were shipped on board the Martha Washington, bound for N. Orleans; that the copies of (B. of L.) bills of lading accompanying this statement are true copies of the originals; that he the said Cole was possessor and owner of said goods, until delivered to the purchasers at the place of destination; that said goods were insured in the sum of (\$5,458) fifty-four hundred and fifty-eight dollars, by the "Detroit Fire and Marine Insurance Company," and that no other insurance was effected on said goods; that on the morning of the 14th January, said steamboat was destroyed by fire, and said goods believed to be burned, which are abandoned to the assurers.

" (Signed,)

LYMAN COLE."

" In testimony whereof, I have hereunto set my hand and seal Notarial, this 7th day of Feb., A. D. 1852.

{ SEAL }

" (Signed,)

SHATTUCK HARTWELL.

" Not. Pub."

Mr. Scarborough.—The originals of these bills of lading were handed, as I understand, to Messrs. Walker and Kebler, Mr. Cole's counsel. These certified copies came to me through Messrs. Frost and Foster, viz. :

"Shipped, in good order, and well conditioned, by Lyman Cole, on board the good steamboat Martha Washington, the following, marked or numbered as below, which are to be delivered, without delay, in like good order, at the port of New Orleans, (the unavoidable dangers of the river and fire excepted,) unto James Connolly & Co., or assigns, he or they paying freight for the said goods at the rate of forty cents per hundred :

" Five thousand three hundred thirty-five lbs.

" In witness whereof, the Owner, Master, or Clerk of said boat hath affirmed to four bills of lading, of this tenor and date, one of which being accomplished, the others to stand void,

" Dated at Cincinnati, this seventh day of January, 1852.

MARKS	ARTICLES.	WEIGHTS.
S. M. C. Grand Ecure La.	97 Cases Boots and Shoes.	5,335.

"Nicholson, Clk."

"HAMILTON COUNTY, }
"STATE OF OHIO. } ss.

"I, Shattuck Hartwell, a Notary for said County, duly commissioned and sworn, do certify that I have carefully compared the above, purporting to be a copy of the original bill of lading, with said original bill of lading, and find the same to be a true copy thereof.

"In testimony whereof, I have hereunto set my hand and seal Notarial, this seventh day of January, A. D. 1852.

{ SEAL }

"SHATTUCK HARTWELL,
Not. Pub."

"Shipped, in good order and condition, by Lyman Cole, on board the steamboat called the Martha Washington, whereof Cummings is master, now lying at the port of Cincinnati, and bound for New Orleans, to say :

C. Care of O. Wickham, New Orleans, La.	Fifty-four Cases Boots, Clothing, &c. Forty Cents per Hundred Pounds. Three thousand fifty-seven pounds, (3,057 lbs.)
---	---

"Marked and numbered as in the margin, and are to be delivered without delay, in the like good order and condition, at the port of New Orleans, (the dangers of the river and fire only excepted,) unto O. Wickham, or to assigns, he or they paying freight for the said.

"In witness whereof, the Master or Clerk of said boat hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void. J. N. Cummings.

"Cincinnati, the seventh day of January, 1852."

"Shattuck Hartwell, Not. Pub., on Feb. 7th, 1852, certifies (as above) 'that the foregoing is a true copy by (him) me made of the original bill of lading.'"

"Signed by J. N. Cummings, Capt. of the Martha Washington."

Mr. Scarborough.—I may know Horace Cole slightly; believe he is a brother of L. Cole; four or five years ago I think I knew him. Have made some inquiries for Cooley, but do not know him. Know three of the Chapins by sight; am somewhat acquainted with Amasa, and know him from the others; think I know Lorenzo. Have had an interview with Amasa and Mr. Kimball, in relation to certain insurances effected with the Union Mutual Insurance Company of New York, more especially, though the insurances generally made by Filley & Chapin were spoken of. Can't say I remember anything of those conversations particularly. My object was to get any papers that might be offered me voluntarily by them; I confess I endeavored only to forget these conversations. Did not wish to ask them for any papers. Amasa Chapin said he represented Cole and Kimball. He said that 26,000lbs. of white sole leather, and 1,600 dozen sheepskins had been shipped by Cole on the Martha Washington, to Kimball in New York. He did not say where Cole got them. I told him there were some suspicious circumstances connected with the destruction of that steamer.

Mr. Chapin pressed me to know what kind of a statement I wanted, as attorney of an Insurance Company. I finally said that if I were in like circumstances, I might offer to show the books of Filley & Chapin, they having sold the 26,000 pounds of leather to Cole. I said also that they might exhibit their bills of purchase. He said the bills of purchase had been burned. As to the books of Filley & Chapin, he remarked that the firm had been recently embarrassed, and there was a delicacy felt about exposing their books on unnecessary occasions. I told him I would look only at such parts as he wished to show me. I told him I was examining the matter quietly. The books were not produced. I think he gave me a name or two on some bills of purchase, not amounting, however, to one-fifth of the quantity said to have been shipped. I think he said the bills were burnt on purpose; think he said he or they did not regard them as of any value. He did not say when or where they had been burnt. Do not think he said who burned them. Did not say how Cole paid for the goods sold him by F. & C. He told me generally that F. & C. had sold out their stock to L. Cole shortly before their suspension.

I spoke of the invoice of sale to Cole; suggested I should like to see it; never did see it; no excuse was given for not producing it. He never spoke of any assignment. I understood that the sale took place about the middle of December, 1851. The embarrassments of F. & C. were spoken of as one occasion of the sale. A pass-book of a Mr. Earl came into my hands through Amasa Chapin, or Mr. Kebler. A. Chapin said at another time when in my office, and after some conversation, which I have forgot, that he wanted to know why the policy was not

paid. I said they would not pay till proof of interest was given, nor till they knew who had the interest. He said L. Cole had an interest, and B. W. Kimball had an interest, and there were other interests. He could not, or did not, tell the names of the others. He said Kimball lived in Owego. I do not wish to be positive that he said he himself had an interest in the policy, but think so. At any rate I received that impression from the conversation. I alluded to Kimball as his brother-in-law, and he did not dissent. Would not say he spoke of K. as having a place of business at Deposit.

At this point the Court adjourned to Saturday morning.

FOURTH DAY.—SATURDAY, JAN. 1st, 1853.

Mr. Scarborough, cross-examined by Mr. Walker.—I can't say within a month when I first saw Amasa Chapin; it was as late as May last. He was introduced by Mr. Kebler. I did not intend to say that Chapin said in so many words that he was the agent of Cole and Kimball, but he talked as if he were. I may have seen Mr. Kebler before Chapin. Kebler said at one time he thought I could have the books—he would see them about it. I never asked him to produce the books. Kebler afterwards said his clients had said that owing to the situation of their firm, they did not care to show their books. Chapin said nothing about being advised by counsel not to show them. He never said there was an invoice. Cole would naturally have that. He said Cole had an interest in the insurance effected by Kimball. He may have mentioned the investment of F. & C. to Burton; am sure he said nothing of the debt due to Burton in connection with the collection of the insurance, but he did mention debt from them to B. Think C. said he had an interest himself. The sixty days must have then elapsed after the loss. He had no expectation of getting money from me. I had said I supposed they would not adjust the loss till they heard from me; in consequence of this, I presume, C. called on me. The pass-book was handed me by Chapin or Kebler; I made extracts from it. Have no recollection of ever hearing that they declined to show me the books because I made extracts from that. Have seen Burton often on this subject. They showed me no bills, but mentioned one or two instances of purchase, and stated from whom. I said they said the bills were burnt:

[*Was it not said they had given up their place of business to Cole, and he did not want the bills?*]—I do not remember anything of it, but

recollect indistinctly. Have never talked with Mr. Cole. Have had two conversations with McGrew, about what he could testify respecting this case. He spoke about Holland. The conversation was very brief. He said H. came to board at his house with Stephens and a son of Mr. Cole, and stayed till about the time the Martha Washington sailed. I am not sure, but I have an impression he told me he came there after the burning of the Martha Washington. He had told Holland he could not come there again, or could not stay. Said Holland told him he became acquainted with Cole on the Rio Grande, where Cole was keeping a gambling-house, and made a great deal of money. Do not think he said Holland *commanded* a boat on the Rio Grande. He spoke of Cummings as having been there. I did not tell McGrew my name.

To Mr. Pugh.—An affidavit of Mr. Earl, a clerk of Filley & Chapin, was presented to the Firemen's Insurance Company, respecting certain shipments on the Martha Washington. I have it not here. Believe Mr. Clawson has it.

[Mr. Clawson here produced the paper.]

Mr. Stanbery took the affidavit of Mr. Earl, and handed it to the Commissioner, remarking that he should not allow counsel for defence to have this and several other papers in evidence at this time, for the reason that the parties who made or signed them are themselves to be brought on the stand.

To Mr. Walker.—I inquired for Cooley of various insurance men, but could not hear of him. I did not inquire as if I were in pursuit of that very man, and had no other occupation.

Mr. Stanbery here put in a certain paper, and asked counsel for the defence if it were Nicholson's handwriting. The counsel said they did not know.

Mr. Scarborough re-called.—I have seen bills of lading handed to me by Chapin, and signed by Nicholson. I know Mr. Nicholson. I have seen genuine papers purporting to be signed by him. As counsel, have had papers signed by him, of the genuineness of which I had no doubt.

Questioned by Mr. Stanbery.—Do you believe that (handing a bill of lading,) signature to be Mr. Nicholson's?

Mr. Pugh objected.

Mr. Stanbery.—We have papers signed by Nicholson, the genuineness of which your clients have admitted.

Mr. Pugh.—No such thing.

The Commissioner.—The fact stated by Mr. Stanbery is in evidence. The question now asked is proper.

Mr. Scarborough resumed.—I believe that to be Nicholson's signature. I have seen quite a number of his bills.

The paper was then read; it as follows:

“Shipped, in good order and condition, by [*Smith & Kissane erased*] Ross & Greathouse, on account and risk of whom it may concern on board the good steamboat called the Martha Washington, whereof Cumins is master, now lying at [*Cincinnati erased,*] and bound for New Orleans, the articles marked and numbered as below, which are to be delivered, in like good order, at the port of New Orleans, (the dangers of the river, fire, and unavoidable accidents only excepted,) unto T. C. Twichell & Co., or his or their assigns, he or they paying freight for the same at the rate of twenty-five cents per bag.

“In witness whereof, the Master or Clerk of said boat hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

“Dated at [*Cincinnati erased,*] Slupe’s Landing, this 10th day of January, 1852.

MARKS	PACKAGES.	WEIGHTS.
No Mark.	942 Nine hundred and [<i>fifty erased,</i>] forty-two sacks Corn. Ten in dispute.	.

“Nicholson, Clk.”

Mr. Scarborough.—Slupe’s landing—where some was said to have been taken on—is on the Indiana side of the Ohio, below Louisville.

Question by Mr. Pugh.—Have you known Lewis Choate?

Mr. Stanbery.—I will here state that we shall discharge Mr. Choate (if now in custody,) from arrest for crime, and retain him for a witness. I am instructed that he is now pilot on the steamer Sam. Cloon, and may be expected here in a few days.

John S. Tappan was next called.—Live in Brooklyn. In Jan., 1852, was Vice-President of the Union Mutual Insurance Company, in Wall street, New York. The application now shown me is one made by B. W. Kimball for insurance in our office.

Judge Walker objected to the introduction of this evidence, as Mr. Kimball was not named in the affidavit.

Mr. Stanbery.—We expect to connect him with those who are named.

The Commissioner decided the evidence to be in order.

Mr. Tappan read the application referred to. It as follows, viz.:

“5,543.

5,557.

“Insurance is wanted by B. W. Kimball, whom, &c. Loss, if any, payable to him.

“For \$5,200 on Leather.

“For \$4,800 on Sheepskins, per steamer Martha Washington, and to be insured at and from Cincinnati to New Orleans.

1 per cent. on Leather.....	\$48.00—\$52.00
1½ “ “ Skins.....	\$24.00—\$72.00

\$72.00 \$124.00

\$1.25

\$125.25

“What will be the Premium?

“Binding, Jno. S. T., Vice-President.

“New York, January 12, 1852.”

“B. W. KIMBALL.

Mr. Kimball called at our office on the 12th of January, at about 3 o'clock in the afternoon, and asked if the President was in. Thinking he wished to see the President himself, I asked him to sit down, and said the President would be in soon. When he came in, Mr. Kimball stated that he wished for insurance upon a shipment of sole leather and sheep skins from Cincinnati to New Orleans. He being a stranger, we required proof of the shipment. He exhibited a bill of lading and an invoice. The bill of lading was signed J. N. Cummings. The invoice was only partially exhibited; it had upon it the names of Filley & Chapin and L. Cole. It was for 200 rolls white sole leather, and 1600 doz. sheep skins,—valued together at \$10,000. We agreed to take the risk, and he asked when the policy would be ready. We told him the next morning. He said he was in a hurry, and we consented to make it out at once. He waited and received it, and paid the premium in cash. He said he was engaged on the "York & Erie"—meaning, I supposed, the New York & Erie Railroad. We asked him if the property was not coming forward to New York, and why he did not insure all the way. He said he did not know whether it would come forward or not; it might be sold in New Orleans. We asked him to whom the property belonged. He said he had an interest in it with Mr. Lyman Cole, of Cincinnati,—a moneyed man. At one time, he said he had a joint interest with Cole,—at another time, he said he had an interest with Cole and another party,—refused to give the name of the other party. He was evidently unacquainted with business. Called the bill of lading, the *way-bill*. The goods, according to the bill of lading, were marked "B. W. K.". We asked him to whom the goods were consigned in New Orleans. He said he did not know; he supposed the name would be on the way-bill. He was named in the bill as the consignee at New York. Attached to the invoice, on the lower part of the same side of the sheet of paper, was a letter which Kimball was very careful not to exhibit. He laid the papers on the desk before us, and kept his hand over the letter. This was at the time the insurance was made. The bill of lading was shown at the time the insurance was made, and afterwards. The insurance was made about 3 in the afternoon, just as I was going to dinner. The invoice covered the leather and skins. My impression is that the names of Filley & Chapin were erased, and the name of L. Cole inserted in place of them. Kimball would never allow us to get possession of the papers. The bill of lading was dated the 7th of January. The prices of the goods in the invoice correspond with those given in the application for insurance. We saw, on the 16th of January, in the newspapers, a telegraphic notice of the loss of the Martha Washington. On the 17th, we wrote to Messrs. Haws & Lockwood at Cincinnati, requesting them to send

us a copy of the manifest of the boat ; and subsequently received from her Cincinnati agents, Messrs. Athearn & Hibberd, a copy of her manifest, or list of freight, so far as known to her agents, on which there was no evidence of the shipment of the leather we had insured. It is as follows :

Freight List of the steamer Martha Washington, left Cincinnati for New Orleans, Jan. 7, '52, P. M., and burnt at Island No. 95, Miss. river, Jan. 14th, half past 1 o'clock, A. M. J. N. Cummings, Master.

CINCINNATI SHIPPERS.	ARTICLES.	N. O. CONSIGNEES.	EASTERN CONSIGNEES, &c.
L. Fletcher	150 brls whisky.....	McGregor & Co.....	
J. McGregor.....	100 hds bacon.....	McGregor & Co.....	
J. Lewis.....	60 brls whisky.....	Vos. Landis.....	
Geo. Shillito & Co.....	140 brls oil.....	Seccomb & Voorhees.....	100 of it for New York.
Geo. Shillito & Co.....	50 bbls soap.....	Seccomb & Voorhees.....	
Phillips & Jordan.....	7 tons iron.....	Seccomb & Voorhees.....	Smead & Co, Vicksburgh.
Smith & Kissane.....	300 brls pork.....	Chas. Giralдин & Co.....	R. H. Burdell & Co., New York.
Smith & Kissane.....	300 brls lard oil.....	Chas. Giralдин & Co.....	
Smith & Kissane.....	300 bxs candles.....	Chas. Giralдин & Co.....	H. Risman & Sons, Balt. Carson, Baltimore,
Smith & Kissane.....	600 bxs candles.....	Chas. Giralдин & Co.....	
Minor, Andrews & White.....	1000 empty brls.....		Plantations on coast.
S. W. Smith & Co.....	200 brls whisky.....	A. & G. Sturges, for sale.....	
Walker & Brothers.....	100 " whisky.....	For sale.....	
N. W. Thomas & Co.....	100 " pork.....		For Natchez.
N. W. Thomas & Co.....	200 " flour.....		For Vicksburgh.
O. Schultz.....	200 " flour.....		
R. K. Love.....	Sund. prod. 30 tons.....	Vose & Bro.....	For Natchez.
Fisher & Emerson.....	100 brls pork and lard.....	W. J. Leary.....	Fisher & Chapin, Boston.
W. M. Rae.....	354 " oil.....		
C. Davis & Co.....	200 kegs lard.....		
L. K. Thomas.....	30 brls hams.....	Beatty, Liggett & Co.....	Chambers & Co. "

On the 4th of February we received this letter, viz. :

"OWEGO, February 3, 1852.

"UNION MUTUAL INSURANCE COMPANY—Dear Sirs: I am this morning in receipt of your favor of the 31st ult., in answer to mine of the 28th, requesting me to forward to your office the letter of advice relating to the burning of the steamboat Martha Washington. I will say, the advice I had came by a private letter from Cincinnati. They received it by telegraph from Memphis. I am expecting a letter from the Captain of the boat in a few days, and as soon as I receive it, I will forward it to you.

Yours, respectfully,

"B. W. KIMBALL."

We had received one previously, on the 31st of January. This is it, viz. :

"OWEGO, January 28, 1852.

"UNION MUTUAL INSURANCE COMPANY—Gents: I have this day received news of the burning of the steamboat Martha Washington on the Mississippi, a short distance below Memphis, which is the boat that the leather and sheepskins was on that was insured by you on the 12th inst., from Cincinnati to New Orleans.

"The extent of damage done to the leather and skins, I have not been apprised of, but I presume it may be a total loss, as I am informed that

the boat was entirely destroyed. You will confer a great favor by advising me of the proper steps to be taken by me in regard to the business. The boat was burnt on the night of the 14th inst.

Yours, very respectfully,

“Owego, Tioga Co., New York.”

“B. W. KIMBALL.”

We received the following dispatch on the 13th of February, at twenty minutes before three, P. M. — viz. :

“ [NEW YORK, ERIE, AND MICHIGAN TELEGRAPH COMPANIES.]

NEW YORK, February 13th, 1862.

“ [Received by telegraph for Union Mutual Insurance Company, 58 Wall street.] ”

“ I have received from the Captain and officers a protest of the total loss of the steamboat Martha Washington. If I come to New York, will you cash the claim, discount off. Answer this day. Direct here.

“ (Signed,)

B. W. KIMBALL.”

To this we returned answer :

“ *No, Sir.* ”

I replied to the letter of the 28th of January, requesting him to forward us his letter of advice, containing the account of the disaster, and saying that upon its receipt, we would inform him definitely what course he should pursue.

His next letter to us was the one dated February 3rd, in which he speaks of a private letter. I asked for that letter. He never produced it ; he never said whom it was from.

I could not see what name was signed to the letter with the invoice ; could not see where dated. When we asked for more proof after the loss, he stated he would write to Cincinnati and get it. We have never received anything further. I think he had the policy in his hand when he called on us after the loss. The preliminary proof of the loss has never been presented. He was questioned by our counsel at one time ; he was asked for the bills of purchase of the goods insured. He said he could get them from Cincinnati, and would write for them. He never produced them. We questioned him as to the value of the leather. He seemed to know nothing about it. He said he knew nothing of the price of the leather. The next day he told us it was worth twenty cents per pound—it was invoiced at that price. He seemed to know nothing about the value of sheepskins. In the first conversation I think he mentioned he had been to Ohio to purchase the leather. He did not say how he paid for his interest in the goods, or what his interest was. He never showed any evidence that he had paid for any part of the leather or skins. I do not know that he had any place of business in

New York. He named no warehouse at which the goods were to be delivered on arrival. Did not say he had any arrangements for their reception. I afterwards found he was engaged in keeping Restaurants at Owego and at Deposit.

To Mr. Walker.—A copy of the protest was brought to our office—no affidavit. We did not inquire the price of leather or sheepskins at that time in New York, only asked as to their price in Cincinnati. There, the highest price of white or oak-tanned sole leather was twenty cents per pound, and of hemlock-tanned thirteen cents per pound.

To Mr. Stanbery.—I remember no man of the name of Chapin coming to our office with K., or appearing about the insurance. We sent to K.'s hotel, and found there was a Mr. Chapin staying there with him.

To Mr. Walker.—A Mr. Chapin may have been at the office—I do not know that he was. The policy is not a valued policy. The leather and skins were insured for \$10,000.

Melvin Hathway sworn.—Resided in October, 1851, at Cleveland. Had a job with Mr. Burton, finishing up his bark-skins. I sorted and dozed them. In the fall of '51—can't tell definitely the time—a gentleman called there and says, "you do not know me." I replied I did not. He then said, "I was here in the spring." He took out a card of Filley & Chapin. Said his name was Chapin. Whether he said his name was Chapin simply, or that he was the Chapin of the firm—I do not remember. He said he wanted some sheepskins. I said Mr. Burton was in Montreal, and would soon be home. He said he wanted some skins of a particular kind, saying that they were out of that kind. We had not a full bale of the kind he wanted put up. A bale is sixteen dozen, as we pack them. Of No. 2 we had bales enough. I found dozens enough of the sort he wanted to make a bale. I said Burton told me not to let any skins go in his absence. He represented his case so strongly that I fitted up a bale, and tied it up, and weighed it. I did not, however, deliver it. He said they wanted sheepskins. He either said they were out, or would soon get out. I told him Burton had ordered me to get some bales ready as soon as possible, for he wanted to send them to Cincinnati. It was late in the fall. Think he was there the day of the great eclipse of the sun; think he asked me if I had noticed the eclipse. Burton was out of an assortment of skins, should say as late as the middle of October, or first of November. That's the gentleman who called on me, the oldest of the two (pointing to Mr. Amasa Chapin.)

Franklin Holliday called. I reside at Dayton. In January, '52, I was at the levee in Cincinnati, and took passage on the R. H. Winslow for New Orleans. The George Washington and Martha Washington steamers were then in port. We left in the evening of the 7th. Those steamers overtook us at Louisville—the Winslow went through the

Canal, the Martha Washington went over the Falls. We were very heavily loaded on the Winslow. I went on board the Martha Washington; she had no deck load on board, and was remarkably lightly loaded—about half loaded. Capt. Norton, of the Winslow, remarked to Capt. Cummings, “you are very lightly loaded;” Capt. C. said “yes, we have but a light load.” He gave no reasons. Capt. Cummings said he could not go over the Falls that night, because the pilot refused to go over in a fog then rising. He also said some one wanted to get more insurance.

Our boat was very heavily loaded, and encumbered with a deck load. All the other boats I saw were down to the guards, except the Martha Washington. I went along her deck, and up into the cabin. There were lights on her, and I could see about her decks, and saw the guards. Was introduced to Capt. Cummings. I said to him, “Captain, you are not loaded.” He replied, “No, I am not.” I saw no quantity of leather or sheep skins. I looked at her guards, and she was lightly loaded.

Cross-examined. It was not very light; the cabin was lighted, and I could see plain enough outside. I did not go into the engine room,—did not look into the hold; am not a steamboat man.

To Mr. Stanbery. I have been a warehouseman, and have been accustomed to notice the stowage of Canal boats.

A. M. Taylor sworn. Resided in Cincinnati in January, 1852. Make and deal in leather,—principally sole leather,—pretty largely. Keep myself tolerably well posted up about the market. In Dec. 1851, and Jan. 1852, in Cincinnati, the stock of white sole leather was light. The demand was greater than the supply. It was worth from 18 to 20 cents per pound. There are two kinds of white sole leather, heavy and light. White sole leather of the light kind, was, at the time referred to, worth something more in the east. Heavy was worth more here. White is tanned with oak-bark. For the last two years there has been a good demand for sole leather in Cincinnati. Supply has been light. Red or hemlock tanned sole leather is worth much less than the white. Deal largely in sheep skins. Can't speak positively of the price of sheep skins in Cincinnati, in January, '52; do not manufacture them; we buy them of skin dressers, to fill orders.

Sheepskins are used chiefly by glove manufacturers and saddlers; are purchased to work up in their shops—used for lining. The custom is to put up six sides of sole leather in a roll—sometimes more—generally six sides. A roll is fastened with strings around it—no cover. Of sheepskins I do not know how many there are in a bale—frequently a number of dozen. They are exposed, not covered. Sixteen hundred dozen sheepskins (I have a faint idea of the space they would fill,) of the average size bales would fill a very large space, I should think; they are

more than I ever saw together. Have dealt in skins twenty-five or thirty years. Have never been in the habit of seeing more than one hundred or two hundred dozen together anywhere. One dozen would be two to two and a half feet in length, four to six inches high, and ten to twelve inches broad. The average weight of a side of sole leather is from twelve to twenty pounds—average about fifteen or sixteen pounds, between light and heavy. An average roll of sole leather containing six sides (sometimes, in shipping, a larger number might be packed in a roll,) would be four to four and a half feet in length, and in diameter twelve to fifteen inches. Have seen 200 rolls together in my own establishment, not unusually, except in winter. Have not had so much for the last three years in winter. We are as large dealers as any in Cincinnati. For the last two or three years, in the winter season, have frequently been entirely out of white sole leather. If we could get it from the tanners, we bought it. We manufacture white leather. Our country dealers have a different kind. White sole leather has been too much in demand to allow us to keep a large stock on hand.

To Mr. Walker.—Country-tanned white sole leather is inferior in price to what we make in the city—is worth fifteen to eighteen cents per pound.

To the Commissioner.—I watch the stock of sole leather in the city. Do not know of any large quantity shipped down the river in the winter of 1851.

To Mr. Walker.—Leather of our manufacture is more in demand, I think, than any other in Cincinnati.

To Mr. Stanbery.—The average weight of white sole leather is eighteen to nineteen pounds a side—white sole leather of the best sort I mean.

To Mr. Walker.—Our principal business is in leather; we sometimes have several hundred bundles.

To Mr. Stanbery.—We do not have several hundred bundles at a time in the winter.

Samuel P. Hibberd sworn.—Reside in Cincinnati, and of the firm of Athearn & Hibberd, Steamboat Agents and Commission Merchants. I acted as agent for the Martha Washington for the last trip she made. I have a memorandum book. The paper now shown me is a copy drawn off by me from that which I sent the Union Insurance Company in New York.

Capt. Cummings asked me to engage the freight for his boat—estimating her capacity at 600 tons. We got from 500 to 525 tons for her, and he then said he wanted no more—had engaged some himself, and had enough. The list I have furnished is not an exact copy from my memorandum-book. It was drawn up at the request of Mr. Lockwood. He

asked me for a full list of all he had on board. I said I had no full list. He said he would pay me for my trouble if I would get one.

I went to the shippers, and got what they had shipped, and the names of their consignees. Entry, "50 tons small produce." This is a margin we always leave for the Captain and his friends. I do not know that anything was shipped of that fifty tons. In our original book there are no candles for Mr. Kissane. Mr. Kissane told me he should want to engage to ship some oil and pork, and probably some candles, not certainly. Afterwards met Kissane on "Change," and asked him if he had shipped candles; he was in a hurry, and said he could not tell. Afterwards remarked he had shipped some six hundred boxes star candles to one house, and I think added that he had shipped six hundred to another house. The three hundred barrels of pork and two hundred barrels of lard were in the first memorandum. There are no sheepskins or leather on that list. I know of none on board; some may have been shipped by the Captain without my knowledge. On our book, as I calculate, there are five hundred to five hundred and twenty-five tons; on the corrected list about the same I think. Probably as much was taken out of the original as was added to the corrected list. The weight of a box of candles is forty pounds—star candles, which these purported to be. Can't tell the size of a box; they are eighteen inches long, I think. Do not recollect being on board of the boat.

To Mr. Pugh. — Often freight is engaged of which the agents know nothing. We ordinarily leave fifty tons for the Captain. Think Kissane said, when he first engaged for freight, he might want to ship some boxes for California. The two items of six hundred boxes candles each are not down in the original list.

Mr. Kissane said first he sent 600 boxes to somebody, and then 600 boxes to somebody else, giving the names of the consignees. Think I told him it was my object to make up a true list of what was shipped. He told me if I would come to his office he would give me a full statement. Sometimes, in a very few instances, a bill of lading is given, when we know the parties, before the goods are actually shipped. I never showed this list to Cummings, nor conversed with him on the subject. The manifest of a boat is ordinarily made out sometime before they arrive in port, not before they start. We generally presume the freight will come about as we engage it; if one overruns, another falls short. I do not know whether these goods on the list were actually shipped or not.

To Mr. Stanbery. — There are from two bushels to two and a half in an ordinary average sack of corn. There are two bushel bags, two and a half bushel bags, and three bushel bags — so that two and a half are the average contents of a bag.

To Mr. Walker.—I am not accustomed to ship leather.

[Mr. Walker here stated that he estimated the weight of the sole leather shipped at 13 tons, that of the sheepskins at 7 tons, and that of a box of candles at about 40 pounds.]

John H. Ballance sworn. — Resided in Cincinnati in January, 1851. Have resided there near twenty years. Deal in sheep pelts, wool and manufactured sheepskins—manufacture them, purchase and sell. From May, '50, to May, '51, sheepskins were abundant. From May, '51, to May, '52, there was a much lighter stock—not more than 100,000 in the last year to 200,000 in the previous one. In December, '51, there were more skins in the market than the summer before. From October 1st to January 1st, the greater quantity of sheep were slaughtered. The process of manufacture is not long. Can't say at what time they were scarcest in 1851-2. The demand was never better than then. I always found the Cincinnati market better than any other for the sale of sheepskins. They are brought from Cleveland, Buffalo, Rochester, and New York to Cincinnati. We have not been able entirely to supply the demand for a year to two. I have brought skins from Cleveland to Cincinnati, and sold them to good advantage. Did so in May, 1852, bought nine hundred dozen in Cleveland and sold them in Cincinnati; could have sold as many more. I was engaged three or four months in buying them. Sheepskins weigh about twelve pounds to the dozen. Sixteen hundred dozen would require a good deal of room for stowage; can't say how much. In the bales of unfinished skins (those which are tanned only,) there are often twenty dozen. Of finished, I put ten, or from six to ten dozen. There are several manufacturers of sheepskins in Cincinnati, and they are used in many manufactures, such as trunk-making, saddlery, and the like.

Cross-examined. — My manufacture of sheepskins sells as high as any in the market. I have known Mr. Kissane several years. His general reputation is good—very good. Mr. Burton has been engaged in furnishing sheepskins for the Cincinnati market in large quantities.

At this stage of the proceedings, the Commissioner adjourned the Court till Monday at 2 P. M.

FIFTH DAY, MONDAY,—JAN. 3d, 1253.

Mr. Stanbery presented the following paper, as a part of the proof of insurance effected on 600 boxes of candles, per "Martha Washington," by Messrs. Carson & Co., of Baltimore.

(COPY.)

UNITED STATES OF AMERICA, } Sc.
STATE OF MARYLAND, }

"I John Patrick, Notary Public, by letters patent under the great seal of the State of Maryland, commissioned, and duly qualified, residing in the City of Baltimore, in the State aforesaid, do hereby certify, attest, and make known, that on the day of the date hereof, before me, personally appeared Thomas J. Carson, and made oath according to law, that the sum of forty-eight hundred dollars, insured by the Sun Mutual Insurance Company of New York, is the only insurance made for or on account of the merchandise mentioned in the annexed papers, for him or for any other person or persons whomsoever.

(Signed) THOS. J. CARSON.

"In testimony whereof, the said deponent hath hereunto subscribed his name, and I, Notary, have hereunto set my hand, and affixed my seal notarial, this tenth day of February, in the year of our Lord eighteen hundred and fifty-two,—1852.

(Signed) JNO. PATRICK,
Notary Public."

(Seal)

(COPY)

"SHIPPED in good order by Smith & Kissane, on account and risk of whom it may concern, on board the good steamboat called the Martha Washington, whereof Cummings is Master, now lying at Cincinnati, and bound for New Orleans, the articles marked and numbered as below, which are to be delivered in like good order at the port of New Orleans, (the dangers of the river, fire, and unavoidable accidents excepted,) unto James Connolly & Co., or assigns, he or they paying freight for the same, at the rate of 30 cents per 100 wt.

"In witness whereof, the Owner, Master, or Clerk of said boat hath affirmed to 4 bills of lading of this tenor and date, one of which being accomplished, the others to stand void.

"Dated at Cincinnati, this 7th day of January, 1852.

MARKS.	ARTICLES.	WEIGHTS.
C.	600 boxes Star Candles,	24000 lbs.

To be forwarded to
Thos. J. Carson & Co., Baltimore.

(Signed) NICHOLSON,
Clerk."

THE STATE OF OHIO, }
 County of Hamilton. } Sc.

"I, Alexander H. McGuffey, Commissioner in Ohio, appointed and commissioned by the Governor of Maryland, to take affidavits, &c., &c., designed to be used in said State of Maryland, sworn and residing in the City of Cincinnati, do hereby certify that on the second day of February, eighteen hundred and fifty-two, personally appeared before me, John Whately, who, being by me duly sworn, says he is clerk of Smith & Kissane, Merchants, doing business in the City of Cincinnati, and that the foregoing is a true and literal copy of a bill of lading, contained in the bill of lading book of said Smith & Kissane, and that the merchandise specified in said bill of lading was shipped on the steamer Martha Washington, at the time and in the manner in said bill of lading and copy specified, and was the property of said firm of Smith & Kissane, the shippers. (Signed) JOHN WHATELY.

"In testimony whereof, I have caused said affiant above to write his name, and now hereto affix my signature and official seal, at Cincinnati, Ohio, this 2d day of February, 1852.

(Signed) A. H. MCGUFFEY,
 Commissioner in Ohio for the State of Maryland.

The Sun Mutual Insurance Co. of New York, insured for Thos. J. Carson & Co. \$4800, on the foregoing property, and paid as for a total loss, on the 23d February, 1852.*

Sidney C. Burton called and sworn.

Have resided in Ohio City for eighteen years. Have been for the last six or seven years, and am now in the wool and sheepskin business. Know the Chapins and Lyman Cole; have seen Mr. Kissane several times: never saw Holland or Chandler till they were arrested. In 1845 or 6 first saw the Messrs. Chapin. I know Adams and Rufus Chapin, as well as these present. They were carrying on the leather business; Adams & Lorenzo composed the firm; sold them sheep skins at that time. The firm was L. Chapin & Co. It broke up in 1846. Adams and Lorenzo remained in Cincinnati, not in business. 1850, recommenced doing business with them under the firm of Filley & Chapin. L. L. Filley & Rufus Chapin were the firm, and dealt in boots and shoes which they manufactured. The firm was first known as L. L. Filley.—that was the first sign,—but at that time all four of the Chapins were in and about the store and manufactory—engaged about it. Filley was a young man from the East. Their store was on the corner of Main and Pearl streets, Cincinnati, manufactory on the corner of Sycamore and Columbia streets—over Clayton's Jewelry store. When the firm became Filley & Chapin, they purchased leather and sheep skins, and manufactured and sold boots and shoes. I had a good many transac-

* The last paragraph has no signature.

tions with the firm, from 1850 to Dec. 1851. Sold them sheep skins. Went to Cincinnati, Nov. 28th, 1851, sold them 160 dozen sheep skins on the 3d of Dec., and left 182 dozen more stored in their upper story—these latter belonged to me. They did not pay the note they gave me for the 160 dozen. Before this sale, they owed me \$1000 for sheep skins sold them before, which fell due Dec. 3d, 1851. I went home a day or two after the sale. While in Cincinnati, I looked through their stock in both their establishments, store and factory. They had but about 20 dozen sheep skins on hand when I sold them 160 dozen. They told me they had so many, and I think, from my own inspection, they had. They had some 50 or 60 sides of sole leather only. They had not, in December, '51, as many hands as usual at work for them. They gave me their note at sixty days, for the skins. Saw all four of the Chapins apparently engaged in the establishment. Saw Mr. L. Cole at Filley & Chapin's almost every day, from Nov. till Dec. He did not appear to be doing anything, but was about there. I returned to Ohio City directly from Cincinnati. Four or five days after I returned to Ohio City, Adams Chapin came to my house early one morning, and said they were out of white sole leather and of upper leather.

He also brought me a note for \$600, which he wanted me to get discounted for him, as money was tight in Cincinnati. He wanted the money to buy leather. I told him it would be almost impossible to get the note done, but went with him to the Commercial Bank and to Morrison's, and tried. I did not get it discounted. I then told him I would introduce Messrs. Brettenhal & Brother, large leather dealers in Cleveland, who would sell to him on sixty days' time, which would be the same thing, I did so, but he was unable to buy the leather. Mr. Brettenhal said he had none; the upshot was, he got no money or leather. This was about the 9th of December, 1851.

I had been in the country, buying skins; when I got home, on the 23d December, I found there a dispatch from Springer & Whiteman, and on Christmas day I left for Cincinnati, where I found Filley & Chapin had failed. I arrived in the evening; next day went to their store; I found there a son of Lyman Cole, who then held possession of the store. Cole's name was on a sign stuck up by the door. Very soon Lorenzo Chapin came in, then the three other Chapins, then Cole, then Filley, then Earl. I took Mr. Filley aside—

Mr. Pugh.—What have we to do with Mr. Filley?

Mr. Stanbery.—A very great deal. You bought your goods of Mr. Filley.

[Here an earnest conversation between counsel on both sides, with a view to deferring the argument on the legality of the reception of any of Mr. Filley's (now deceased,) declarations. The question was waived for the present.]

Mr. Burton resumed.—After a conversation with Filley, he went to Cole, who stood leaning on a desk. He said to Cole that I had been a good friend of theirs, and must be settled with at some rate or other. Cole said, “let him go to the devil with the rest of the creditors.” Cole, they said, had bought them out. I asked for the 182 dozen skins I had stored with them; they were gone. Mr. Filley demanded that I should have them. Cole replied to him in these words—“*You might as well ask me to take off my boot and let him — in it.*” I left Cincinnati on next Wednesday morning. While in the store, I saw Captain Cummings there most of the time; also saw Kissane there several times. Cummings and Cole were talking of a steamer they said they had bought. Said she had been frozen up below. She was the Martha Washington.—They were God-damning about her. They were very much incensed against the Almighty, and were damning Him and everybody else because the river was frozen, and the boat could not come up.

I looked at their stock at the store and at the factory very carefully again; found the 160 dozen sheepskins I had sold them—also all but ten bales of my 182 dozen. I saw no more sheepskins; saw no *white* sole leather, and only fifty or sixty sides red—part was in the factory, and the rest (16 or 18 sides,) in the cellar of the store. Saw no boots or shoes of any consequence. There were not more than ten or twelve hands employed in the factory; before this they had kept two hundred. I went through the factory and store with Earl once, and once with Filley, and tried to be made assignee, but was not. Could get no property and no payment, or satisfaction. Left New Year's morning. They showed me no invoice of the sale to Cole; showed me no notes of Cole for the purchase. I made an estimate of all the stock and tools in the store and factory with Earl; we made \$8,000, and no more. Went through it with Filley also. I went off without any property, and without my sheepskins. Cole and Cummings both, spoke of having purchased the Martha Washington. I returned to Cincinnati January 7th, in the evening; went to their store on the 8th; found Cole and all the Chapins, but Adams. Filley came in in the course of the day. My sheepskins were gone. One of the Chapins told me they had gone over to the factory. I saw no alteration in the stock, except my sheepskins.—Did not see any hands at work there. Stayed there some days; visited Dayton in the meantime. Did not see Cummings or Holland. Was down again on the 24th or 25th of February. Saw Cole, Cummings, the Chapins, Filley, and Kissane, all at the store of Lyman Cole (late Filley & Chapin;) saw them there several times. Remained till the 4th of March. Was nearly every day at the store. Recollect one day they were speaking of buying a “thief boat”—a stern-wheel boat—to run on Red River, Kissane and Cummings. Did not see Nicholson or Holland.

I did not hear a word of the Martha Washington, except they told me she was burned, and they had lost heavily by her. They said nothing of any insurance, except Cummings said he had something on the boat. On the 4th of March I returned to Ohio City. Went to New York between the 4th and 20th of April. Went on with my nephew, J. H. Burton. of the firm of Aldrich & Burton, 69 Liberty street, New York, who had been sick at my house; he persuaded me to go with him.

I met Adams Chapin on Broadway, N. Y. It was near dark. Told him I was glad to see him, and would do anything I could for him. I supposed he was there to settle with his creditors, and I thought I would be smart enough to help him, and thereby ultimately secure my own debt. The next morning he came to my room. Says I, "I want a list of your creditors." Says he, "If I must tell you, I am not here on the business you think—I am here about getting a policy of \$10,000 insurance, effected by Mr. Kimball, my brother-in-law." He said Kimball had the policy. It was taken out in his name. I saw Kimball; that is he (pointing to him). He said it was hard work to get the money; that "the damned hounds at the insurance office abused him." I said I would get it for them. They requested me to do so, but refused to let me have the policy. They promised to pay me my debt from Filley & Chapin if I would get the insurance money. I went to the Union Mutual Insurance office, in Wall street, and was introduced to Mr. Tappan, and the president, Mr. Lathrop. They asked me what I had to do with the insurance. I told them that I had a claim on it. The President showed me the application, when I first fully understood the amount and quality of the shipments insured by Kimball, for Cole and others. They consisted of 1600 dozen sheep skins, and 200 rolls (6 to 8 sides in a roll) of white sole leather; the whole amounting to \$10,000. After ascertaining this, I said to Chapin:—"Where under heavens did you get them sheep skins?" Chapin said: "We got them of you;" and then said they got the leather from persons I knew.

I told Adams Chapin to go immediately to Cincinnati, and get the bills of purchase and other proper papers relating to the shipments, etc., etc., and we could get the money of the insurance office. I now first suspected the parties, and commenced investigation. He said if I would help them get the money, I should be well paid. Adams Chapin started for Cincinnati, and promised to be back on Thursday. Kimball left New York also. Chapin did not return as he promised. On Friday I received this letter from him, (handing it.)

"CINCINNATI, April 27th, 1852.

"FRIEND BURTON—DEAR SIR—Yours of the 1st, also of the 2d, has been received, and contents noted, and will be attended to in time. You may look for the proper papers on Saturday, also myself. It cannot be done any sooner.

Yours, in haste,

A. CHAPIN."

I waited till the next Friday; Chapin did not come. Then I got this letter, (handing it,) viz.:

“OWEGO, N. Y., May 5, 1852.

“MR. S. C. BURTON — DEAR SIR — Mr. Kimball will call on you at New York in a few days, and see what you and himself can do with that insurance. I gave him the papers this morning, including a very favorable document from Mr. Nourse, of Cincinnati, stating the amount of business, etc.

“Any arrangement you can make with Mr. Kimball will of course be satisfactory to me. I should think you could co-operate together to a better advantage, as you can say more about our affairs at home than he can.

“I have talked with Mr. K., and he is disposed to do about right. He says he will not be able to go down to New York this week, and if it is convenient, you had better come this way, if you should want to go home before he comes to New York. You will find him at this place or at Deposit.

Yours, &c.,

R. CHAPIN.”

I started that night for Owego, but found Kimball at Deposit, on the N. Y. and Erie R. R., where he kept a restaurant—an eating house. I stopped at Deposit, and went to the Depot and spoke to Mr. Kimball about the insurance matters, and he took me out doors and behind a pile of railroad wood, where we sat down. I said to him: “Kimball, I have come here for one purpose, and for one purpose only—I want the money due me from Filley & Chapin—you are able to pay it, and if you do not pay, I will blow you sky high—you can have just 15 minutes to decide. I tell you, I know the whole thing is as rotten as a pear.”

Kimball replied: “if you do, you will blow up insurances to the amount of \$60,000, and bring out men in Cincinnati whom nobody would suspect.”

Kimball replied that if I would give him until the following Thursday, he would come to New York and pay me my whole claim, and, also, the expenses I had been at. He showed me a letter in the handwriting of Adams Chapin, signed Filley & Chapin, which I read. On the top of the sheet was a bill of sale from L. Cole to B. W. Kimball, for 1,600 dozen sheep skins, at \$4,800; 200 rolls of leather, \$5,200, signed Lyman Cole.

Mr. Stanbery. Did Kimball keep his promise.

Mr. Burton. He came to New York. He said they would pay me, but I must agree, in writing, to help them through in getting their insurance. I told him that if he would pay me my money, he could have a receipt in full, but that if they were to give me the whole city of New York, I would lend myself to no such thing as he proposed—but if they could get the proof of the shipments of the sole leather, their insu-

rance money was good. I told them that all the writing they could get from me would be a receipt for the money due me. I warned them of the danger they were in. Kimball replied: "there is no danger, that man Cole was never caught yet." Kimball offered me \$1000, besides my debt, if I would join with them in getting insurance. Upon this I left the room. I had already disclosed my suspicions to the Insurance Company. I now got the best legal counsel in New York, and acted accordingly. Kimball then said he had another proposition to make me, and he proposed that I if would go with him to Cincinnati, and see the Chapins, Cole, and the other parties, I should be paid my debt and expenses.

I was at work then to ferret this out. Had disclosed my suspicions to my friends at New York. Disclosed them to the officers of the Insurance Company, the first day I read the application. I went to Owego, and stayed there with Kimball over Sunday. Went with him to Cincinnati. Had not been there an hour before Adams and Amasa Chapin came to the Dennison House to see me. I told them: "Boys, this sheep skin business is as rotten as the devil." I asked for the bills of purchase. They said they were there, that evening. Amasa Chapin and I took a walk—we walked up to Ninth street. I said: "Your foot is in it. The affair is bad, and you had better compromise."

Question. What did he say.

Mr. Burton. He said he thought "they could bluff it through." The next day I went to Walker & Kebler's office. There were Adams and Amasa Chapin, L. Cole, Rufus Chapin, Capt. Cummings, Kimball, myself, and Kebler. The attempt was again made to force me to "stick by them in their insurance matters," by all but Cole. I demanded their bills of sale and lading. They said I should see them. Mr. Kebler said: "Burton, it is not possible that these men could burn that steamer at that time of the year, and at that hour of the night." Capt. Cummings said: "If the insurance companies prove that the goods insured were not shipped, then we burned the boat." Amasa remarked, "Yes, that's a fact," or some such words.

I think Kebler an honest man, but if his head hadn't been as thick as an inch board, he must have seen the fraud. They never showed me the bills of purchase. I stayed in Cincinnati two weeks. Kimball and Captain Cummings are both brothers-in-law of the Chapins—married their sisters. Cole, Cummings, Rufus and Adams Chapin, and Kimball had been on the Rio Grande, keeping a gambling shop, during the Mexican War. Capt. Cummings married his wife on the Rio Grande, as I learned from one of the Chapins.

They never produced bills of purchase, as they had promised; I told them they would help mightily; they did not tell me they were burnt. They talked about the insurances; said there was about one in Detroit,

two in Hartford, one in St. Louis, and one in Louisville, and spoke of an insurance in Boston, and several in Cincinnati. Kimball said there was about \$60,000 insured in all by them. After the meeting at Kebler's we met at Cummings's room, at the Walnut street House—Adams Amasa, Kimball, and myself. They wanted me to stick by them, and said I should be taken care of. Cummings was at Owego, to see Kimball, about June or July last; stayed some time. Adams Chapin told me in N. York that Filley & Chapin put in \$4,500 on the Martha Washington's purchase—did not tell who put in the balance.

[Mr. Stanbery now proposed to ask if Filley confirmed this statement in July, '52, while they were endeavoring to get the insurance, and after some discussion it was agreed to allow an examination in chief hereafter on that point.]

Kimball told me he and Cole owned most of the New York policy. Amasa Chapin told me, in Mr. Scarborough's office, he and Kimball, and Cole owned portions of it. Mr. Scarborough asked him who the other was; he did not say—nor what portion any one owned. Kimball did not tell me where he was going to store the leather and skins in New York; told me he had no place of business. Sheepskins in Cincinnati would sell half a dollar better per dozen than in New York, in December, 1851, and January, 1852. He did not say what he gave Cole for them, or what proportion of interest he owned in the skins. Last June I was in Cincinnati again. I asked Amasa Chapin to show me the bills of purchase—he then told me the papers were burnt up last winter; said Cheney burnt them. I was at the Dennison House an hour or an hour and a half after, and there Rufus Chapin told me—"I burnt them myself last winter."

As I sat at the window of the Dennison House one day, I saw Amasa and Lorenzo sitting at the opposite side of the street; they came over. Lorenzo says—"Burton, you are the man I want—any man who is against me shall not live." I told him I was after him, and would have him in the State Prison yet.

In October last, Lorenzo Chapin came to me on the steps of the Dennison House—I and young Mr. Dennison were talking there—and Lorenzo says—"How did you get here?" I had got on board the cars down the road, instead of at the Station, believing I was watched. He said—"What the devil are you trying to do with us? Are you going before the Grand Jury?" Says he—"You have got a d—d hard party to crack." Says I—"You have threatened my life, but I am after you."

Cole did not appear to be acquainted with the boot and shoe business—never saw him do or say anything about it.

Cross-examined by Mr. Walker.—It was about two years I was trading with Filley & Chapin before they failed. I suppose I sold

them in 1851, 900 or 1,000 dozen of sheepskins. [Presents memorandum of sales in 1851.] There were 1,112 dozen, including the 182 dozen which I left with them, and could not get back again. I saw at Kebler's office the parties I named before. This was in May or June, 1851. I believe I have a letter Kebler wrote me to call on him a second time. I am sure the parties were all there. I went at their request. I told Kebler I was requested to come. I did not tell Kebler I had any interest in these insurances. I told Kebler the President of the New York office had told me he would pay whenever I was satisfied it was all right. I never told Kebler I thought it was all right. Never told Kebler some of the offices were pretending the property was not on board, but I knew they had it. Did not tell Kebler I had sold them 1250 dozen a short time before. I showed him the memorandum I have just shown you. Did not say I knew they had the skins, because I had sold them 1,250 dozen. I told Kebler the sole leather could not possibly have been shipped. Did not tell him the direct contrary of that. Did not say I knew the boots and shoes were there, or that they had a great number of hands employed after their failure. He asked me if they had not employed a great many men. I said yes, from 150 to 250 before they failed. Told him 'twas not possible they had shipped so many boots and shoes. I said, and say now, I have been the best friend the Chapins ever had. I did not tell him I thought they were honest men then (at the time of the conversation.) I knew they had employed Walker and Kebler as counsel to sue for the insurance.

They owed me \$2,500 to \$3,000. I had to persuade Kebler to get them to pay me. Did not tell Kebler I would help them to get the insurance. They had told Kebler I was the only man who could get their insurance. That was why he talked to me and sent for me. Before the last sale they owed me \$1,000. They agreed I should have that paid. I did not tell Kebler I did not expect to get paid till they got their insurance.

I told Mr. Kebler, I wanted the policy assigned to me by Kimball. I meant to give it up to the Union office to be cancelled.

Judge Walker: Are you the instigator of this prosecution?

Mr. Burton. I am. I pledged my honor to my friends—O. A. Burton, of St. Albans; and Jno. Tappan, of New York—I would ferret this thing out, and, Judge, I'll do so, as sure as you're born? (Laughter.)

Question. And still you aimed at getting the New York Insurance money?

Mr. Burton. Yes, if anything was honestly due them, I offered to collect it, and give Springer & Whiteman in security that I would pay over the balance over my claim.

Question. What do the Insurance Companies pay you for this prosecution?

Mr. Burton, Not a mill.

Question. Have you not said you were to have \$3000 or some other sum for breaking up this insurance?

Mr. Burton. Never said I was to have \$3000, or any other sum. The Companies never offered me anything.

In December, 1851, the Chapins told me they had sold everything to Cole, and had taken his notes. Before I went to Kebler's room, I may have said I believed the matter of the alleged shipment of the sheep skins to be as "rotten as hell." I told Kebler they never shipped the property. He said he was sorry I felt so, and asked why. I told him they never had the sheep skins. Kebler took the mems. of the sheep skins out of my book. If there is a difference between the mems. and the book, I know nothing about it. F. & C. said they had sold everything they had to Cole, about December 16th. They did not say they had reserved their hides and sheep skins. Never saw Cole's notes for the purchase; never heard from them. They owed Cole some \$8000. I saw the application in April, and then said to the Insurance Co., that the whole thing was rotten in my opinion.

Judge Walker. If you have no contract with Insurance Companies what motive have you in this prosecution?

Mr. Burton. I do it as a public duty, and because they tried to implicate me in the fraud. I am bound to carry the thing through. I have thought the Insurance Companies would probably pay me my debt, but they never promised it.

I never advised the Insurance Company to pay the whole of Kimball's claim—it was with regard to the 200 rolls of sole leather the President said he would do as I said. Dec. 26th, 1851, I was in the establishment of Cole, and did not believe they had 50 sides of sole leather on hand. They told me they had not bought 50 dozen sheep skins that year, (1852) except of me. I never told Amasa Chapin that I could get \$8000 if I had the papers assigned to me; but that Kimball would not trust me—did not want or asked to be trusted.

Question. Did you not tell Chapin you had a contract with the Insurance offices, drawn up by Francis B. Cutting?

Mr. Burton. No, sir. I told him I had a contract drawn up, but it was not and is not signed; I had my designs in telling him so; I wanted the money they owed me, if I could get it honestly. I said the contract was drawn up by a smart lawyer in New York.

Question. Did you not say you were to have \$3000 cash for your services, and 20 per cent. on all the policies you broke?

Mr. Burton. No, sir—no, *sir*, I guarded my language; for I had paid a smart lawyer \$200 for legal advice long before Kimball saw the contract, and Chapin saw it. I had my own views in showing it to them.

I wanted to produce an effect upon them. It had no effect upon them at all. Did not say any Insurance Co. had urged me to accept the offer. Did not say the President of the New York office had offered me \$2000. Did not say I had nothing to do but telegraph the New York office, and they would honor my draft. Know Alex. McCabe. Do not remember a conversation with McC. when Filley was present. Had a conversation with McC. July 1st, 1852. Wish you would ask me the circumstances of that talk, Judge. (Laughter.) Had a conversation with McC. this fall,—not soon after the failure of Filley & Chapin. Did not say to McC. that at the time of failure, they had \$30,000 or \$40,000 worth of stuff. Did not say I would trust them again. Did not tell McCabe the Insurance Co. at New York had offered to pay \$8000. Have no hostility to the Chapins—regard myself as the best friend they ever had in the world. In July or August did not treat McCabe at the Dennison House. Had a conversation with him there.

It was at the time they threatened my life, McCabe said "what is the matter?"—says I, "McCabe, do you know what you swore to in your affidavit?" I said I had read it, and told him what was in it. He said he had never sworn to any such thing. Did not offer him money to testify contrary to his affidavit. Did not say he would get his debt if he would recant. Did not say I would insure him \$2,000 if he would correct that affidavit. When he said he had not meant to swear so, I told him to save his own neck if it was not so, and to go down and see Mr. Scarborough. He did not say the affidavit was not true—*not by a good deal*. I did not threaten him with the Penitentiary about the time of this arrest. Did not say to McCabe I would have every one of the d—d crew in the Penitentiary, and that I had the documents to send him and Earl too, if they did not retract their affidavits. Did not say that nothing but his good character saved him.

Know S. J. Cheney—not much; saw him the day after the arrest. In October, 1852, had no conversation with him, nor about that time, to my knowledge, about an affidavit he had made. Did not tell Cheney if he would recant what he had said I would give him \$2,000. Had a conversation with him after the arrest. Told him, in my opinion, these parties would not get out of the Penitentiary till they had served their full time. Told him I had supposed him honest; that his mother was a dear woman—and so she is, Judge, one of the best in the world; that there was something wrong in the business; did not think he knew it. Told him that he was in danger—that he had got his foot in. Do not know that I held out any inducement to him to retract. I told him the platform he stood on. Did not threaten him with a prosecution for perjury. I told him his affidavit could be put in the hands of a third person; said I had the affidavit in my pocket. Did not say he should hear

from me if he did not retract. Did not say I would have him up for conspiring. Did express to Cheney sorrow for Earl. Told him Earl was in the same situation he was. I said I loved Cheney; never said I would have him arrested.

I know Benjamin K. Earl; have known him several years. I invited him some six months ago to dinner, and then to tea with me. He did not come. He had told me he wanted to see me. In conversation with him did not tell him he was in danger of being implicated in this conspiracy. Did not tell him if he did not own up to me, that I would have him up for this conspiracy—never told him so. Recollect conversation about the 1st of June. Did not tell him I was engaged in a prosecution, and should want him to help me to substantiate my charges. I told him I believed all these insurances to be frauds. Did not say he and I could make \$5,000, or any money, if he would come out—neither then nor afterwards. I said the father of Mr. Mason, the Insurance Agent, whom Cummings assaulted, was rich; had said his father had said he would pay any amount to bring to justice the men who abused his son. Earl said “the assault was a G——d——d mean trick; a d——d nasty trick.” I did not say Earl or I could get a dollar from Mr. Mason’s father. I said his father would spend a great deal—and I *tell you* his father *would* spend a heap of money. Did not say, “do you see we have money to back us;” and did not say, “I do not care for the little Filley & Chapin owe me.” Wish you would ask me what he said. He had only made one affidavit that I know of—then a short one he sent to New York. I advised him to recant, at the last conversation I had; never offered him a mill. Told him he could have the paper.

J. S. Cheney is the successor of Cole, in the store once F. & C.’s. Earl stays in his store. Did not go the store and say to Earl I had been sent to arrest him, but did not want to do it. Have not threatened to arrest him if he did not recant. Did not recommend him to go into business with Carpenter & Field, and say I had recommended them to hire him. Did not tell Earl to go nor stay. Told Earl if he had done wrong, and was sensible of it, his deposition could be given up to him at a proper time. Did not say, “Oh, Earl! oh, Earl! I am only waiting for telegraph to arrest you.” Did not say anything about putting him in irons. Did not say, “if you will come out, and say you swore a lie, you shall not be arrested.” He did not say, he would save me the trouble, for he was going to Columbus. Believe Earl, Cheney, and McCabe honest men, but they lacked nerve to withstand the threats of Cole and the Chapins.

Question by Judge Walker.—Have you not said you would prove the crime of murder and arson, committed in Arkansas, on these defendants?

Mr. Burton. — Yes, sir, and (pulling out some papers,) here are the documents. I had once started to Arkansas on that business.

Ques.—Did you ever say these defendants threatened your life?

Mr. Burton.—Yes, sir; on one of the last days of June, I was sitting in A. B. Carpenter's office, opposite the Dennison House, when I observed Lorenzo and Amasa Chapin go into the hotel, and come out again, as if looking for some one. Seeing me they came across the street, and coming up stairs, walked into the room without knocking.

Have had no conversation with Seeley J. Howell, at any time, about this business. Did not say I had backers in New York, and more money could be made by standing with me than on the other side.

Here the Court took a recess.

EVENING SESSION.

Met again at 7½ P. M.

Mr. Burton resumed.—I made the affidavit on which these parties were arrested. I included Lewis Choate in it. Chapin told me Choate was in the business as deep as they were. I changed my mind about him, because my friends in Cincinnati said he was an honest man. I think he is guilty, but my friends think him honest, and therefore, I recommended or assented to his discharge.

I set on foot the prosecution, most assuredly. I employed able counsel in New York, and paid them; employed Mr. Ware and Mr. Stanbery here. Expect no compensation, except the satisfaction of having done my duty to my country. Have spent money already—I have spent over \$3,000. I mean to pay the bills. Am prosecuting this against my friends, those whom I have loved. Have no promise or expectation of a dollar of reward.

When I called and saw Cole, did not ask Cole to accept my draft for, or to lend me \$300. When I first went to the Insurance Company in New York it was between the 15th and 22nd of April. On seeing the application, said it was a rotten concern. Neither the President nor the Vice-President said they would pay if I could get the bills of purchase. Told them if I could see the bills of purchase from men whom I knew, I should be satisfied. The President and Vice-President said when I was satisfied they would pay. I knew the shipment of sheepskins was a fraud. I knew perfectly well they had not the leather or skins, or the bills of purchase. I did not think the *critters* had bought it of some one else. When I said I would give back the surplus over my debt, I knew there would be no surplus.

Question by Judge Walker.—Are you aware of the solemnities of your oath, and do you mean to swear that Mr. Kebler's head is "as thick as an inch board?"

Mr. Burton. — Under oath, I mean to say I consider Mr. Kebler's head *thicker* than an inch board, else he must have seen this fraud.

Ques.—Were you present at the arrest of these parties?

Mr. Burton.—I was not.

Ques.—Did you give instructions as to this arrest?

Mr. Burton. — Yes, sir, I bought the handcuffs, some four pair, with my own money; I brought them to the Marshal; perhaps I instructed him to put them on, and perhaps not. I had just as lief tell you all my life as not. I am ashamed of nothing. I told the Marshal the defendants were among the greatest desperadoes in the country.

Ques.—Did you order them to be sent out secretly.

Mr. Burton.—I had been told by these conspirators that I was not smart enough to arrest them. I replied I was enough for all, and they would find it so. I used decisive measures to bring them here, that they might not be rescued by Habeas Corpus or their associates.

I told the Marshal it would take two men to arrest them. Told him—I think—that I had no confidence in the authorities or police of Cincinnati. I said they should not be allowed to communicate with their counsel or any one else. Did not direct the Marshal to refuse to have verbal messages sent to their families.

We arrested one man by mistake in a gambling-house. I supposed they would arrest five in all—the two Chapins, Cole, Kissane, and Stephens. They got the wrong Stephens.

Deputy Marshal Harris bought the irons by my direction, and I paid for them.

I do know they were not allowed to communicate with people outside. I knew there were Commissioners in Cincinnati, but I did not go to them—found out their official reputations; did not hear Jno. C. Wright's name mentioned as Commissioner.

I know a Mr. Titus; got acquainted with him at Filley & Chapin's store; between Christmas and the New Year of 1852 saw him several times.

Question.—Did you tell him there was \$25,000 of stock in Filley & Chapin's store?

Mr. Burton. — I did not tell him so, but he being a creditor, and I also, I tried to bluff him off all I could—did not mean for him to get the start of me. Did not say their stock was worth \$25,000, for he offered me his debts for fifty cents on the dollar. I told him I would not give it. I should not wonder if I told him he might write home to New York that it was all right. I never told him the debt would be paid. Know I did not tell him the debt was good.

Question.—How did you bluff him then?

Mr. Burton.—I told him what the Chapins said. (Laughter.)

I know a Titus. Got acquainted with him at the store of Filley & Chapin, between Christmas and New Year, 1852. Saw him several times. Did not tell him they had \$25,000 worth in store. Bluffed him off all I could. He offered his debt at 50 per cent. Told him I would not give it. I should not wonder if I told him he might write home, it was all right. I never told him the debt would be paid. Know I did not tell him the debt was good. Do know what I did say—I told him what they said. I have no notes of L. Chapin & Co. now; once had, but paid them away. I told the Chapins, Springer & Whiteman took the note of L. Chapin & Co. in 1846 from me, endorsed without recourse; but I told S. & W. afterwards that I would pay it at some future day. Think the note was somewhere near \$400—\$400 or \$600. I said they owed me an old debt of \$600 to \$700. They owed me \$1000, December 1st, 1851. The 160 dozen sheep skins were worth from \$400 to \$500. The 182 dozen \$400 to \$500. On the 1st of March, Filley and Rufus Chapin said I should have \$1000 extra for what I had done for them. I took a note as a pledge for the 182 dozen. Paid that note away, but did not sell the skins. L. Chapin & Co.'s note I did have, and passed it without recourse, and yet say they are indebted to me. I consider myself in honor bound to pay Springer & Whiteman. I sent off yesterday some \$1600, all the notes I have of Filley & Chapin.

Their note was in bank when I demanded the skins, and received Cole's answer. I object to tell to whom and for what I sent away those notes yesterday, because I do not want any other man to get the start of me in suing those notes.

[The question was insisted upon by Judge Walker, who remarked that it was to test the credibility of the witness.]

Mr. Burton. I would rather jeopardize my pecuniary interests than have my word questioned. I heard yesterday, that Rufus Chapin had property in Wisconsin. I sent the notes up with orders to attach the property, and thus secure my debt. I sent them to a man of the name of Burton, a nephew of mine, to collect for my own use. Kissane talked with Cole and Cummings, at the time they were talking about the boats. I arrived on Christmas Eve. I did not hear them talking about a steamboat that night. Heard Cole and Cummings talking of the boat. Don't know what Kissane and they talked of.

To Mr. Stanbery. Have seen the note; Kebler's man brought it. Received this note from Kebler. [The note requests the witness to do them (Walker & Kebler) the favor to call at their office on receipt of the note, and is dated June 14th.]

Kebler never took my affidavit. McCabe is a large vender of leather in Cincinnati, and a tanner. He told me when my life was threatened, that Carpenter had been to see him, and said there was trouble. L.

Chapin had said he (McC.) had sworn so and so. McCabe asked me the tenor of his affidavit. I gave it. Said he: "I never swore to no such thing,—if they have got it so, the whole was not read." Said I: "If you are satisfied that it is not so, go down to Scarborough's office, and tell him the truth. The amount of leather mentioned in the affidavit was what I brought to his notice. The day after the arrest he came to Carpenter's office, and made the same remark. Says he: "If I do right, shall I be killed on the affidavit?" Says I: "you can have it." Says he: "For God's sake, don't let me suffer." Earl had been in L. Chapin & Co.'s establishment. I believe the policy Adams Chapin took at Louisville has been sued on by Earl and Kissane.

Cheney is now in the store of Filley & Chapin; he is a young man. L. Chapin married Cheney's sister.

McCabe told me they had promised to pay him his debt, if they got the insurance, \$6000 or \$8000. The debt was desperate unless they got the insurance. McCabe told me they wanted to send forward the affidavits to New York. McCabe is a very honest, ignorant man—as much so as I am. Said he was going by Kebler's office, and was called in, and that affidavit was read to him.

Earl came to me June 1st; says I: "where did they get the sheep skins and leather?" "I was at the store all the time," he said, "and if the deposition says I culled the skins, I did not understand it,"—said he "put some sheep skins aboard." Says I, "why not go and see that man." He said somebody had written him a letter, offering him \$2000 to come out, and, says he, "the d——d scoundrel ought to come out." Lo. Chapin then came round the corner, and the conversation was interrupted.

Question.—Have you called the defendants, desperadoes?

Mr. Burton.—Yes, sir; and I got the hand-cuffs because several of the defendants threatened to take my life; they said I could not get men enough to take them.

Question.—Have you feared they would assassinate you?

Mr. Burton. I have no fear of them; but I do think they would have killed me if they could have found an opportunity.

Question.—Did Mr. Kissane ever threaten you.

Mr. Burton.—Mr. Kimball, when we were sitting on the steps of the Dennison House, told me Mr. Kissane had sent his compliments to me with the message that if I went against him in this matter, he would take my heart out of me, if it was when I was coming out of church. I said: "Tell Mr. Kissane he is the man I want to get hold of."

To Mr. Pugh.—That is the only threat I ever heard coming from Kissane.

Mr. Pugh.—When did he say so?

Mr. Burton.—About the first of June last.

Question by Mr. Walker.—Have you ever been informed that the defendants had designs upon you.

Mr. Burton.—Yes, sir; that man there (pointing to L. Chapin) told me, that they (the def'ts) were all armed and ready for me. I pointed to my own preparations for self defence. I had told 'em I was after 'em. Lorenzo Chapin told me in October, when he talked about the Grand Jury, that I could not arrest them. I never said to the Sheriff or Mr. Neville that I was afraid to stand on that pavement, for I was afraid they would assassinate me.

To Mr. Stanbery.—Adams Chapin and Kimball told me Cummings had knocked Mr. Mason down—that Nicholson was about introducing him to Cummings, and as Mason was holding out his hand to shake hands with him, he (Cummings,) knocked him down. They said C. would have killed him if people had not interfered, and that he ought to have killed the d——d scoundrel.

To the Commissioner. — Think I first heard of the particulars of the destruction of the Martha Washington in February last.

Question by Mr. Walker.—Do you read the papers?

Mr. Burton.—When I have time I do. I may have seen a newspaper notice, but no particulars prior to February.

[When the examination of Mr. Burton had been concluded, Mr. Stanbery read letters from Filley & Chapin to him, as follows, viz.:

“CINCINNATI, January 16th, 1851.

“MR. S. C. BURTON—SIR—We wish you to ship us forty dozen red linings immediately, or if you have not so many on hand, send what you have.
Respectfully yours, FILLEY & CHAPIN.

“Per A. M. HELMAN.”

“CINCINNATI, February 13th, 1851.

“MR. S. C. BURTON—SIR—Please send us fifty or one hundred dozen good russet linings, if you have them on hand. If you have them, send them immediately, as we are nearly out. Let us know by return of mail.

“Respectfully yours, FILLEY & CHAPIN.

“Per A. M. HELMAN.

“P. S. —Send the red linings as soon as you can.”

“CINCINNATI, March 12th, 1851.

“MR. S. C. BURTON—SIR—The sheepskins you shipped us have been received. The red linings are too light for our use, and we have laid them aside until we hear from you. The russet skins we think are not worth more than four dollars per dozen.

“We wish you to send us, same kind, one hundred dozen of russet skins, at four dollars per dozen, and draw on us at four months. Please answer by return of mail. Respectfully yours, FILLEY & CHAPIN.

“Per A. M. HELMAN.”

“CINCINNATI, October 19th, 1851.

“MR. S. C. BURTON, Cleveland.—Mr. Chapin leaves here in the morning for New York, and I have drawn on my brother at three months, for six hundred dollars, which he will accept, and if you will get it discounted for us, we will do as much for you, as we want to raise all the funds we can to purchase a good stock East. Any time you want money, we will give you as good a lift. Mr. Chapin will explain all. Business is looking up here.

Respectfully yours,

L. L. FILLEY,

“OF FILLEY & CHAPIN.”

Henry B. Filley was next called and sworn.—I reside in Westport, Cayuga county, New York. Have been a Justice of the Peace for twenty years, and am now Collecting Agent for mercantile firms. I am the father of Lucius L. Filley, late of the firm of Filley & Chapin. Visited him in July last at his residence, on the Walnut Hills, in Cincinnati. Then became acquainted with Lyman Cole. I knew Amasa Chapin, and saw another one of the brothers. The Chapins may or may not have known my business. After I had been there some days, Amasa Chapin came to my son's house with a Mr. Earl, and asked me to go with them to Mr. Kebler's office, in Cincinnati, in order that I might be satisfied as to the reports current in regard to the burning of the Martha Washington, and certain insurances there—that I might be satisfied as to the amount shipped. I had previously conversed with my son about the matter. I went to Messrs. Walker & Kebler's office, where I found Lyman Cole, Amasa Chapin, another Mr. Chapin, another gentleman, whose name I did not learn, and a Mr. Longworth, who appeared to have some business with Mr. Kebler, and left very soon after I went in. I was introduced to Mr. Cole by Mr. Kebler. Mr. Kebler, after he had got through with Mr. Longworth, says to me, “You have come on rather unpleasant business, and are rather unnecessarily brought here. I can appreciate your feelings, and am glad to have an opportunity to explain things to you.” He said he had the management of the whole business, and believed it to be a fair transaction—if he had not thought so, he would have abandoned it; he would pledge me his honor there was nothing in it, that he had discovered, that was not perfectly right. He offered to show me some affidavits about the property. I said I did not care to see the affidavits—wished to get a statement from him. After further conversation, Cole asked me what I thought. I told him I had been a Justice of the Peace, and sometimes took four days to make up my judgment..

I stayed about a week with my son. Got there Saturday night. One of the Chapins knew I was there Monday afternoon. I think Amasa was there every day I remained; the others were not there but twice. Think it was the middle of July, or perhaps past the middle. Two or

three times they came in the house, but generally called my son out to some shade-trees there were on the grounds, and they held their conversations there.

The declaration made to me by my son, was made in Cincinnati in July. He died in Illinois in the October following. He had been very unwell when I visited him.

Mr. Stanbery.—I believe we have now arrived at the point where I wish to ask the witness the conversation which took place between himself and his son, with regard to the burning of the Martha Washington. The son—of the firm of Filley & Chapin—made certain declarations in his lifetime—these declarations were reduced to writing, and were signed by Mr. Filley, his son. We have the paper.

Pending the question raised upon this matter, the Court adjourned.

SIXTH DAY.—TUESDAY, JANUARY 4th, 1853.

The whole day was taken up by the argument of counsel.

The question before the Court at the adjournment last night—the senior Mr. Filley being on the stand at the time—was as to the admissibility of the written declarations of Lucius L. Filley (now deceased,) with regard to the burning of the Martha Washington, and to policies of insurance connected therewith.

The paper was handed to the Commissioner, but not read in open Court.

Mr. Walker requested that the reporting of this paper for the Press should be guarded against.

Mr. Pendleton, of counsel for the defence, opened the argument against the admission of the testimony contained in the written declarations of Mr. Lucius L. Filley, (now deceased.) He said the paper offered was one made out by a party to exculpate himself from all participation in the crime now charged. It was only on the ground that he is a co-conspirator, that, by possibility, it is admissible. The confession or statement must be made in furtherance of the design, or cannot be received against others. If he had nothing to do with these proceedings, then what he said to any one is not and cannot be made evidence. Only once was he connected, by the testimony given, with any of the circumstances properly belonging to this case. The firm of Filley & Chapin had been often mentioned, but it was the *firm*, and not the individual acts of young Filley.

Mr. Pendleton proceeded at length to make a very able and well-arranged argument. He cited 2nd Starkey on Evidence 325, also pages 33 and 326—1st Phillips on Evidence, pages 95, 97, 234—1st vol. of Cowan and Hill's notes to Phillips's Evidence, page 179—24th Howell's State Trials, page 447-457 (Hardy's Case)—2nd Wheeler's Criminal Cases, page 256—1st Greenleaf on Evidence, section 108.

Where the declaration is made in furtherance of an act, and is a part of it, it is admissible; but if it be the mere recital of a transaction after it is past, it cannot be received as evidence against any one but the person who made it—2nd vol. Burr's Trial, 538.

With the principles so well established, let us, said Mr. Pendleton, apply it to the present case. The paper signed by young Filley does not purport to be in furtherance or in prosecution of the conspiracy. It was a mere statement made by him to his father, long after the burning of the steamer. It was not to procure the insurance, to burn the boat, or to procure the insurance money under the burning, that the statement was made. If it should appear that it was made, on the contrary, to prevent the payment of the policies, then it was not in furtherance of design—2d Leech's Crown Laws, page 563; 5th Modern Reports, page 163; Rex v. Paine; 3d Hill's N. Y. Reports, pages 299 and 298; (the People v. Pestell) were quoted to the Court.

Mr. Pendleton then examined the proposition that testimony which would be incompetent before a jury, was, in certain cases, competent in a preliminary examination before a Commissioner. He denied that there was any such distinction. This Court, to a certain extent, has the power of a final Court. Its decision may take away the liberty of the defendants. The only distinction admitted is as to the *amount* of testimony, not its quality. In support of this proposition—4th of Cranch's Reports, page 129—1st Burr's Trial, page 99.

Mr. Ware, for the prosecution, stated the points upon which the United States urged the admission of the written declaration of young Filley. He argued that by the testimony a full connection had been established between Mr. Filley and the defendants in this examination.

[It is not thought necessary to follow Mr. Ware in his brief but comprehensive argument—the following is a statement of his points:]

First—The United States have shown that L. L. Filley knew of this conspiracy, and did acts in furtherance of it—that he was one of the conspirators, his declaration and acts, therefore, are evidence against co-conspirators.

The declarations of one conspirator, unconnected with any act in furtherance of the conspiracy, may be given in evidence, to show the general action and plan of this conspiracy.

Filley was, by testimony given, connected with the conspiracy. The

parties here under examination, called Filley out, under the shade-trees, several times, and held private conversations with him. Filley being connected with the conspiracy, his acts and declarations were as admissible in evidence as those of any other of the conspirators. As Mr. Pendleton had asserted that the paper offered exculpated Filley, and as counsel could not refer to the contents of the paper without making them public, he would assert as roundly that the paper inculpated Filley. As it was not permitted to speak of the contents of the paper, the Commissioner who had it, and had read it, would determine which statement was the more correct. Declarations made without acts by the parties, are not mere admissions—Cited 2nd Starkey, page 328.

Mr. Justice Buller, and Mr. Justice Grose, in Hardy's Trial, held that conversations of the parties were in general, and of necessity, evidence. Cited 2nd Carr and Paine, 104, also Burr's Trial, 2nd and 11th pages, to show that evidence upon examination ought not to be strictly limited, as upon a jury trial.

At the suggestion of the Court, the attention of counsel was directed as to whether a Grand Jury could receive evidence but admissible upon a jury trial.

Mr. Walker would, if material, cite authorities to show that a Grand Jury could not admit evidence not admissible upon a jury trial.

Mr. Ware continued, and cited Mr. C. J. Marshall's opinion, that proof not strictly admissible upon a jury trial could be received upon a preliminary examination—Cited 1st Burr's Trial, pages 2, 11, 15, 97, and 99. Chief Justice Marshall's language admitted of no doubt upon the point, and here Mr. Ware would leave it.

Gov. Morehead then addressed the Court in support of the proposition to reject the testimony. He proposed to examine the proposition that one set of rules was applicable to the admission of testimony, on a preliminary examination, and another set of rules is to apply on the first trial of the case before a jury. He denied that any such distinction existed. There was no *reason* for the distinction, and he held that, till a reason is shown for a different course, Courts will hold that the rule must be held to be the same in either case. The testimony offered was against the uniform rule, supported by the uniform authorities. The offence charged had been, if it all, completed when this alleged evidence was detailed. The conversations were held, and the paper is dated long subsequent to the offence. As an offence, the crime was complete when the conspiracy was once formed. The offence must be consummated at some time — when the policies were obtained, the offence was consummated. The principle had been assumed, that such declarations, made after the conspiracy was complete, and its objects consummated, could be introduced as evidence to prove the combination.

Mr. Stanbery, said he would state that he relied upon the position—that obtaining the policies *did not* consummate the offence ; the offence was not consummated till the money was obtained—that was the object of the conspirators.

Gov. Morehead argued, in continuation, that Filley had not been implicated in the conspiracy. There was nothing to show it. The paper disproved it, if it was taken to be true. If not taken as true, the counsel for the prosecution would impeach the credibility of his own witness. But admit that Filley was a conspirator, a declaration made after the offence was consummated cannot be admitted. He cited 2d Starke, page 325. Each conspirator is an agent for all the others—Greenleaf, 1st section, pages 113, 125. But when they become severed, when the conspiracy has been consummated, the agency ceases. The acts of one will not bind the others—his declarations made then cannot impeach the others.

Adjourned till 2 o'clock.

AFTERNOON SESSION.

Governor Morehead continued.—The offence being the conspiracy and the intent to defraud, it is consummated whenever those are proved—the receipt of the money does not enter into the offence, and he here cited 1st Phillips on Evidence, pages 94, 96, to show that declarations, made after the conspiracy was consummated, and not in furtherance of it, could not be evidence against the other parties. The declarations must be made during the pendency of the criminal enterprise ; if they are subsequent narratives of a past occurrence, they cannot be taken as proof of that occurrence, 5th Harrison's Digest, page 737. The learned counsel here cited the Queen vs. Blake ; 2d Peters, pages 368, 465, cited to the same effect, as to an agent. The learned counsel here read the opinions and rulings of the English Judges, in the case of the King vs. Hardy, and drew a comparison between the opinion in that case and the one under discussion. Gov. Morehead then delivered a forcible and eloquent address to the Court, and concluded by saying that he confidently left the question in his Honor's hands.

Mr. Stanbery replied. — He had looked with considerable doubt and misgiving upon the question whether this evidence could be admitted before a traverse jury—he had doubts yet ; but he maintained that this Court was not to be bound by the rules of evidence which obtained in a trial before a traverse jury. His learned friends had mistaken the nature of the testimony he offered. It was not the testimony of young Mr. Filley, but of old Mr. Filley, that was offered. The proof was

sworn testimony, touching declarations made by a certain conspirator, while the conspiracy was pending. A man need not be at the first forming of the conspiracy to be a conspirator; if he comes in afterwards, while the conspiracy is pending, that implicates him. The conspiracy was pending till it was consummated by getting the money. Any one who came in before the money is obtained, to aid in obtaining it, came in as a conspirator. The money was the object conspired for, and that obtained, the crime was consummated, and never before.

He claimed that the facts plainly proved that young Filley was a co-conspirator, that the fact of the firm paying \$4,500 of their money to buy the boat, if there were nothing else, would implicate him. Before a jury his only doubt would be, whether the statement was made in furtherance of the conspiracy. This, perhaps, would be proven by the statements of the father and Mr. Burton. But in this stage of the case this point does not arise. This is not a trial. There is no jury—no element of a trial. It is simply an examination before a Commissioner, to ascertain whether there is probable ground to hold to bail. The defendant must satisfy the Commissioner that he is innocent before he can ask to be discharged. The instruments of the conspiracy were all active when this conspirator made the declarations. They were meeting day by day to carry out the plot, and get the money. The crime was in the course of perpetration when he made the declaration to his father. He would cite a late decision to show that a declaration need not be in furtherance of the design—12 Common Law Reports—Wright vs. Court and others.

Mr. Stanbery continued, in an able argument, to show that this was not a trial—it was merely a preliminary investigation; the rules for the guidance of a trial, whereby the defendants might be convicted or acquitted, did not apply to this examination—proof enough to convict was not required in this Court; the United States was not to be supposed to have presented its whole case, when this examination was concluded; and he cited Burr's case, in which C. J. Marshall gave his own opinion, and grounded it on Blackstone.

Col. Swayne closed the argument for the defence against the admission of the evidence. He examined the propositions of Mr. Stanbery, and referred to Wheaton's Am. Cr. Law, pages 261, 262, 263, 1st Burr's Trial, pages 25, 99, 100, and read several other authorities. He contended the conspiracy was at an end when the boat was burned, and that no person could become a conspirator who came into the matter after that event. The money may not have been obtained, and a person may have agreed, with a knowledge of the previous facts, to assist in getting the insurance money on the policies, without, in any way, becoming one of the conspirators. Such is claimed, in any event, to be the posi-

tion of young Filley. As such, his statements cannot be received by the Commissioner.

But it is claimed that in an examination before a Commissioner, matters may be admitted and considered which cannot be admitted on a trial before a jury. This strange doctrine is placed on two grounds—one of policy, and the other of authority. He discussed the first ground, and urged that such an unlimited discretion was dangerous to the rights of the people, and ought not to be encouraged. As to the authority, the only ones relied upon were to be found in Burr's Trial—that, at best, but one case, and it in opposition to all other authorities. He then examined the Burr case, and contended that the points referred to did not admit of the broad construction and application that were claimed for them. The Court said the testimony must be *legal*, though it might be *ex parte*. He then contended that the statements of young Filley were *not* legal testimony, and therefore should not be received. The argument of Col. Swayne was ingenious and very able.

The Commissioner reserved his decision till after an adjournment, and adjourned till 10 o'clock the next day.

SEVENTH DAY. — WEDNESDAY, JANUARY 5th, 1853.

The attendance of spectators in and about the Court-room had increased to a most uncomfortable throng. A case of greater interest had never been examined in this District.

This morning a number of ladies were admitted, and remained in the Court-room most of the day.

At the opening of the Court, the Commissioner said he had duly weighed the arguments of counsel for and against the admission of the written declarations of Lucius L. Filley, late of the firm of Filley & Chapin, and had come to the conclusion that the paper might be read in evidence.

The Commissioner stated his reasons for this decision, in a somewhat elaborate and very able argument. His citation of authorities evinced extensive reading.

Mr. Filley, [a very fine-looking, dignified old man, was now recalled to the stand.] — I think my first conversation with my son was on the Monday after my arrival. He had a forlorn appearance, as if in trou-

ble. I told him to disclose to me the dark side of the matter — to tell me the worst if he had wrong—said if he had been led astray, I wanted to know it. He said he had not done a direct wrong, but feared he might be implicated. He made a pretty full disclosure; on Wednesday, I think, it may have been Thursday, I wrote it all down, read it over to him several times, and he signed it. The paper now handed to me is the one; that is my son's signature; I saw him write it. There is one slight error, owing to my own forgetfulness, in the Christian name of one of the Chapins, the one who went down the river. On reading it over he said it was a mistake. I said I would rectify it, but omitted to do so. The interlineation was made before it was signed.

My son is now dead; I have never seen him since the time when this paper was written. My son told me that when he was at my house at New York, in or near February previous, he had intended to make a disclosure of this matter, but when he came there he went to his sister's, about three miles off, whose child was then not expected to live, and the sickness and death, and subsequent funeral of the child, prevented his doing anything about it. A few days after the funeral, and after the retiring of the family, he commenced saying to me "there is trouble in Cincinnati," and just at this moment the conversation was interrupted by the entrance of his mother. It was not resumed. Some months after he told me that this was the beginning of a disclosure.

To Mr. Walker.—I had seen Mr. Burton in New York City before this disclosure was made. He made statements to me which were the cause of my visiting my son. He requested me to go to Cincinnati—he paid my expenses. I went to see Mr. Kebler after having received this disclosure. I have copied this declaration; the day before I sent the original paper to the U. S. Commissioner at Cleveland, I took a copy; that was three or four weeks ago. I did not seal the paper till it was sent to the Commissioner. Burton had heard a part of it read in his house in Ohio City; had not taken a copy. In July had the paper with me at Cleveland, and read a part of it to Burton at his house. Part of the contents Mr. Scarborough knew, through a letter I sent him from Cleveland. My son did not say that in February he had the protest with him. He went to New York from my house; can't fix the date of his visit; can't say it was in February; think it was his last visit to New York. Saw Burton but once before my visit to my son; that was in New York. He said he thought my son might be dragged into this conspiracy, but he did not think he had done anything wrong; my son told me he did not think he had done anything wrong. I thought he was *morally innocent*. The object of the disclosure was to relieve his feelings and mine. He said he himself had not done anything wrong. I told him that Burton had spoken with me, and of all that had preceded, including Burton's

paying charges, Burton accompanying me as far as Cleveland, &c. Burton did not suggest that I should get my son's statement in writing. I told Burton he had made disclosures, before they were reduced to writing. Burton did not advise me to have it reduced to writing. The reduction was my own suggestion to my son—that his friends might know he had disclosed the whole matter, and was not driven to it. I told Burton he had made disclosures, without telling him what they were. My son was feeble at the time of the disclosure. I went to the insurance office in New York after the interview with Burton. Burton requested me to go.

When I came from New York to see my son, I did not stop at Cleveland. On my return, I stopped with Burton over Sunday. I went to Cincinnati at Mr. Burton's expense. The paper now shown me is the genuine document, containing the disclosures of my son, now deceased, signed by him.

Mr. Stanbery rose to read the written declarations of Mr. Filley, and was about to take the paper from the desk when

Mr. Pugh rose, reached forward to Mr. Stanbery's desk, took the paper, and commenced addressing the Commissioner.

Mr. Stanbery.—I am about to read that paper. I wish it now for the purpose of reading. The paper is now in evidence, and must be read.

Mr. Pugh.—I object to the reading. If this is now read, it will be taken down and published to-morrow morning, and be read by more than 10,000 people, who would never read the reply to it. I hope we may, at least, have the privilege granted us of having it read in the absence of spectators, for which there is a precedent in the Aaron Burr case. I want the antidote to go out with the poison. We expect to show our innocence of this charge.

After concluding his remarks, Mr. Pugh returned the paper to Mr. Stanbery.

Mr. Walker.—I shall not demand that this paper be not read in Court. I will appeal to the Attorney for the U. S. to withhold it from public reading. The press speaks with a thousand tongues, and there is a morbid appetite in the community, especially in Cincinnati, to read the reports of this examination. At the time of these arrests, publications calculated to prejudice the public mind were made.

I am happy to say that a report of this examination, has, thus far been fair and correct. But all these publications, combined with other influences, constitute an outside pressure, crushing counsel and clients—if it could crush us. Nothing in the administration of justice requires the reading of this paper. It might add laurels to counsel, but I know the learned counsel need no such laurels.

Mr. Stanbery. — I can assure gentlemen that I feel very differently now, than when Mr. Pugh peremptorily demanded that these declarations of Mr. Filley should not be read. I was then determined to insist upon our legal rights. But when the gentleman (Mr. Walker,) appeals to me—addresses me on the ground of regard to the feelings of the defendants, and their friends he touches my—weak side.

Mr. Walker. — You are a very *strong* man, and have no weak side.—
(Laughter.)

Mr. Stanbery. — The gentleman has surely found my weak side now.
(Laughter.)

My conclusion in regard to the matter is this—I will consent to waive the public reading of this paper if the counsel for the defence will withdraw some declarations they have publicly made, viz.: that this was a malicious prosecution, got up to avoid the payment of certain insurance policies. Gentlemen should remember that other parties have feelings and friends, besides their clients. There is an out side pressure on both sides. The Cincinnati Enquirer has published articles in which the prosecution is denounced as malicious, and got up for the purpose of avoiding the payment of insurances.

Mr. Walker.—That was not in the regular report of this examination.

Mr. Stanbery. — No, sir. Inasmuch as counsel for defence decline withdrawing statements with regard to Mr. Burton, and that this prosecution was malicious, &c., I feel it my duty to insist upon the reading of this paper.

The paper was read. It as follows:

“On the 23d day of July, 1852, I, Lucius L. Filley, of the City of Cincinnati, State of Ohio, do hereby certify that I am one of the late firm of Filley & Chapin, in the said city; that the said firm consisted of Lucius L. Filley and Rufus Chapin, who were known as the actual active partners in the concern, but that Amasa Chapin and Lorenzo Chapin were secret partners, and had an interest in the concern jointly. Said firm were connected in the business of manufacturing and selling boots and shoes, of buying and selling leather, hats and caps; that the said co-partnership commenced or was in existence in the years 1850 and 1851, and that the concern was closed in the month of December, 1851, about the middle of the month; that at or about the time of closing we sold to Lyman Cole.

“The Chapins made the inventory, and I copied the same, which amounted to, and was called eighteen thousand dollars, and I have no doubt but there was that amount inventoried, and sold to said Cole, which I supposed included about all the stock and boots and shoes we had on hand. I knew nothing of Cole, only by the way of Chapin, and had barely seen him until the Chapins sold out to him, they recommend-

ing him very highly, as a man of worth and high standing, and I learned nothing to the contrary, till told by Carpenter. There was leather on hand at the time of sale to Cole, which might amount to three or four hundred sides of red sole leather. Can't say whether or not that was included in the bill of sale to Cole. I knew of no white leather on hand.

"There were 200 or 300 dozen sheepskins; can't say whether they were sold to Cole or not. I only gave my consent to the trade of Chapins with Cole. At the time, the firm was vastly in debt, and I consented to any disposition of the property they thought advisable. I do not know how much money the firm owed Cole; that was generally managed by the Chapins.

"The Chapins had Cole's notes for the property, amounting, I should judge, to six or eight thousand dollars. I was taken sick, and know nothing how the matter was settled, if settled at all. I knew of no arrangement, never heard anything about shipping goods or leather on the Martha Washington, until I reached home on Wednesday night, the 7th of January, 1852. On the 4th of January I went to Ripley, and from thence to Maysville, collecting, and returned on the 7th to my house, in Sixth street, between eight and nine o'clock.

"Lorenzo Chapin came up there, and said they wanted me at the store. I went down with him, and he told me going down, that they had shipped a lot of goods on board of the Martha Washington.

"I went to the store, and found the Chapins, Cole, and Cummings. They showed me bills of lading that had been receipted at the boat. I said nothing, but mistrusted there was something wrong. They said they had been buying leather. I left the store, and Adams Chapin came out and said he wanted to talk with me, and said he was going to Louisville.

"He hinted to me what was going on, but seemed to be afraid to tell me. Two or three days after the boat was gone, I was in the office, standing by the desk, and the Chapins handed me a book to copy off the weights of the leather, which I done as they called them off to me. I knew nothing about the leather or weights, only as they read them off from a paper, purporting to have the weights upon.

"Three of the Chapins were then standing at the desk. Earl was not there, nor did he call off any leather to me during that week. After I had copied the bills, they then, for the first time, told me what was going on, and then said the man that exposed them would be shot down in less than four hours. I made no reply, but have ever stood in fear, and so affected me the thought of what I was implicated in, and the trouble, threw me into a state of wretchedness, and used me up.

"Just before the boat was burnt, Rufus told me, and so did Lorenzo

that the calculation was to burn the Martha Washington, and no one that exposed them, could live long, and that if they were all arrested, others that were not known would shoot them down. Said Cole was the first that got it up, and Kissane was as much in it as any one, for he had the largest insurance of any one. After the boat was burnt, Adams Chapin told me that a man by the name of Holland set the boat a fire.

"I saw Holland, for the first time, some weeks after the boat was burnt. He came to the store to see Cummings—spent most of his time in the store.

"One of the Chapins told me that Kissane's insurance made a shipment over the left; said that Kissane shipped more fictitious than any one else.

"I heard Nicholson, who was clerk of the boat, tell Cummings, in my presence, that any man who exposed them, he would shoot down. This was said so that I might hear it. The leather, after the 15th of Dec., was mostly worked in the factory. Filley & Chapin had some boots and shoes in Louisville at the time they sold to Cole—say from \$800 to \$1,000—in Thomas Anderson & Co.'s hands.

"Yorke & Hewson was in possession of some that were made over to Cole by Amasa Chapin. I don't know the amount that was shipped on the Martha Washington, (not being here,) from the store.

"Since, or during the past week, Adams and Lorenzo Chapin told me that they got Albert Helman drunk before he made his deposition; also Earl they made a present of \$100, and he had given a strong one.

"They agreed with McCabe that if he would give a strong deposition, they would pay him what Filley & Chapin owed him when they got the insurance.

(Signed,)

L. L. FILLEY.

"H. R. FILLEY, Witness."

Charles Bretenhall sworn.—I am a tanner, and buy and sell leather. Resided in Cleveland in the fall of 1851, and still do. Mr. Burton introduced a man named Chapin to me more than a year ago, before Christmas, 1851. Said he was of the firm of Filley & Chapin. I do not see him here. He wanted to buy leather, white sole leather, and upper leather to manufacture, as he said. White sole leather was very scarce that year. We had none to spare. Sold him nothing.

Cross-examined.—Burton recommended the house of Filley & Chapin to me.

J. H. Carter recalled.—I am the Agent at Cincinnati of the Ætna Insurance Company of Hartford, Conn. G. P. Stephens called on me, and requested insurance on goods said to have been shipped in the Washington on the 6th of January.

This memorandum, in pencil, is a minute of the application, (hands it to Mr. Stanbery,) viz.:

"G. P. STEPHENS—6 Boxes Merchandise, \$5,361.41—Martha Washington, Capt. J. N. Cummings, for New Orleans."

Mr. Carter. — Here is the application :

"COPY OF INSURANCE.
"POLICY No. 540.

G. P. STEPHENS.
G. P. STEPHENS.

"On shipment 6 Boxes sundry Merchandise from Cincinnati to New Orleans, per steamer Martha Washington. In sums—

"\$5,361 at l. \$53.61
"Policy..... 1.00
"Say sum of five thousand three hundred and sixty-one dollars.
"(Signed,) J. H. CARTER,
"Cincinnati, Jan. 7, 1852." Agent.

After the loss, Stephens handed me—as part of the preliminary proof of his loss—a bill, of which this is a copy, (hands it,) viz :

"G. P. STEPHENS,

"Bought of JOHN EDWARDS, Jan. 2, 1852.

"An invoice of a bill of goods shipped by G. P. Stephens, this seventh day of January, 1852, in good order, on board the steamboat Martha Washington, Capt. J. N. Cummings, bound for the port of New Orleans:

60 dozen cotton shirts, \$18.....	\$1,080.00
48 " " " \$15.....	720.00
24 velvet vests \$4.....	96.00
48 satin do. \$2.....	96.00
12 pair Cassimere pants \$7.....	84.00
24 " " " \$5.....	120.00
48 " " " \$1.75.....	84.00
24 dozen flannel shirts, \$12.....	288.00
24 dozen drawers, \$18.....	432.00
14 dozen undershirts, 10.....	140.00
24 dozen cottonade pants, \$12.....	288.00
13 dozen " jackets, \$15.....	225.00
12 dozen monkey " \$24.....	288.00
12 pieces cravat silk, \$7.50.....	90.00
36 dozen cotton drawers, \$6.....	216.00
30 dozen hickory shirts, \$6.....	180.00
4 gross suspenders, \$30.....	144.00
50 dozen cotton hose, \$1.50.....	75.00
24 dozen woolen " \$2.00.....	48.00
24 overcoats, \$7.50.....	180.00

\$4874.00

Add 10 per cent..... 487.40

\$5,361.00

"STATE OF OHIO, }
"HAMILTON Co. } ss.

"Before me the undersigned, a Notary Public in and for said county, personally appeared G. P. Stephens, who being duly sworn according to law, deposeth and saith, that the above is a true and correct invoice of a bill of goods shipped by him, 7th day of January, A. D. 1852, on the

steamboat Martha Washington, for the port of New Orleans, as set forth in the foregoing invoice of bill.

G. P. STEPHENS.

"Sworn to and subscribed before me, this 16th day of February, A. D. 1852.

JNO. LEOWEON,

"Notary Public."

"The foregoing, upon comparison, is found to be an exact copy of the original handed to Walker & Kebler, and received for by them to J. H. Carter, Agent, upon G. P. Stephens's order on J. H. Carter, favor of Lyman Cole.

JOHN KEBLER.

"May 31, '52."

He handed me also a copy of a bill of lading, of which this is a copy :

"[COPY.]

"Shipped, in good order and condition, by G. P. Stephens, on board the good steamboat Martha Washington, John N. Cummings, Master, the articles marked and numbered as below, which are to be delivered, without delay, in like good order, at the port of New Orleans, (the dangers of the river, fire, and unavoidable accidents excepted,) unto O. Wickham, or assigns, he or they paying freight for the same at the rate of forty cents per hundred.

"In witness whereof, the Owner, Master, or Clerk of said boat hath affirmed to three bills of lading, of this tenor and date, one of which being accomplished, the others to stand void.

"Dated at Cincinnati, this 7th day of January, 1852.

MARKS	ARTICLES.	WEIGHTS.
Brownsville, Texas, Care of O. Wickham, New Orleans.	6 Boxes Merchandise. (Signed,) J. N. CUMMINGS."	2,950 lbs.

Here is a note from Stephens to me, viz. :

"J. H. CARTER, Esq.— You will please deliver to Lyman Cole all the bills and papers I left with you relative to my claim against the Ætna Insurance Company of Hartford, Conn.

"Respectfully, your obd't. serv't, G. P. STEPHENS.

"Chicago, May 11, 1852."

[In Pencil:]

"1 Bill of Lading.

"1 Bill as Invoice.

"1 Original Bill of J. Edwards.

[Endorsed thus:] "G. P. Stephens's order on J. H. Carter."

And here is a receipt for the papers delivered on that order :

"Received this May 31, '52, from J. H. Carter, Agent, three papers :

"[1.] Bill of lading on steamboat Martha Washington, favor of G. P. Stephens, signed by J. N. Cummings, dated Jan. 7th, 1852.

"[2.] Bill of sale, dated Jan'y 1, 1852, from John Edwards to G. P. Stephens.

" [3.] Invoice of goods shipped by G. P. Stephens, 7th Jan'y, 1852, on steamboat Martha Washington, sworn to by G. P. Stephens before J. S. Nixon, Notary Public.

WALKER & KEBLER,
" For L. COLE."

Have made inquiries for Stephens and Edwards ; they are not resident in Cincinnati. Could not learn that either ever had a place of business there. Never saw Edwards.

Stephens said Edwards had gone South, when I asked if he could not produce him. He said Edwards had brought these goods from the East. Do not recollect that he said where they were stored in Cincinnati.

To Mr. Walker.—Stephens came to my office alone to make the insurance ; my brother wrote the proposition.

To Mr. Stanbery.—Cole has garnisheed our Company for that money. I got the information from the younger Chapin that the goods had been stored with Filley & Chapin.

[Mr. Stanbery hands the witness the bill of lading signed " Nicholson, Clk.," left with the Firemen's office]—I saw this on the 13th or 12th of March, 1852. Mr. Lawrence brought it to me. I saw it three or four days afterwards. When I first saw it, I was attracted by the freshness of the writing, and made up my mind it had been written the same day I saw it. The color of the signature was bluish green ; soon after I saw it again, and then it was black as now. I think it was written the same day I first saw it. Have used such ink.

When I asked Stephens for a reference, he referred me to Kissane and Cummings. Kissane said he had known Stephens some time—he was an honest, upright man—he believed the insurance was all right, and he should have no hesitation about paying it.

I have seen several other invoices on which insurances have been obtained on goods shipped on board the Martha Washington.

W. B. Cassilly was next examined. I was agent in Cincinnati, in Jan., 1852, of the Firemen's and Mechanic's Insurance Company of Madison. In January last, Stephens applied for an insurance, and got it, on merchandize, to the amount of \$1,971, on board of the Martha Washington ; he said he bought the goods of L. Cole. I do not know Stephens ; he went to Madison and got his money.

Here is a copy of his application, viz. :

804	" Insurance wanted in the sum of \$1971.50 on merchandise, per steamboat Martha Washington, to New Orleans.
340	
1971.50	
2	" 1971.50 $\frac{1}{2}$ \$14.78
\$14.78	" G. P. STEPHENS.

" Cincinnati, Jan. 7, '52."

Above on the same paper is the following:—

800	" Insurance wanted in the sum of \$2,500 on freight list and
339	charges of steamboat Martha Washington to New Orleans
2,500	from hence. J. N. CUMMINGS.
1½	" \$2,500 1½ \$37.50
37.50	" Cincinnati, Jan. 7, '52.

" The above transferred to Jas. McGregor and Chas. Cassilly.—E.
" M. L. NEVILLE, Sec'y."

To Mr. Pugh.—This paper is cut from our Application-book. The applications were made on the same day. Stephens came in, the next man after Cummings.

To Mr. Stanbery.—Here is the original policy to Stephens, (handing it:)

" Policy, in the common form, from the Firemen's and Mechanic's Insurance Company of Madison, Indiana, to G. P. Stephens.

" Dated 7th Jan., 1852, at Madison.

" Countersigned at Cincinnati, 7th Jan., 1852.

" Numbered 804. Jan. 7.

" \$1,971.50 on Merchandise, per steamboat } \$1,971.50 + \$14.78
" Martha Washington to New Orleans. }

The policy is endorsed thus :

" Policy (B. L.) and bill of brandy and cigars, bought by Stephens, and insured at Cincinnati agency on steamboat Martha Washington.

" Settled March 10, 1852."

The words are written across the face of the policy: "*Policy cancelled by payment for loss on the risk.*"

This is an invoice handed in by Stephens, after the loss, as part of the proof.

" CINCINNATI, January 1st, 1852.

" MR. G. P. STEPHENS,

" Bought of LYMAN COLE.

" 13 Bbls. Brandy, 503 gals., @200.....	\$1,006.00
" 13 Barrels, 82.....	10.65
" 55,400 La Cella Cigars, @14.....	775.00

" \$1,792.25

" Received payment, by note at six months, for the above bill.

" LYMAN COLE."

An affidavit to the truth of the bill was made afterwards by Cole.

Stephens handed in also this bill of lading, viz.:

" Shipped, in good order, by G. P. Stephens, on board the good steamboat called the Martha Washington, whereof John N. Cummings is master for the present voyage, now lying in the port of Cincinnati, and bound for New Orleans, the articles marked and numbered as below, which are to be delivered, without delay, in like good order, at the port of New Orleans (the unavoidable dangers of navigation and fire only excepted),

unto O. Wickham or assigns, he or they paying freight for the same at the rate of ninety cents per barrel, and forty cents per hundred for cases.

"In witness, whereof, the Owner, Master, or Clerk of said boat hath affirmed to three bills of lading, of this tenor and date, one of which being accomplished, the others to stand void.

"Dated at Cincinnati, this 7th day of January, 1852.

MARKS.	ARTICLES.	WEIGHTS.
S. Brownsville, Texas, Care of O. Wickham, New Orleans.	Thirteen bbls. Brandy. Two cases Cigars. "J. N. CUMMINGS."	980 lbs.

Mr. Cassilly proceeded. — Have lived in Cincinnati twenty-six years. Did not know Stephens. Did not ask where he hailed from. When he applied for his money he said he wanted to go to Tennessee. I gave him a letter to the home office in Madison, and they paid him the loss. \$2,100 of the loss on the freight list, insured by Cummings, was paid to Mr. McGregor, and the balance to my brother.

To Mr. Walker.—I never saw Mr. Burton till the night before last.

Samuel E. Mack called and sworn.—I am Agent in Cincinnati of the Hartford Insurance Company, and was in Jan., 1852. G. P. Stephens effected with me an insurance on 76 cases of boots and shoes on the 7th January, 1852, for \$3,369.50, which he said he had shipped on the Martha Washington; he said he bought the goods of L. Cole, and referred to him. The loss has not been paid.

Here is the receipt for the original papers left with me by Stephens after the loss. I delivered the papers to Mr. Kebler; think he demanded them in the name of Cole. The receipt is as follows, viz.:

"Received this May 27, 1852, from Protection Insurance office, four papers:

"[1.] Bill of lading on Martha Washington, dated 7th January, 1852, favor of G. P. Stephens, signed by J. N. Cummings.

"[2.] Copy of policy of insurance of Protection Office, No. 11,844, to G. P. Stephens.

"[3.] Sworn statement by G. P. Stephens, of invoice of goods shipped by G. P. Stephens on 7th Jan., 1852, on the Martha Washington.

"[4.] Bill of sale of L. Cole to G. P. Stephens, of some goods, dated Jan. 6th, 1852, sworn to by Lyman Cole. WALKER & KEBLER."

Here is a copy of the bill of lading, viz.:

"Shipped, in good order, by G. P. Stephens, on board the good steam-boat called the Martha Washington, whereof John N. Cummings is master for the present voyage; now lying in the port of Cincinnati, and bound for the port of New Orleans, the articles marked and numbered.

as below, which are to be delivered, without delay, in like good order, at the port of New Orleans (the unavoidable dangers of the river and fire only excepted,) unto O. Wickham or assigns, he or they paying freight for the said goods at the rate of forty cents per hundred.

"In witness whereof, the Owner, Master, or Clerk of said boat, hath affirmed to three bills of lading, of this tenor and date, one of which being accomplished, the others to stand void.

"Dated at Cincinnati, this 7th day of Jan., 1852.

MARKS.	ARTICLES.	WEIGHTS.
S. Brownsville, Texas, Care of O. Wickham, New Orleans.	76 boxes Boots, Shoes, and Hats. "J. N. CUMMINGS."	8,600 lbs.

And here a copy of the bill of sale, and of Cole's affidavit to its correctness, viz.:

"[COPY.]

"CINCINNATI, January 6, 1852.

"MR. G. P. STEPHENS,

"Bought of L. COLE, No. 7 Pearl street.

48 cases boots, @28.....	\$1,344.00
10 " Calf Boots, @42.....	420.00
6 " Brogans, 60 pair in a case, @121.....	435.60
5 " Hats, @42.....	210.00
2 " Kossuth Hats, 3 dozen in a case @31.....	186.00
2 " " " " " @21.....	126.00
3 " " " " " 6 " @19.....	342.00
Drayage, 9 loads.....	2.25

76 cases

\$3,065.85

"Received payment.

"By cash fifteen hundred dollars.

"By note, at six months, for \$1,565.85.

"LYMAN COLE."

"STATE OF OHIO, }
"HAMILTON Co. } ss.

"Before me, a Notary Public within and for said county, personally came L. Cole, who being duly sworn according to law, deposeth and saith that the above bill of goods, sold by him to G. P. Stephens, Jan. 6, 1852, as above set forth, together with the prices charged and received therefor, as above set forth, is in all respects true and correct.

"LYMAN COLE.

"The foregoing sworn to and subscribed before me, this 17th day of February, A. D. 1852.

JNO. L. NIXON.

"(Seal.)

"Notary Public."

Here is a copy of the invoice, as sworn to by Stephens, viz.:

"[COPY.]

"An invoice of a bill of goods, shipped by G. P. Stevens, this 7th day of January, 1852, in good order on board the steamboat Martha Wash-

ington, Captain John N. Cummings, bound for the port of New Orleans.

48 cases	Boots, \$28	.....	\$1,344.00
10 "	Calf Boots, \$42	.....	420.00
6 "	Brogans, 60 pair in a case, \$1.21	.....	435.60
5 "	Hats, \$42	.....	210.00
2 "	Kossuth Hats, 3 dozen in a case, \$31	.....	186.00
2 "	" " " "	" \$21	126.00
3 "	" " " 6	" \$19	342.00
	Drayage	.....	2.25

\$3,065.85

Add ten per cent..... 306.50

\$3,372.35

" STATE OF OHIO, }
" HAMILTON Co. } ss.

" Before me the undersigned, a Notary Public in and for said county, personally came G. P. Stevens, who being duly sworn according to law, depose and saith that the above is a true and correct invoice of a bill of goods shipped by him 7th day of January, A. D. 1852, on the steamboat Martha Washington for the port of New Orleans, as above set forth.

" G. P. STEPHENS.

" Sworn to and subscribed before me this 11th day of February, A. D. 1852.

" JNO. L. NIXON,
Notary Public."

" (Seal.)

Here is a paper cut from the Record-book of applications in the Cincinnati agency of the Protection Insurance Company, viz.:

<p>" 11,844. \$3,369.50. Pol. 11,844 Issued.</p>	<p>" CINCINNATI, January 7, 1852. " Insurance is wanted by G. P. Stephens, of Cincinnati, at and from this port on steamboat 'Martha Washington,' to New Orleans, in the sum of \$3,369.50, on 76 cases boots, shoes, and hats. " [In pencil, 25, 25 per cent.]</p>
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Here is a copy of the policy (the policy is in the common form,) from the Protection Insurance Company of Hartford, Conn., by which they cause to be insured, lost or not lost:

" G. P. Stephens, of Cincinnati, Ohio, in the sum of three thousand three hundred and sixty-nine dollars and fifty cents on 76 cases boots, shoes, and hats, on steamboat Martha Washington, at and from this port to New Orleans, and landed—

" Beginning, &c., at the port of Cincinnati, O., and to continue, &c., and until safely landed at New Orleans, La.

" No valuation.

" Prem. \$25.28. Dated 7th Jan., 1852."

There are the following six:

Endorsement on the policy, viz.:

" [1st.] In consideration of the sum of three thousand three hundred and sixty-nine dollars, to me in hand paid by Henry Stephens, I, Geo. P. Stephens, do hereby assign, transfer, and sell, and set over unto the said Henry Stephens all my right, title, and interest in the within policy of insurance, and all benefit to be derived therefrom, and all moneys due or

to grow due thereon by reason of any loss suffered or to be suffered, hereby authorising him to collect and receipt for any moneys due or to grow due for losses either in my name or in his own, the proceeds to be applied to his own use, without in any way accounting to myself.

"Witness my hand and seal this sixteenth day of Feb., A. D. 1852.

"G. P. STEPHENS. (Seal.)"

"Witness, J. G. DOUGLASS."

"[2.] \$3,369.50.

"St. Louis, March 20, 1852.

"On the 12th day of April, A. D. 1852, please pay to E. W. Clark & Bros., or order, three thousand three hundred and sixty-nine dollars and fifty cents, the same being the amount of insurance due on the within policy, No. 11,844, on that date, and oblige Your obd't. serv't.,

"HENRY STEPHENS."

"To W. B. ROBBINS, Esq., General Agent for the Western States of the Protection Insurance Company of Hartford, Cincinnati, O.

"[3.] Pay above draft to Geo. Milne & Co., or order.

"E. W. CLARK & BROS."

"[4.] \$3,369.50 ins. at $\frac{3}{4}$ per cent. \$25.28."

"[5.] Acceptance declined on presentation of original policy and order by Milne & Co., 25th March, '52.

"[6.] A true copy of original. W. B. R. G. A."

[Mr. Walker here stated that he thought the suit against the Protection Company had been brought in the name of Henry Stephens.]

Edward G. Whitney was next called. — I reside in Madison, and am Secretary of the Madison Insurance Company. Adams Chapin obtained an insurance on 200 boxes boots for \$4,200, at our Louisville agency. The goods were represented to have been shipped on the Martha Washington. Chapin called for the money in the latter part of February last. He introduced himself as the person who had procured the insurance. The policy was assigned to B. A. Earl. A man who came to the office with Chapin represented himself to be Earl. I inquired, in consequence of information he gave our Louisville agent, at the time he left the protest with him, about his proceedings respecting the shipment, and I repeated the substance of the conversation at Louisville when the insurance was procured. He had said then that he had brought the goods to Louisville to raise money on them, but had conversed with an auctioneer who had discouraged him. He said B. F. Baker & Co. had offered him his price at ninety days, but he wanted cash and had concluded to bring them down the river to Memphis, and if he could not sell them there, to take them to the Arkansas river. When he applied for the settlement he said he had not gone down the river because his sister had come to Cincinnati, and he had not seen her for many years, so he went back to see her. Our agent had also told me that he had consigned the goods to some house in New Orleans. He said he did not remember to whom he consigned the goods at New Orleans, but said the bill of lading would

show. Arthur Fulton & Co. are the consignees named there. He did not know Arthur Fulton & Co—had consigned to them by direction of the Captain of the Martha Washington. Had shipped them with directions to forward them to Van Buren, Arkansas. I looked over his papers, and made a note of the additional proofs wanted.

Besides the bills of lading, I am not sure he left any paper. He may have then left the paper purporting to be a consignment from Filley & Chapin to A. Chapin. This was my only interview with Chapin. This is the paper :

“CINCINNATI, January 7th, 1852.

“We have this day consigned to Adams Chapin, 200 cases of our No. 1 kip boots, (12 pr. case,) to be sold to net us \$21 per case.

“FILLEY & CHAPIN.

“BENJ. A. EARL, Assignee.”

This is a copy of the policy issued to Chapin :

The policy is in the common form—is numbered 268, and by its terms the Madison Insurance Company of Madison, Ia., insure “A. Chapin for account of whom it may concern, forty-two hundred dollars, on 200 cases of boots, valued at \$21 per case, on board of steamboat Martha Washington, hence to New Orleans,” from Louisville, till safely landed at New Orleans. Prem. $\frac{1}{2}$ per cent. \$31.50.

Dated at Louisville, Jan. 9, 1852. Countersigned James E. Tyler, Agt. Endorsed thus :

[1st.]

“CINCINNATI, Jan. 20th, 1852.

“Be it known hereby, that for value received of B. A. Earl, I do by this instrument transfer to him all my right, title and interest, in and to the sum of forty-two hundred dollars, being the amount insured for my benefit in the within policy of insurance.

“Witness my hand and seal, this 20th of January, A. D. 1852.

(Signed)

“A. CHAPIN. [Seal.]

“Witness: L. L. FILLEY.”

[2d.]

“For value received of William Kissane, I do hereby assign and transfer to him an interest in and right to the within policy of insurance, to the amount and to the extent of fifteen hundred dollars: and I do hereby request the Madison Insurance Company to receive and register this assignment—the receipt of the said Kissane to said Company to the extent of said fifteen hundred dollars I hereby authorize and affirm.

“Witness my hand and seal, this 1st March, 1852.

“B. A. EARL, [Seal.]

“Witness: THOS. B. BRYAN.”

“The above was copied by me from the original, and having compared the copy carefully with the original, I hereby certify the copy to be correct.

“THOS. J. HARRIS.”

“Sept.(?) 7, 1852.

[The matter of the last date may be August or October. It is simply illegible.]

Nicholson in Cincinnati, at the Burnet House, and also at the Walnut Street House; saw him on the 12th and 13th of March, 1852. He said he had been the clerk of the steamer Martha Washington.

Adjourned to 2, P. M.

AFTERNOON SESSION.

John Westcott sworn—Reside in Cincinnati, am a dealer in leather. Know Amasa, Lorenzo, Rufus and Adams Chapin; have seen Lyman Cole. Have purchased of Filley & Chapin their manufactures; have loaned them money in small sums at various times since March, 1851. About December, 1852, I was a creditor of the firm, and am now. Had an occasion then to look into their affairs. My last loan of \$500 to Filley & Chapin was negotiated by Lorenzo or Rufus Chapin in December, 1852. This loaning became burthensome to me, because I did not myself wish to borrow, therefore I commenced charging them interest and requiring collateral securities. I was in and out of their store perhaps every day from the 1st to the 15th of December. Their stock of goods was light. My place of business was within two rods of their store. The loan of \$500 was made on the collateral security of \$900 in notes.

They paid me \$400 of the \$500, and I gave them up the collateral securities, they begging me to take their check dated several days ahead, for \$100, the balance. I took a check payable on the next Tuesday—on the Monday before, they failed. I asked Rufus if he would pay the check; said he would pay me in goods. I went to his manufactory, where Rufus was about to turn out goods, when Lorenzo came in and said I should not be paid; he finally consented to paying a part of my claims. There were not more than ten or twelve boxes of boots in the store; there was a little leather and a great many empty boxes. There was confusion among the few workmen in the establishment, who were importuning the Chapins for the wages due them. What boots they had on their shelves would fill about eight or ten boxes.

After the first of December, I saw no white sole leather in their establishment. I had previously seen some two hundred or more sides of red sole leather there. The same week they failed, I went through their whole manufactory. Their stock looked about as it did when I went on the previous Tuesday, when I went to get pay for my check. The manufactory appeared in confusion; very few hands about; perhaps none at work. I saw no sheepskins; my attention was not called to them. Had seen a good many on previous occasions in their sale rooms. There was a small quantity of red sole leather there.

In the store I saw at one time—or perhaps two or three—some thirty or forty boxes addressed to Louisville, Ky., marked with some initial, I think T in a diamond. The Chapins made sometimes an extra fine calfskin boots at \$42 per dozen; a fair price for their boots in general was \$18, \$23, \$24. Hungarian boots at \$25a\$27 per dozen; long legged Hungarian at \$30 per dozen; calf \$33.

Cross-examined.—I might remember a stock of goods, boxes, &c., for a year, under the circumstances. Did not count the boxes. I went all over their factory after they sold to Cole. I estimated that in January, 1852, they might have a stock of some \$15,000 to \$18,000—this may not be precise. I examined the whole stock with Mr. Vallette, in December, I think in the week they failed.

Henry Vallette called.—I went all through the Chapins' establishment between the 17th and 20th of December, 1851—through the factory and all the rooms. Saw no sheepskins there, and very little stock. Do not remember seeing any sole leather. Saw a small amount of boots and shoes. There might have been a dozen men at work—perhaps not six. The shops appeared to have been abandoned. There were preparations apparently for a hundred workmen or more.

Cross-examined.—Know but little if anything about the boot and shoe business. Went to the Chapins' establishment at request of Mr. Westcott—went into three or four rooms in the first story, second and third—went through the third story.

Examined by Gov. Morehead.—I know Mr. Chandler, one of these defendants—his intimate friends think well of him—have never heard anything against him; I rented him a store at one time, in 1848; he paid my rent promptly. All his intercourse with me has been perfectly satisfactory. Have heard several persons speak of him. The house I let him was a dwelling house, of which a grocery store was a part.

A. B. Carpenter sworn.—Reside in Cincinnati—resided there in December, 1851; am acquainted with the Chapins. Had transactions with Filley & Chapin; accommodated them with money; was a creditor at their failure. They owed me then \$250; I had no security—had a judgment note—do not call that any security. I told them if they would let me have \$750 in goods, I would give them \$500 in cash.

I selected goods myself. That's the invoice:

"CINCINNATI, Dec. 18th, 1851.

"MR. A. B. CARPENTER

"Bought of (*Filley & Chapin erased*) Lyman Cole,

"Wholesale Boot and Shoe Manufacturers, &c.

10 cases	No. 1 Kip Boots, \$20.50,	\$205 00
1 "	Hungarian "	23 00
3 "	Youths' Kip " \$13,	39 00
2 "	Boys' Thick " \$15,	30 00
2 "	Fine Calf, " \$30,	60 00
60 prs.	Men's Kip Brogans, \$95,	57 00
60 "	" " \$95,	57 00
36 "	Woman's Fine Calf Buskins, \$1	36 00
36 "	" Enamelled Polka Boots, \$1,	36 00
0 case	Fine Calf Boots,	00 00
3 "	No. 2 Kip " \$18.50,	55 50
2 "	Calf Boots, (in pencil mark "not del'd) \$30, ..	60 00
38 prs.	Woman's Goat Boots, .72	27 36
38 "	Boys' Grain Brogans, .60,	28 80
48 "	Woman's Grain Boots, .75,	31 50
6 "	" " " Polka Boots, .70,	4 20
		750 36
	By check,	450 00
		300 36
	" two checks signed by Filley & Chapin, } one \$50.60, the other \$200,	250 60
		49 76

"Rec'd payment,

L. COLE, by B. A. EARL."

The goods were in boxes—I think the prices were their fair market value. I went through their store on Pearl street while I selected them. I wanted to find \$750 worth; could not find it of the sort of goods I wanted. Earl showed me the goods. Had to wait till some of them were finished. I bought kip, Hungarians, fine calf, men's brogans, misses' fine calf, quite a variety. I think the kind I did not get was calf boots. I fell short of some one or two cases. In a week I got the balance. They said they had not any manufactured. I told them I would take sole leather. Did not see much there—saw some red. I think in the cellar on Pearl street saw some white, very few sides. Filley said they had not much white on hand. Saw some sheepskins up stairs. Filley said they belonged to Burton. Think they were the only ones of any amount. Filley said "all the goods we've got are not worth \$8000; would not sell for more than that, cash." Cole was there when I bought the goods. He made no objection.

To Mr. Walker.—I do not know that the Chapins did not ask Cole to let them credit the amount of these goods on his notes. I have always been friendly to the Chapins. Charged them for the accommodations.

Question.—Did not you charge five per cent. a month?

May have charged that. I shave notes for a business—am a banker. When I bought, I bought to save my debt. Should have taken sole

leather, if I could have got it, in preference to boots. They were very hard pressed before their failure. Know Burton—I have had conversations with him about the Martha Washington; can't say how many; a number. The first was last summer, about June. He told me at one time he was going to have the Chapins, Kissane and others arrested for burning the steamer. Know Robt. Lemon—suppose he has been employed in Chapins' shoe factory. Have known him by sight about two years. About two or three months ago, he said he wanted to get into other business, along with Mr. Field, my partner in the shoe business. I was going to quit Field. Lemon came to me on Third street, at my place of business. He proposed to have half the profits. He had no capital. I understood there was not to be any capital in the firm. (Laughter.) I mean, more than Field had on hand. I told him he could make more with Field than where he was. I told him I did not think they could keep on a great while in business. I told him Burton was giving them some trouble about the insurances. I own the Exchange Bank of Wooster. Don't think I told him Burton would give him a credit of \$20,000 if necessary, if he would form the partnership. Burton did not give me any such authority. Did not say Burton would have them in the Penitentiary in twenty days—might have said he would have them at Columbus. Do not remember saying he should have possession of the Chapins' factory, or slip into their shoes as soon as they were arrested. Did not say I would have any of them kicked out who came in there. Do not remember any conversation of the kind. Something might have been said about getting possession of their tools. Don't remember the conversation. He thought the factory might be for sale. Do not know whether he signed a partnership contract then. I know there was published a notice dissolving his partnership with Carpenter & Field. Anybody can publish a notice. Suppose Lorenzo Chapin put it under my door in an envelope. Never told Lemon anything like that he might go on for five years, and then make a fine burst up and lay it all to Pierce's administration.

To Mr. Stanbery.—Cole & Chapin were carrying on the boot business under the name of Cheney. I suppose Cole and the Chapins would say they were interested in it. Cole was there about two months. Cheney is a brother-in-law of L. Chapin—had been employed with them. Nothing was done in the name of the Chapins that I know of.

Burton was in my office one day last summer, opposite Dennison's Hotel, when Lorenzo and Amasa Chapin came in. Lorenzo said—“Burton, I understand you are against me in this business, and, by G—d, no man shall be against me and live!” I understood him to refer to this insurance business.

Lorenzo Chapin threatened to whip me to the amount of \$20 or \$100,

for what we have been talking about. He came to my office ; I told him I was ready for him ; he said he had no weapons ; told him he had better clear out then. I had no weapons at the time myself — put my hand to my pocket as if I had.

To Mr. Walker. — Never had any design to prevent Lemon from testifying here, except in favor of the prosecution.

Timothy Croning sworn.—Reside in Cincinnati ; carry on the leather business ; was a creditor of Filley & Chapin's ; they owed me for upper leather when they failed ; furnished them upper leather at different times from October 8th to December 8th or 10th, 1851. Tried to secure myself ; went to two or three different lawyers. Went into their establishment on Main and Pearl the second day after the failure ; found Filley and one of the Chapins ; they were up stairs. Filley told me there was stock enough to pay us all. I saw Cole walking about like a strange man. Made application again and again. Saw the stock in the store, and also in the factory—it was principally boots and shoes. Saw a large quantity of red sole leather in sides ; it was piled from the floor to the ceiling in one room ; saw no white sole leather ; believe I saw a few dozen of sheepskins ; saw about five or six dozen in the factory ; saw no white sole leather in either building ; saw not over 20 dozen sheepskins in both stores ; saw five or six dog skins.

White sole leather was scarce, and in great demand at that time — always is at that season of the year.

Cross-examined by Mr. Walker. — Don't think I went into the cellar of the store — only went into the first and second stories. They bought some seventy dollars' worth or less of damaged white sole leather of me, now and then, in the summer of 1851.

Henry Gesler sworn. — Live in Cincinnati ; have resided there about sixteen years ; deal in red and white sole leather, and other kinds of leather. One year ago the market was scarce of white sole leather — it was a cash article. Was at Filley & Chapin's after they failed ; saw some boots and shoes there ; did not examine their stock. Six or seven days before they failed, they bought a small lot of damaged white insole leather of me — it was \$40 worth ; they did not state what they wanted it for. Don't think you could find 3,000 dollars worth of white sole leather in any one establishment in Cincinnati at this time of year. Do not think any one concern in Cincinnati had 200 rolls of white sole leather at that time. Do not think Mr. Taylor, who is one of our largest manufacturers, has had so much at one time within two years. Two hundred rolls would be a very heavy stock. The white is the most saleable leather. Think 1,600 dozen of sheepskins a very heavy stock. Sheepskins are brought from the East every year ; I bring them. For the last year or eighteen months they have been scarce in Cincinnati. Do not know any inducement one could have to ship white sole leather or

sheepskins from Cincinnati to New York in December, 1851, or January, 1852. There could have been no profit in it.

Samuel Roney sworn.—Reside in Cincinnati; am in the leather business; have been in it fourteen years; generally know what stock of leather is in town. Heavy white sole leather was a very scarce article last winter, in Jan., 1852—was sold about as fast as it could be delivered by the tanners. I knew of no large stock in the city; 200 rolls of white sole leather would occupy about the same space as 200 barrels of flour, or 10 or 11 cords of wood. Suppose 1,600 dozen sheepskins would occupy about as much space as four cords of wood.

[Mr. Walker here said the defence admitted it was against the course of trade to ship sole leather to the East from Cincinnati.]

William Parvin sworn.—Carried on business as a trunk manufacturer in Cincinnati a year ago; use large quantities of sheepskins in the business; keep myself tolerably well acquainted with the stock of them in Cincinnati; know of no stock at that time of 1,600 dozen sheepskins; am buying pretty much all the time; never saw more than half that quantity in one establishment; 1,600 dozen would be an extraordinary stock.

Cross-examined by Mr. Walker.—My establishment buys from 1,000 to 1,200 dozen in the course of a year—from 200 to 300 dozen at a time.

Charles Fox called.—I had a policy of insurance, purporting to be issued by the National Insurance Company, put in my hands by Mr. Chandler, a defendant in this case, with the request to endeavor to collect it. There was a bill of sale to Chandler of the goods purporting to have been shipped.

Dr. Kates called.—I was in the store of Filley & Chapin in October or November, before their failure; was induced to go there by one of the clerks to buy sheepskins; they had some four or five dozen fair or light sheepskins, and a few dozen russet skins. I think this was about the 20th of November.

To Mr. Walker.—I wanted the sheepskins for a particular purpose; I use them in my business to make trusses. The person who showed me them, Mr. Earl, said those were all they had of that kind—of all other kinds I saw but a few dozen.

John W. Clark sworn.—Live in Cincinnati. The Chapins occasionally called on me for some months previous to the failure of F. & C. to get their checks—dated some days ahead—cashed; some of these I had on hand when they failed. I went through their establishment to see what they would turn out in security; was at their factory I think, as well as their stores. Saw no particular sheepskins or sole leather; the stock was rather lean. A good many empty boxes were there; saw some boots and shoes, and perhaps some hats. I cashed their last check a

week before their failure ; it fell due on the Friday before they failed ; one of the Chapins asked me to let it lay till Tuesday. I consented unwillingly. On Monday I left the city, and returned on Wednesday. I called at the store and asked them to cash the check—I supposed it was all right. They said they had sold out. I said, “Have you failed ?” They said, “No,” and promised to make it right in a few days. I never could get anything for it.

Cross-examined.—I took all the interest they would pay me—no regular rate ; took three or four dollars for the use of two or three hundred dollars for three or four days. (Laughter.) I should think the firm was hard up for some time before failing.

W. H. Kidd called.—At the time of the sailing of the Martha Washington, on her last trip, I was Reporter for the Chamber of Commerce. Went on board the Martha Washington on purpose to get a list of her freight ; there was no manifest ; took a list of her freight from a book in possession of the clerk or agent. I found no white sole leather on board. Do not recollect being in the Agent’s office that day. I was on board as she was about to start.

Cross-examined. — Always go on board the New Orleans boats in the evening, and never take lists of the freight until the clerk tells me all the freight is on board or on the wharf, that he expects.

Remember the circumstances from the fact that the Martha Washington exploded on the trip. New Orleans boats never go out the day they advertise. I never take lists of freight till just before they *do* go out. Once or twice only in the course of a year I have taken lists from bills of lading — always get it from the books, and almost always from the book of the clerk. I have got freight lists as late as ten o’clock at night. Have known New Orleans boats to fire up, and then let the fires go down — always get the freight a second time in those cases.

This is the list I copied from the book : “Jan 9th, 1852—To New Orleans per Martha Washington—530 bbls. whisky, 440 do. oil, 600 do. lard, 200 do. lard oil, 50 do. soap, 100 boxes candles, 100 tierces hams, 100 hhds. bacon, 500 bbls. pork, 500 do flour, 20 do hams, 1000 empty tierce barrels.

Adjourned.

EVENING SESSION.

Robert McGrew, jr., sworn.—Am son of Mr. McGrew, at whose house Holland, Edwards, and Stephens boarded in November and December, 1851. Edwards and Stephens seemed to have no regular business; did not know that either of them had any quantity of boxes of goods. Mr. Kissane came to the house twice to see Holland, Stephens, and others. Kissane was conversing with Stephens and Holland when I saw him. Kissane and Stephens once went out together. Mr. Holland left our house first, leaving Stephens and Edwards there; the two last said they were going down the river when they left. Stephens and Holland came back separately. Capt. Cummings came to the house to see Holland; these two and Stephens talked together like old acquaintances. I was but seldom about the house. A son of Mr. Cole boarded there.

Cross-examined.—Capt. Cummings talked with Holland and Stephens in the public sitting room. Do not know what goods or property these men have.

To Mr. Pugh.—Kissane called both times in the evening. I do not know what time the river froze over.

Robert H. McGrew, sen., recalled.—Holland, Edwards, and Stephens said they became acquainted in Mexico, on the Rio Grande. Stephens was engaged running a boat on that river; Holland in taking boats over from New Orleans; Edwards tended cattle for the Government. Stephens and Holland said they saw Cole in Mexico. Holland said Cole dressed and looked like a Mexican, and he thought he was one at first. Kissane had no business with me. He conversed with these men as acquaintances. When first seen, Holland brought Cummings to my house. When Holland returned from the South, after the burning of the Martha Washington, he said he had nothing left but the clothes he had on; he brought only a small carpet bag. A week or two after, he purchased new clothes. He boarded at the Woodruff House after his return. Mr. Kissane and Stephens talked about the purchase of some steam tanks. Stephens said, on his return, he had been as far as Memphis, Tennessee. Holland said the machinery was to be taken up to Brownsville, on the Rio Grande, for the rendering of lard oil.

I have heard that Holland purchased an interest in the steamer Ohio, after the burning of the Martha Washington. Kissane and Stephens used to go away from my house together.

To Mr. Pugh.—Kissane called frequently and inquired for Stephens. Holland said he had been engaged in a boat as part-owner.

To Mr. Stanbery.—Holland has been walking about the city since he boarded at my house; has been at a hotel—the Gibson House, I think.

Isaiah Wheeler sworn.—Have worked for Filley & Chapin; am a bottomer of kip boots; have worked for them, more or less, for three years prior to Dec., 1851. Left them in Sept., 1851; was in the establishment about the middle of Dec., 1851. While I was there their average stock of unmanufactured leather was not great; they were frequently out, waiting for leather. Did not have much white leather. About one-sixth of the work was calf, and five-sixths kip. The white leather was used only on calf; the red goes into kip. Do not know that I ever saw a roll of white sole leather brought into their factory; I only saw it in sides. When I left, they had hands enough to make 60 dozen pairs a week. Did not see much leather in December. Was in the factory the fore part of January; but few hands at work; most of the stock was cut up; could not say how many boots and shoes they had.

To Mr. Walker.—I am now working for Mr. Fields—I suppose Carpenter & Fields.

Adjourned.

EIGHTH DAY.—THURSDAY, JANUARY 6th, 1853.

Mr. Sweeney sworn.—I kept the Walnut street House in Cincinnati in the spring and summer of 1852. Mr. Cole boarded with me; Capt. Cummings also stopped with me; Mr. Nicholson boarded there when in the city; have seen Mr. Kissane there as often as any man—Rufus Chapin now and then—Amasa not very often—Holland sometimes. They talked of the freight, &c., of the Martha Washington. Cole or Nicholson would not ride out with Kissane—sometimes I would. Do not know Mr. Chandler.

To Mr. Walker.—The Walnut street House is a large hotel; we have 200 or 300 men there. There was nothing in the conduct of these gentlemen to excite suspicion. Cole had been with me two years at the Walnut street House, and before that at the United States Hotel. Saw no difference in his appearance after the burning of the Martha Washington; have seen no change in the times of Kissane's calling since the house was opened; while he lived up town, he frequently dined there.

The Chapins sometimes brought their wives. Cummings said he was going to Owego at one time. Do not know that Cummings or Nicholson

had any business with any persons except those I have named. Cummings's deportment was that of a perfect gentleman at my house, as much so as that of any other.

To Mr. Pendleton.—Kissane's reputation is that of one of the most industrious and best young men in the city.

To Mr. Stanbery.—Kissane sometimes sent his card up to Nicholson's and Cummings's room: Do not know that he went up.

Captain Charles Ross sworn.—Resided in Cincinnati a year ago.—Knew the Martha Washington; was employed by the Underwriters by the year to see the boats were well manned and loaded. Went down the river to look for the wreck of the Martha Washington; the river had risen when I got down, and the wreck was under water. Chandler—one of the defendants—had been put in charge of the wreck by Capt. Cummings; she was in a bad neighborhood—a great many wreckers were about there. Went to New Orleans to see after the savings from the wreck; went to James McGregor & Co., having heard from Cummings that the savings were to be sent to him, and that two or three shipments had been made by Chandler to New Orleans. McGregor said nothing had come; told him I knew it had arrived; told him the names of the boats; went to the Bulletin office, and found the property on the files—it had been consigned to J. S. Jourdan—inquired of the merchants who Jourdan was; nobody knew him; clerk of the Bulletin office told us he knew him—we found him—he kept a small affair for the sale of periodicals, at No. 133 Camp street. Asked him how much property he had received—made no answer; told him my authority, and asked how much Chandler had sent down. Said he knew nothing about Chandler; said he did not know that he had any authority to tell me anything about the property. Went away to my friends—Jourdan followed me. He said then he was acting under the authority of Captain Cummings. Mr. Ashton, my friend, had then told him I was agent for the Underwriters, and he must do right. Jourdan was not a merchant at all. Chandler was in the city, but I did not see him. He told me so afterwards. I heard he was there, and left word with an acquaintance of his I wanted to see him; did not see him. Chandler brought up to Cincinnati the account of the sales made for Jourdan, as sub-agent of Cummings. Cummings said he changed his mind after he left the city, and determined to ship to Jourdan, instead of to McGregor; he said he had known Jourdan up Red River, and he was a clever fellow, and he wanted to help him along.

I telegraphed to Mr. Chew not to pay, on account of this curious arrangement about the savings. The account of sales, made out by an auctioneer for Jourdan, showed a balance of \$339.

To Mr. Morehead.—The marks on the goods were not given in the

account of sales. Saw the paper authorizing Chandler to ship the goods to Jourdan. Chandler deducted five dollars a day for his services. Did not see Chandler at the wreck; it was abandoned when I got there. I think Chandler conformed to the instructions.

To Mr. Walker.—I went to Mr. Chew before the insurance was made. Think I told him Choate had no interest in the boat (Mr. Chew thinks I am mistaken.) I knew that Choate had made an arrangement to go on the Brooklyn to New Orleans; my brother took his place. I told Mr. Chew that Cummings wanted \$4,500, and asked him if he wanted the risk. I said, "Cummings wants the risk in Choate's name for this trip only, on account of a judgment against him in New Orleans." "Think I can manage that," said Chew, "by putting in the words 'whom it may concern.'"

Choate and Cummings came in one day when I was there, and am almost confident the same words passed. Mr. Chew afterwards asked what Choate had lost. I was surprised at the question, because I thought he knew.

I've been on the river the better part of my life. Choate went down with me in a flatboat in 1824; his reputation is that of an over-careful man; he won't run in fogs or dark nights; there is no man living whom I regard as of more integrity.

To Mr. Stanbery.—They keep watchmen to look out for fire on board most boats; "Texas," as it is called, is above the hurricane deck, and the pilot-house is on top of that—two stories above the saloon floor. I do not think I was in Mr. Chew's office any time over a minute and a half or two minutes, while Choate and Cummings were with Chew. The boat wooded at the Grand Crossing wood-yard; I know the place very well; where she wooded it is clear river; the main channel is on the Arkansas side; where she landed on fire there is an island about 200 yards from the Arkansas shore, 2 miles long, and with tail or bar extending half a mile below; about 200 yards below the foot of that bar she first landed; it is three and a half miles below the woodyard; the chute goes dry at low water; where she landed it is a deep hole, average 48 feet; it is shallow from the head of the island to the foot—on an average fifteen feet deep. In wooding, custom is for Captain to land the boat at wood-yard—the Mate takes charge after bargain; the deck hands and firemen help to wood, all hands. They pay for wood after it is delivered on board.

To Mr. Walker.—I do not know that this boat was more liable than any other to fire. I never advised Mr. Irwin to have an alteration made on that account.

To Mr. Stanbery.—The boat would reach the place she landed at after getting under headway, near third of an hour, in 20 or 21 minutes. The

fires are not generally in full blast when they start. We run by the Arkansas shore—high the shore—island shore.

To Mr. Pendleton.—There are only two branches of the river there.

To Mr. Stanbery. — There is no place where the channel hugs the shore closer; there is only the width of boat between. It is the Captain's watch till 12; the Captain usually sits up till one o'clock; the hands of his watch turn in at 12 o'clock.

To Mr. Walker.—There is a sandbank, a most dangerous place to land, where the boat was; they were lucky, and stuck the nose of the boat into a crack in the bank. The position of the pilot would be good for detecting a fire if it caught around the chimney.

To the Commissioner.—Chandler was not on the Martha Washington when she burnt.

Stephen Morse sworn.—Am Agent of the National Insurance Company of Cincinnati. This policy (handing it,) was made by me on an application made January 7th, 1852, by Chandler for insurance of \$2,200 on four boxes merchandise, on Martha Washington. The date of the policy is January 7, 1852.

The policy is for the amount stated in the application. After the loss, a bill of purchase made to Chandler by one J. E. Crane was presented to us by Chandler; we handed it back to him (Mr. Chandler here produced it.) This is the bill; I do not know such a person as Crane; Chandler was asked in my presence who he was; he said he had been boarding on Fifth street, and had afterwards gone to Texas or California. This is the bill of lading of the goods (handing it.) It is in the names of Paul & Murdock.

To Mr. Morehead.—They are respectable Commission Merchants in Cincinnati:

Caleb E. Nourse sworn.—Was teller of the Commercial Bank in 1851. Was acquainted with L. L. Filley in 1850; was acquainted with Filley & Chapin in 1851. I lent my own money several times to Filley & Chapin on hypothecations of boots and shoes. When I advanced money on boots, the boots were stored subject to my order; it was my individual concern, having nothing to do with the Bank. The boots were stored with Adee & Labrot, and I had their warehouse receipt. When they paid the money, I gave them an order for the goods. I think the boots were worth \$21 to \$22 per case — \$16 per case was advanced on them. Two thousand dollars accumulated in 1850; at the end of the year they brought the money, and I gave them the goods. In July, '51, the account stood \$2,918 against them, and the goods were stored; they cleared the advance by paying part money and by promissory notes; they took up the boots in September, October, and November. Cannot tell what proportion they took up in September. I did not begin to return the boots

till September. It is possible the last one of four hundred might have been taken up early in December. I charged interest two per cent. per month; they kept the money as long as they liked. They called them kip boots. Filley and Rufus Chapin made the arrangements. I knew them only. I think I charged less where my security was notes. When they failed, they owed me rising \$2,000 on notes coming to maturity and secured by counter-notes.

This is a memorandum of my transactions with them from my books, viz.:

[MR. NOURSE'S MEMORANDUM.]

"L. L. FILLEY, 1850.

June 15.....	\$400
" 22.....	400
" 29.....	400
July 17.....	400
" 29.....	400

" All paid. \$2,000

" About 105 Cases No. 1.

" FILLEY & CHAPIN, 1851.

May 20.....	\$400
" 31.....	403
June 10.....	403
" 17.....	403
" 25.....	403
July 8.....	403
" 24.....	503.75

\$2,918.75 About 152.

" Notes.....	600.00
" Draft on Louisville.....	350.75

" All paid. \$3,869.50."

Cross-examined by Mr. Walker.—All their notes due me were paid by the 8th of March, 1852. I called at their store in the month of December, after the failure. There appeared to be a large stock of goods—a great many cases and boxes were about. The second story of their store appeared to be full. I was there several times up to January 7th; there was large piles of leather on the floor level with the street; my impression is, it was red leather. I am under the impression they had leather in the cellar; I never went into it—have seen leather there from the head of the stairs. Supposed they had in their store from \$20 to \$30,000 worth of stock. I judge that when I went first at the time of their failure, they were taking an account of stock. Their store was quite a large building.

Re-examined.—Cannot remember who was engaged in counting and taking down. It was in the second story. Have seen white leather in the factory, but not in the store.

To Mr. Stanbery.—When they borrowed of me, they said they wanted money to pay their hands and buy stock.

To Mr. Walker.—The Chapins were better mechanics than merchants. They appeared to me to be doing business largely beyond their capital.

Mr. Scarborough recalled.—Had a notice for taking depositions in a suit of Earl and Kissane vs. the Madison Insurance Company.

The counsel for the defence objected to receiving the notice as evidence of the pendency of a suit, and the matter was withdrawn.

The Commissioner here called the attention of counsel to the case in 1 Sanford Rep. 104, as to the powers of an examining magistrate.

Court adjourned.

AFTERNOON SESSION.

At the opening of the Court, Mr. Stanbery said he would state that as far as Mr. Chandler was concerned, the prosecution did not feel authorized or disposed to detain him any longer. Mr. Chandler was then released and passed out of Court, shaking hands with Mr. Burton very cordially as he went.

The prosecution failing to adduce evidence to criminate Mr. Chandler, Gov. Morehead, as his counsel; had nothing further to do with the case.

The evidence in chief for the prosecution was here closed.

Evidence for the Defence.

Mr. McDaniel sworn.—Reside in Brooklyn, Kentucky; am a ship-carpenter; was on the Martha Washington at the time of her destruction. Shipped in September, 1851. She left January 7th, at—don't know exactly the hour—twelve or one o'clock at night. I am a steam-boat builder, and am now building a boat at Cincinnati. I do not know exactly the capacity of the Martha Washington. Should judge she would carry down stream 650 tons; she ought to carry about that; her draft, fully loaded, would be about 7½ feet. She went over the Falls at Louisville on the morning of the 9th January. Had a Falls pilot. She was then drawing 5 feet 11 inches at the Falls. She ought to have something over 400 tons on her then. I suppose we had rising 400 tons. It was no part of my duty to assist in stowing. My department was all over the boat. Was over the boat off and on while she was stowing every day. She had pork, flour, whisky, lard, and red oil, in barrels, and

shoe boxes. As to the number of shoe boxes, there was a large number, a large pile scattered about the boat, except on the boiler deck, and that was one continual pile to the guards, of boxes of shoes. In the engine room there was a great deal of freight—can't say what. Was through the hold a great many times; it was full of freight—a variety—can't say what. Recollect nothing about any sheepskins, but there was sole leather went aboard the boat. It appears to me there were packages of leather about; am not sure. We took new freight before we left Louisville. Took some pork at Mt. Vernon in barrels and bulk. Took some corn, in considerable quantity, at a place below. The corn was the last freight we took. When all the cargo was in, the *nosing* of the boat was half under water. She was loaded very heavily—did not want any more. It would depend on the weather if she could carry more; it was then stormy; the wind had blown several days very hard, and the river was very rough—weather very cold; I never saw so cold weather so low down. We had all that could be carried safely in such weather. She could stand up under it. Know of her taking fire one day before she was destroyed, right forward of the fire doors. It did not get great headway; it was in the day time; there was men about. I was in bed asleep when we wooded the last time. The first I knew of the fire, my room door was kicked open by Nicholson. I slept in a room in the social hall. It had two doors, one opening on the guards on the larboard side and one into the hall. I was in the room next to the one the fire was in. That was next the chimney; the chimney ran up between the two. The one before the chimney was on fire; mine was aft. The clerk's office was opposite my room. The clerk slept in his office. That is on the larboard side. I jumped out of bed into the social hall—after making a few steps, the fire broke out of the room it was in. I run back to the social hall twenty feet and run out on the guards—had only shirt and drawers on; tried to get back to my room from the outside; had to throw away boxes to do it. There were boxes piled against the door; picked up a box to throw into the door and mash it down; could not get into my room; picked up the box a second time, was going to throw at the door, heard a scream of the chambermaid behind me in the pantry. She had broke through the glass of the door—was suffocating with smoke. I ran back and kicked the door of the pantry open for her. Could not get down the steps. They went down forward of the cabin, and were gone perhaps before I got out. The fire had gone too far when I first saw it, to try to stop it. I went back to the wheel-house, slid back to stauncheon—threw the chambermaid over and went after her; got to shore. Do not know if anybody had then got ashore. Was not looking for the line; judged they had got it ashore. I suppose we were twenty feet from the shore. I did not touch bottom when I jumped; chamber-

maid got into the chock and I reached my arm under her and gave her a hoist overboard as far as I could. People on shore with poles helped her. After I came out, I think Cummings was aboard; think he was still after I got ashore. Think Holland had got ashore. I know that Cummings after I got ashore came ashore in the yawl. Can't say he had not been ashore before. (The engine was left running till stopped by the fire, to hold her ashore.) Then Cummings and Holland and one or two deck hands or firemen took the boat again and got aboard aft, to rescue a family in the ladies' cabin. Cummings got aboard and burst the door open. The flames burst out so furiously, he could do nothing. The yawl came ashore, leaving Cummings and Holland hanging to the lower guard. The men in her were frightened. A skiff belonging to a flat-boat near by took them off. When I first got up, I was not sure where we were, on which side of the boat with respect to the shore, there was so great a smoke. If we had been on the off side, we could not have got off. A man could have swam but a very little distance on such a cold night. When ashore, we were very near together—the bank was very bluff and ten or twelve feet high. There were eight lost, as near as we could recognize the number—seven burnt, one jumped overboard and was drowned—a Dutchman, who jumped at the first alarm. There were no houses in the neighborhood. We stayed there about an hour; saw a steamer; she tried to round-to, to take us, but broke her tiller rope. The Charles Hammond then came along and took us. All but four or five of us went on to New Orleans—four or five came up the next morning this way.

Holland and two men were left with the wreck; I think they were firemen. While on the bank and on the Hammond, I never heard an intimation that the boat was set on fire, never till I got to Cincinnati. There first heard it, somewhere about the time Cummings had a knock-down with some insurance company's agent. Was among the crowd on the bank. The report could not have been general and I not heard it. I think the boxes were mostly candle boxes. I saw shoes in one that had been broken open, and that I repaired. Do not remember the marks on it. These boxes were in the social hall—lying there till we got over the Falls. Had no time to make a new box for them. This was a shoe box—afterwards took it to my room to mend.

Next morning after we got on the Hammond, I saw a paper brought up recommending the boldness of Capt. Cummings, and I think it was sent to the telegraph despatch. I believe it was drawn up by the man who shipped the pork at Mt. Vernon, and signed by the passengers.

The boat's nosing was well under water at the time of the burning. There was mighty few empty spaces on the boat when we burnt. After

the last freight was on, I think there was rising 600 tons on her—should judge there was that much.

I saw the card of thanks to the captain signed by a good many. Know of no dissent on the part of any one. I think the passenger who drew it up was named Cooper.

On motion of counsel for the defence, order was passed early in the course of the examination for the exclusion of all witnesses for the government, except the one temporarily under examination.

On motion of Mr. Stanbery, a similar order was passed at this point, with reference to the witnesses of the defence.

A suggestion having been made that Mr. Burton was included in the order, Mr. Stanbery said, I understand counsel for the defence have subpoenaed Mr. Burton. Do they wish him to testify hereafter?

Mr. Gallagher.—Certainly. We want Mr. Burton at the proper time.

Mr. Stanbery.—Then you can remain, Mr. Burton—I shall not want you again.

Mr. Gallagher.—But we wish him to leave the court room while other witnesses are examined.

Mr. Stanbery.—Oh! no, gentlemen, you can't exclude your own witnesses, [laughter] except when we require it—and we have no repugnance to the presence of your witness, Mr. Burton. [Renewed laughter.]

Mr. Burton accordingly remained and occupied a seat at the side of Mr. Stanbery during the rest of the examination.

Mr. McDaniel resumed.—Think the fire originated in the forward state-room, a large double room, full of mattresses, from a spark out of the chimneys or from the boiler, that came through the casing of the jacket. The jacket came close to the state-room. This room had been used to keep the stock-men in. "Stock-men" are those having charge ship's stocks, hogs, &c.; at this time it was full of mattresses. The corresponding room on the other side was a store room.

Cross-examined by Mr. Stanbery.—Sometimes calculate the capacity of boats. The Martha Washington was 7 or 7½ feet deep in the hold. In breadth, she filled the canal full. She was no broader than usual at the wheel-houses—her length was about 165 feet; her breadth about 33 feet.

Can't say if we discharged any freight at Louisville. The pilot at the Falls did not take her gauge aft. I looked with the pilot at the gauge forward.

Think we took on board the pork first. It was stowed at night on the right hand side going down,—I helped receive it. The bulk pork received at Mt. Vernon was stowed forward on the forecastle. Can't say how many pounds, a pile higher than the capstan—twelve feet long,

three or four feet wide. The barrel pork, 200 barrels, or nearly as many, were put in the hold I think—if not that night, the next afterwards.

Not far below Mt. Vernon we took the corn; that was the last freight we took. I checked it; it was partly stowed in the hold; I think some was in the engine room. If so, it was at the after end. I was several times in the hold when we were under weigh; frequently in the engine room. Do not recollect any sheepskins on board. Do not know where the leather was put. Do not recollect any kind of skins. Saw some candle boxes, of star candles; one box I know was a shoe box because it was broken. The boxes of candles were stowed with the shoe boxes, some on top of the shoe boxes; most of them on the boiler deck. I did not count the boxes. My room was on the larboard side. The sheeting was as usual on the state-rooms, near the chimneys. The jacket comes down straight to say within three feet of the deck, and then spreads and strikes the deck farther off; it runs up outside of the chimney above deck; goes from the boiler deck up. There are three or four inches between the jackets and the chimney, except where it spreads near the deck. There is a bulkhead between the jacket and the state-room. There was all the customary protection against fire that is usual on steamboats. Unless there was a hole, a spark could not get out through the jacket. A spark might get out by a burnt plank. The fire burst out of the corner of the state-room near the chimney.

There was no one in the hall when I got out. Nicholson had all his clothes on but one boot, when I saw him. Holland had his clothes on; Cummings also had his clothes on. Nicholson's place of sleeping was farther from the fire than mine. When I first ran out, the fire was on the larboard side—the side I was on. Do not know how far from shore we were when I awoke.

When I went back to the wheel-house with the chambermaid, we were about twenty feet from the shore. Could see that most of the people were on shore. Very few were on board when I left. What took place when they first got ashore, I do not know. I and the chambermaid were very near the last who got ashore. The boat was rounding out from shore when they shoved out to the ladies' cabin with the yawl. It was intended the hands should keep the yawl there, but they got alarmed.

To Mr. Pugh.—It was but a minute or two from the time I was waked till I got ashore.

To Mr. Walker.—I think about two trunks were got ashore; may be three. Most of the deck hands saved their clothes. Nicholson did not bring off anything. The captain saved what he had on. Had not his hat; borrowed a cap. Holland saved nothing but what he had on. If

it was after one o'clock, the mate would be going on watch, and the captain going off.

When we got on the Hammond, we were all out of money. [Witness was here prevented by the United States' counsel from telling what Nicholson said about the money.] While ashore, we were talking with each other. The deck hands' dunnage is kept on the main deck. A passenger who came ashore after me, had his carpet bag in his hand; was pretty tolerably drunk—so drunk we thought he could not be saved. He had to be helped off the boat. His bag was all that was saved from the cabin. Our chance was slim enough. If the fire had touched the tiller rope, it would have been all day with all of us. All the hands and officers were saved. Cummings was lamenting the loss of the boat; said he was ruined; was much distressed; said he had lost every dollar. 'Twas then known that some of the passengers were burned. His lamentations were over them and his loss too. He did not refer to any insurances.

James Gray sworn.—Have been here since Wednesday (yesterday) at 4 A. M. Was subpoenaed at Cleveland. Last evening, about eight, was at the Neil House. Went to a room; Mr. Burton was there; Mr. Ware too. Mr. Ware told me, after I had stated what my testimony would be, that it would be of no use. He said I might go that night. The other man said I might go the next morning. They paid me off; they told me not to see the mate; he would be dangerous. Mr. Ware was not present. It was not Burton who told me. A man in the employ of Burton (Mr. Hathaway) took me down to the cars, and told me Holland was dangerous. Mr. Burton gave me to Mr. Hathaway. He told me the carpenter was kept in doors. I told Ware and Burton I did not come to tell lies. They said they did not wish me to.

The City Marshal, I believe, paid me, not Burton. Hathaway took me to the Marshal. I was afterwards subpoenaed for the defence. I was on the Martha Washington as deck hand; went on board about twelve at night, just as she was about to start; had nothing to do with her loading; she was pretty low in the water. We took in corn after we got over the Falls, bacon and hams; were pretty well down in the water at the time of the fire. I was in bed when the fire took place; had been in bed an hour or an hour and a half; had been up to wood. Was on the larboard side, aft in a state-room by myself; was not exactly asleep—the night was so cold I could not. The wind was blowing up river, pretty fresh. The watchman called the firemen to turn out—said the boat was afire; told every one to turn out; I had boots and trowsers on; took my coat and hat in my hand; I jumped out and went to the engine room; Mate came aft, and called out to know if any one was there; the smoke was suffocating—fire burning all about. When the boat

turned, the wind came aft, and blew the smoke out. When I got to the bow, it touched the shore. The Mate said, "Boys, get a plank ashore. Three deck hands (I was one,) jumped out with the line, and run it round a tree, and made it fast; the Mate stood aboard; we then went down to the water.

While handing the passengers ashore by the plank, a woman fell into the water, and a hand jumped in and saved her. The Captain and Mate came ashore by the plank, after all were supposed to be ashore. The Captain asked the Mate if the women and children were ashore; Mate said he did not know — hoped they were; the Captain said, "I must know that;" they rushed to the boat — there was a sailor man in it — they cut the boat down, and she fell into the water. A lot of passengers, who could not understand what was said to them, jumped in; there were four or five men in the boat; they were afraid to jump out, and stopped in. The Mate and Captain jumped in, and went to the boat, aft the wheelhouse; the Captain and Mate climbed aboard by a fender. I saw the Captain go into the cabin. When they came to the guards and looked down, the boat was gone; the man on board had rowed her ashore; the Captain said, "Wait, and see if they get the boat off." By this time a boat came from the other side; I think they were landsmen in her (there was a flatboat and two or three men near by;) they came and took the Captain and Mate off; the flames had then reached the wheel-house; Captain and Mate were hanging by the guards. I saved nothing. The Captain and the sailor man went off in the yawl again; two gentlemen there were saved; that was the last I saw of the boat. We had to keep wetting ourselves to save these men; the Captain had his hands to his face—said, "Oh, the poor woman and children!"

The crowd went up to the bush and lighted a fire. We left in fifteen minutes to half an hour, on the Hammond. The Mate and two Firemen remained by the wreck—the rest went on the Hammond. I heard no hint that the boat was set on fire; should have heard it if there was such a rumor.

Fire took about the hall — do not know where. I do not know the names of the men who stayed by the wreck afterwards. First saw Holland at the cars here; he came after me with the subpœna. Have never since seen the men who were left at the wreck.

The boat was pretty well loaded when she went over the Falls; was almost down to her guards at the fire; there were a great many barrels of pork and whiskey, and a great many boxes on both sides of the cabin; boxes were piled on to the top outside; below there was a lot of large boxes in the engine-room. I saw a few bundles of leather in rolls, in the engine-room, sticking up endwise; saw no leather except in rolls.

Captain, Mate, and Clerk saved nothing that I know of; heard them talking of nothing but the persons burnt.

The bar-room was on the larboard side of the hall, right forward. Have sat in the engine-room on boxes, with my feet on leather — these few bundles were in the engine-room; I speak of sole leather in bundles — know it from sheepskins.

Have never seen the Captain or Clerk since the fire. It was a very bad place to land where the boat struck. When I first saw the fire, it was impossible to put it out. The Captain was on deck, the Mate on the guards, while we were wooding; don't remember seeing the Clerk; I went into the hold to stow the corn; it was very full aft — not quite full under the boiler; put some corn there. I saw brandy on board — can't say how much. I recollect no bales; never saw anybody lying on bales.

To Mr. Stanbery.—I had a talk with Holland to-day; talked about the boat. The leather was on the larboard side, next the engine, standing on end, alongside heavy boxes; the boxes were pretty long, 2½ feet wide, 3, or 4, or 5 feet long. This was *red* sole leather that I saw — five or six rolls; saw no sheepskins. I was only two or three times on the hurricane deck.

I assisted to wood the last time; the boat had cast off before I turned in. When I was turned out, I went half way forward till the smoke met me, and then the wind blew it off, and I went forward; I went outside first, and afterwards into the engine-room; saw the reflection of the fire in the water. When I came forward, the Mate said it was too far gone to be put out, and said, "let us put out the plank." Captain came forward; did not see him with the Mate. I remained down by the water part of the time; I jumped up and down the bank 17 times during that time. Heard the Captain and Mate say it was time for them to leave the boat. The sailor man stuck to the yawl, and went to the boat every time she went.

There were a good many passengers I saw before the fire, that I did not see afterwards.

To Mr. Pugh.—When I went forward, empty barrels were falling on each side of the guard; they had been stowed on the hurricane deck. Did not hear Captain speak of being ruined. There might have been something said among the crowd I did not hear.

William Arthur sworn. — Was on board the Martha Washington on her last trip; was second engineer of her; had been on her one trip before; was on board while she was preparing to go out; she must have drawn nearly six feet when she left. At the time she burned, suppose her nosing was half way into the water; it was no part of my duty to load her. I remember a great deal of rolling freight in her — a great

many barrels and a large number of boxes; the boxes were not much in the way; they were shoe boxes; it is so long ago that much has escaped my memory. Some freight was in the engine-room—rolling freight.

My berth was in "Texas," on the hurricane roof. We changed watch at twelve o'clock on the night of the fire—were wooding then; had left the yard about half an hour before the fire. I heard both bells rung to stop her—I and my partner did so. Choate sung out to us, through the trumpet, to stand by and handle the engines quick, that the boat was afire; we did stand by and handle them. Directly afterwards, I began to see the reflection of the fire on the water. When we got ashore, the upper cabin was burning to a great extent. I got a stick and put it under the lever, to prevent the boiler from exploding, and told the Striker, my partner, to do the same by his engine and to leave her; I then jumped into the river. Not ten minutes after I got ashore—my coat was frozen stiff. Saw the Mate on the bank; the Captain was in the yawl, trying to get somebody off the stern; the stern was 20 or 25 yards off the shore. After the yawl got ashore, the Mate got in, and he and Captain got more persons off.

I heard nothing said of the boat's having been set on fire. I suppose she caught about the chimney. Am inclined to think I saw some leather on board, but am not positive. We were about 200 yards from the Arkansas shore, in the main river, when fire was first cried. If the tiller-rope had burnt, before we got ashore, we should all have burnt, except, perhaps, a few who might have been saved in the yawl. When between the foot of Island 65 and the head of 66, I heard the Pilot say she was afire. Am not sure whether they commenced wooding before or after my watch commenced. I heard Choate say that he had to jump off the wheel-house, that he could not get down forward. It was a pretty dark night.

To Mr. Stanbery.—The fire that first took on the voyage was close by the ash-pan, on the lower deck, right where the firemen are. I was working on the boat when she was loading. My place, when on duty is in the engine-room. I think I saw leather there, back aft. Was in that room every day. Recollect no sheepskins. The boxes were about 4 feet long, 1 foot high, and 1 foot wide; some were on the larboard side of the boilers. Am not positive about seeing candle boxes.

David Hellan was the name of my Striker. Did not see the Mate till I saw him on the bank. To stop the engine would take about five seconds. The Pilot said the boat was all on fire. I saw the reflection as soon as I stopped the engine. Saw a great many rush by the engine before I left. When I left the engine, I went into the river. The whole forward part of the boat was on fire. I judged from what quarter the fire

not examine the cases in their store, but thought, if they were all full, their stock was worth from twenty to twenty-five thousand dollars. I went to the factory about dinner time; R. Chapin said the men were at dinner; I went into the two stories. Went through the factory; did not notice about the stock there; they appeared to be carrying on work there; left with the impression they might pay in full if they had time.

To Mr. Stanbery. — Our claim was entirely for boots and shoes. We had sold them leather in the spring — 500 sides red sole leather. They told me the property had been sold to Cole; said they had sold all to Cole; they did not speak of any reservation of leather, sheepskins, or boots and shoes.

Burton and Filley stepped to the back part of the store when they talked. Our debt is not yet paid, nor any part of it.

To Mr. Walker.—Our house had sold Filley & Chapin about \$8,000 or \$10,000 worth of goods that year.

To Mr. Stanbery.—I saw some boots of our own manufacture. Whether they had twenty boxes filled with boots I do not know; suppose there were as many.

Thomas Locker sworn. — Was on board the Martha Washington as cook. Shipped one day and part of another before she left. Went aboard of her day before she sailed. She was not loaded down to the guards when she left Cincinnati; noticed she was not near so deep as she might have been—I mean, to run the river, not to cross the Falls. After crossing the Falls, she was so deep that only her nosing prevented her decks from being wet — the nosing was half way under; the after part of the kitchen floor was all the time under water; I was very anxious for a false floor; I heard of a previous fire, on the voyage, before she burnt. At the time of the fatal fire I was sick; was asleep before the wooding; the first alarm I got, was the smoke coming into my berth; I was in "Texas;" the smoke came near choking me; saw flames all over the fore cabin; I picked up my hat and boots—saw I had no chance to save anything; put my hat on my head, and threw my boots down; I ran forward, and got out on the larboard side, and ran to the wheel-house, and got down to the after guard on the larboard side; the boat had touched the shore then; saw only two cooks and one other man on the boat when I got down. Threw over two or three bucket planks; looked forward, and saw the Captain and Mate in the yawl, and I halloed, and the yawl came to us, and we four got in; he and the Mate then went back, and climbed up the stauncheons, and kicked in the ladies' cabin door; it looked very dangerous — all fire forward to where they were, was on fire. The Captain and Mate were taken off by a skiff from a flatboat, and were the last persons to leave. It was very cold weather.

I heard no charge of setting fire to the boat; went on board the Ham-

mond ; think the Mate and two Firemen were left—all the rest went on the Hammond.

I heard the fire caught in the casing of the chimney. I heard nothing of any brooms ; never saw any brooms aboard ; I noticed a very large number of boxes on the guards and boiler deck ; there may have been some in the hold ; saw some leather, and perhaps sheepskins ; saw leather near the forward hatch, and supposed they would throw it into the hold ; that was late in the evening before she left—before dark. The Steward was Anthony Johnson. The key was generally kept in the office, but I do not think it was locked. Johnson is now running up Red River. I saw one man had a carpet bag, and one deck hand had his *sailor* bag—that is all the baggage I saw go aboard the Hammond.

Heard the Clerk say he saved some little money, but very little ; said he made a grab at it.

To Mr. Stanbery.—Never noticed the color of the leather ; think it was in rolls ; can't give an idea whether there were 5 or 500 ; saw them bringing it aboard ; saw some of it back near the after hatch ; can't say whether it was standing up or lying down ; can't say how many rolls ; can't say whether it was red or white ; do not recollect seeing any more ; do not recollect seeing anything I thought to be sheepskins ; did not notice the *kind* of leather.

Heard the Clerk say he was just pulling his boots off, and was about going to bed when he saw the fire ; from the door of the office to the door of the state-room in which the fire was, is not far. He said he first ran to wake up the passengers ; said he ran when he *saw it* ; he said he saw the flames, and then ran to wake up the passengers ; I think he said he ran down one side and waked up all the passengers on that side first, and then all on the other. He said he was just about going to bed when he saw the flames.

To Mr. Walker.—There was a small pane of glass over each door opening into the cabin ; lights are not usually allowed in the state-rooms.

William Perkins sworn.—I have been acquainted with Mr. Kissane since the year 1838 or 1839 ; knew him first in Canada ; he came to Cincinnati in '43 ; I came here two or three months after he did ; have been very intimate with him. I left Cincinnati at the commencement of the year '49, and went to California. We were in the same establishment—that of L. Pugh & Co. ; he attended to the outside business of the office, and I to the inside business.

I was a general merchant in Sonora, California—a partner with E. O. Perkins & Co. Kissane was always anxious to ship me something. In my communications to him I mentioned the articles I thought most profitable to send to California—boots and shoes, cigars, candles, lard—no liquors. I sent him a memoranda of wines, and sometimes of liquors.

Kissane was indebted to me in the fall of 1891. I was expecting a legacy from a relative in England, and he received it from my brother in Toronto, and he collected also another sum, together making a few dollars less than \$2,000 — \$1,996, in fact. I told him if he was in New York to invest the money in Gold's revolver — if in Cincinnati to buy something on which it could make a profit, and I invited shipments on joint account; I never expected a consignment of less than \$10,000, or \$12,000, at all events, on joint account. I know Kissane's handwriting, that is his hand (the endorsement) of the bill of lading of boots and shoes, I shipped by Smith & Kissane, care of James Gamble & Co. (New Orleans). The initials on this bill of lading are W. P. and T. P. and was

Was always in expectation of a consignment of Hungarian boots. The prices of calf boots were extremely high in London, and never paid less than \$80 for fine calf boots, from that to \$150 per dozen. [A copy of a notice of Kissane's shipment after him is enclosed to the witness.] The boots mentioned in the notice are Hungarian boots, which, he wrote, would just suit the market (I had told him long boots were the best shipment in the market). I have paid \$240 per dozen at this time, they were long boots, and I never had much to do with them, could not have made a great profit on them. The qualities of boots vary very much; I have paid \$85 to \$85 per dozen for them. We kept an average stock of \$3,500 of boots, and sold less than \$2,000 and kept \$750 of millinery and saw and iron and brass and Cigars at \$2.00 per 100 brought to pay a profit; they are never less than \$18.00 or \$20.00 in California. We always kept a very large stock of liquors, sold them by the package, and this brandy invoiced at 70 cents per gallon, the 240 gallons at 35 cents per gallon would not do in California, and other might be a fair article, perhaps. The profit on the shipment of cigars might be \$50 to \$500 per cent, and boots \$80 per dozen — Hungarian boots I do not know; kip boots worth more than three or four dollars per pair, and saw and iron — and W. P. and T. Kissane's name is on the bill of lading, and about the 30th of September I think he said he would send bills of purchase and bills of lading by the next steamer, and he thought he had sent the consignment of boots, and I did not recollect what he said of the consignment, and I felt very much gratified at receiving his letter. His reason for not sending the bills of lading at that time; he did not recollect it. I do not know how long it took Kissane to send the bills of lading to the letter at New Orleans, in my desk, which has since burnt up. Do not recollect if the consignment which I said the goods were to come to New York or New Orleans. Kissane's character; I have never described him as a man of business, and I have heard him well spoken of by the people in his vicinity as a man of business. The firm of Smith & Kissane was formed in New Orleans; he had an account with the firm of Smith & Kissane in New Orleans, and his character was

rare high.—Lot Pugh could not belong to a firm without throwing around it a vast amount of respectability.

To Mr. Stanbery.—I never received a letter on business from Kissane; his letters were private. This letter was not put with the papers of my firm. Such goods would ordinarily go to California round “the Horn.” Consignee would expect that the goods were insured if the contrary were not said. It is not usual to give advice before the goods reach the consignees; they sometimes send by mail; on rivers, they send by the boat the advice of shipments on it.

The legacy I spoke of was \$1,020; he collected it during the summer or fall of 1851; it was sent from Toronto from my brother to Kissane. I instructed my brother to send it to Kissane; my brother knew where I was; he advised me he had collected the legacy, and I directed it to be sent to Kissane.

Before I left, I made a shipment of bacon, \$970.00, to New Orleans, and the balance was that amount. I left on the 14th of February, '49. Consigned the bacon to N. M. Martin. I left a memorandum of the amount with Kissane, and made it over to him. Our terms of intimacy were such, that there was never anything like a bill or receipt passed between us. I think I left a power of attorney with him about other business. N. M. Martin is Kissane's brother-in-law; think he would pay Kissane without a voucher. The next letter I received gave me intelligence of the burning of the *Martha Washington*. Don't remember the date of the first letter. K. was educated as a merchant. I know as far as he is concerned, when I was with him, he never made a copy of a letter in his life. L. Pugh & Co. kept copies of important business letters.

Have been in Smith & Kissane's office, since my return; found the old books of L. Pugh & Co. there. There were only an half dozen letters copied into the letter-book since I left. They have a bill of lading book; they keep a ledger. When they made a shipment, there is some entry made on their books of it; that is very necessary. It is not usual to burn the letters of correspondents.

I know Mr. Smith, Kissane's partner. This bill is to the firm. Regularly it would go on the books of Smith & Kissane. It is not usual to put how the bill is paid in the receipt; bills to large amounts are seldom receipted. The body of this bill of lading is Kissane's handwriting (the same bill of lading before shown to the witness).

To Mr. Walker.—I knew Horace Cole in Cincinnati; have seen him in San Francisco; understood he went to the Sandwich Islands. The fire at Sonora, since I left, burnt up the town.

To Mr. Pugh.—As to this signature of “Nicholson, Qk.” I have seen

changeable inks—Arnold's fluid—my experience is, that if excluded from the atmosphere, it does not change rapidly; some inks will increase in blackness for weeks and weeks; it is light at first.

The Court at this point adjourned to 10 A. M. to-morrow.

NINTH DAY.—FRIDAY, JANUARY 7th, 1853.

At the opening of the Court, Mr. Walker read a deposition of Lewis Choate, taken in an action brought by the Firemen's and Mechanics' Insurance Company of Madison against Mr. McGregor, to recover back the insurance paid him on the policy on the freight list assigned to him by Capt. Cummings. This deposition is substantially as follows:

"I was pilot of the Martha Washington. Her capacity was reported to be about 700 tons. At the time of the burning, she was as heavily loaded as I ever saw her, with say about one half pound freight and the other half barrel freight. I judge she had 550 tons freight on board, at leaving Cincinnati. I never weighed a pound of freight in my life. Her freight list was worth \$4000—say 550 tons at \$7 per ton.

"The boat burned at 1½ A. M., or about that hour. I had been at the wheel about half an hour. The captain was in the pilot house with me there about half an hour. We had been together three quarters of an hour before that, in the social hall. He was not out of my sight for an hour or an hour and a half before the fire. I gave the alarm first. Captain Cummings rushed off when I said there was fire, and returned saying he saw none. I said I smelt it, and commenced landing the boat at once. The cabin was in flames when I got ashore. I saw no chance to save the boat. The boat was 250 to 300 yards from the Arkansas shore at the first alarm. I put for the shore of my own accord. The cabin was in flames on the starboard side, near the chimney at first. It was one sheet of flame when the boat touched shore.

Cross-examined.—"It was from one-half to three quarters of an hour after the wooding, that she burnt. I discovered the fire on the starboard side, near the chimney. There it was when I saw it first. It was probably a minute from the time I smelt it till I saw it.

"The boat might have been on fire an hour or more in the hold and I not know it. But you can always smell paint burning. I saw no fire on the lower deck till the cabin was nearly consumed. Isaac Goffe, of Covington or Newport, was my assistant pilot. My partner was on board. Willard Caswell was the name of the engineer. This was my first trip on this boat with Capt. Cummings."

John, Brown sworn.—Was on board the Martha Washington on her last trip. Shipped as deck hand on the day she sailed. At the time I shipped, she had some freight aboard her; some rolls of leather and whisky, a large quantity of pork, twelve or thirteen pipes of brandy—more leather came aboard afterwards; and a great many boot and shoe boxes and candle boxes, and a lot of brown paper.

We left Cincinnati about twelve o'clock on the night of the 7th of January. There was some kind of square bales of skins or hides—looked like leather—aboard the boat. When I heard the alarm of fire, I was on the lower deck, and the mate was with me. We had wooded about a half or three-quarters of an hour before. My partner was with me. I was pumping the boat out. The mate and my partner were in the lower hatch. The mate told me to try the pumps. Holland remained on the lower deck from the wooding to the alarm. The first alarm was the bells. We looked up; the fire was round the larboard chimney. The bulk head of the cabin was burning when I first saw it. We started, and some one halloed fire. Holland ordered me to go after the hose, and he and Larnegan, my partner, started for the fire. I went for the hose, and found the water buckets all froze up. The tank in the social hall was thrown on the fire by one of the deck hands. When I came with the hose, it was too far gone to do anything. The captain, mate and clerk and all, ordered the men to put out the fire. Can't say how many buckets I took from the river. Holland told the men not to be frightened, but to keep good heart. By his order, I took the head line, and was followed by my partner and Gray. I carried it ashore and made it fast to a stump on the shore. The line was wet and froze stiff.

I was on the bank when all were ashore. Some saved baggage; some few trunks. I lost all I had. Don't think the officers saved anything. The captain did not. Heard no suggestion of the boat being set on fire; not on the Charles Hammond or ashore.

The fire originated near the larboard chimney; it caught in some of the brown paper there. From where we were standing I saw the flames. Heard some one say it caught betwixt the office and the bar. The bar is amidships and the office on the larboard side. I think now the office was amidships instead of the bar.

At the Falls, the boat drew five feet. At the fire, she was down to her nosing. We had to pump frequently on the trip, she was so deeply loaded. I was the first man out. The hose was kept on the lower deck, on the starboard side, in the blacksmith-shop. Peter Larnegan was my partner's name.

I next saw Holland on the lower deck. I think the bank was seven feet high. The yawl went five or six times between the boat and the shore. A father, mother and her children, were lost.

I helped stow the boots. The shoe boxes were on the upper girds, the biggest part of them, and along the bulkhead. There might have been 400 of them boot boxes. Some 100 to 200 candle boxes were on the boiler deck and many in the hold. The biggest part of the rolls of leather were in the hold. Some were in the engine room. This was white leather — sole leather. The bales were about three feet by two. They were all over the boat, where they could be stowed to the best advantage, saw something like 100 to 150 of them. The boot and shoe boxes came aboard the evening before sailing, up to twelve o'clock. The freight came aboard up to the time of starting. We were taking it from the levee on board during the night.

(To Mr. Swayne.) I began watch at twelve on the night of the fire. I am not certain whether I was called to wood or whether I was up already. Holland was on the lower deck while we were wooding — remained there all the time till the fire. He could not have been absent so as to set fire to the boat without my knowing it. He was on the bank while wooding part of the time. He directed me to pump, and talked with us at the pump.

(To Mr. Stanbery.) I have resided in Cincinnati about four years, since the fire. I have been at New Orleans; came back in March. Have since been on a steamer to New Orleans; then shipped on a boat to Cincinnati. Shipped on the Moss Wheeler and went to New Orleans. Have been in Cincinnati since September; engaged in nothing particular. Stopped at the Monongahela House. Stopped in Fulton a month, in a house I rented. Am now at the Monongahela House, on Front street.

I disremember who first spoke to me about coming here. I was subpoenaed last Tuesday week. I have not seen Holland till I saw him here since the fire. I have not seen O'Connors since March. Do not know the Chappins, Cole or Kissner; have talked with neither. I had talked with some one — Capt. Kendrick was the man — first at the Monongahela House. Had no previous acquaintance with Capt. Kendrick; first spoke to him last Monday week. He called on Monday evening before stopping. He asked for John Brown; he asked the bar-keeper; do not know his name. A young man fetched him there. The bar-keeper told me a man was inquiring for me. The young man is named Isaac; do not know his other name; have known him two or three years. Isaac follows the river; has no particular home. I came down stairs; found some of the boarders. Isaac told Capt. Kendrick I was the man. I did not know his name till I came here. He asked if I was on board the Martha Washington; if I knew anything about the burning. He said he would see me again to-morrow. I saw Holland here; had no particular conversation with him. What I knew I kept to myself; have had no particular conversation with any one else since I came here.

I shipped about 10 A. M. the day before the boat left Cincinnati. She had considerable freight already on. There were ten or thirteen pipes of brandy on the boat; it was not fetched on board till the evening she left. There was leather there the day I came; some few bundles in the hold, on both sides. I stowed the larboard side of the boat. The leather was stowed midships on top of some barrels—on pork and lard and oil barrels, seventy-five feet from any hatchway. There were three tiers of barrels under the leather, a tier on each side the keelson. The Martha Washington had a seven-foot hold; that was the depth. The leather was stowed all along on the barrels, scattered along for about a hundred feet. There was room for two rolls wide only on top of the barrels. There was then room between the leather and the top of the hold—it might have been two rolls high in some places; generally only one. I put some candle boxes on top of the leather—the leather was laid lengthwise. There were some square bundles I took to be leather. There were strips of cowhide round them; saw them stowed aft in the engine room; some were stowed on the main hatch—that is four by six feet, and some two or three inches above deck. The hatch is pretty well aft in the engine room, thirty feet from the stern. The engine room extends to the stern. There was no great amount on the hatch. The bundles were piled six or seven feet high, neatly piled—kept so all the voyage. One bundle was torn open by one of the firemen, who made a bed with it by one of the stoves. It looked like leather to me after it was torn open. There might have been a few bales not in the hatch; in the engine room I remember one or two on the starboard side, about ten feet from the hatch, forward of it. There were some rolls of leather, fifteen or twenty, in the engine room—perhaps 25—aft the main hatch, close to it. Did not notice anything else in that part of the engine room. They were laid lengthwise. They occupied eight feet in length running aft, five or six feet in height, four feet wide across boat, four or five tier high, all one way. The long way of the leather was midships the boat; not as high as the square bales on the hatch; about a foot and a half below them.

Did not count the number of rolls of leather in one row. There was no other freight about the rolls but these bales. They were not on end. Should judge they were white sole leather—which is a little plainer white than drab cloth; a little brighter than that, (a piece of dirty paper shown him.) Do not remember what it had round it; nor how many sides in a roll. Saw that every day in the engine room; any one could see it there. I did not stow it.

The other bales were aft in the run. The run is on each side of the keelson. The bales were stowed aft in the dunnage, by the main hatch; some on other freight, on barrels of pork and whisky. There were three

tiers of barrels, and on top of them the bales. I helped stow those on the larboard. Lanergan helped me stow them. Do not know where he is. I received them in the hold. They were thrown down the aft and fore hatches by some of the firemen. I stowed the larboard side of the hold; my partner and Lanergan. I assisted in taking up these bales. Can't say what kind of leather it was. It was of a kind of brownish color. Can't say if darker or lighter than this book. One bale was a tolerable good lift for me. One man could raise a bale.

I do not think there were any deck hands then shipped to stow the starboard side. There was a fireman then with us. This was the day I shipped on the boat. That was the day I stowed the bales. Do not know the name of any fireman on the boat; have never seen this man Lanergan since; only on the boat.

I recollect the day we began to stow the bales; do not remember the time of day. I also helped to stow the leather; I think that came first. It came down the forward hatches. Larnegan and I, and men who were sent to us as we wanted them, stowed the leather. Can't name any of them. I carried the leather to the place where I put it over the barrels. The leather weighed eighty or a hundred pounds a roll; some were heavier than others. The leather I stowed in the hold was the same color as that in the engine room.

The boot and shoe boxes were stowed on the upper guards against the bulkhead of the cabin—the whole length of the bulkhead—piled six feet high; all lengthwise—all one way, and made a pile four feet or three or four in width, seventy or eighty feet long. A few boxes were stowed in the engine room; some few forward of the main hatch; some few in the hold; on the freight or wherever we could get a hole to put them. Some were larger than others; largest were as much as I could lift; four feet by two or three, and a foot high, as near as I can get it. The smallest were two feet long, one foot wide, eight inches high. Can't tell which had boots and which had shoes. Did not notice the marks.

Do not recollect hardly any that were going to Louisville. Did not know of any freight going to Louisville; heard it was for New Orleans, from some one who gave orders; it might have been the mate. We should have stowed it so as to have been ready for Louisville, if we had known it was going there. There might have been some went ashore at Louisville.

Some of the candle boxes were on the boiler deck, and some in the hold. On both sides of the boiler deck. Do not recollect any other freight with them; 260 to 200 boxes of candles, I should judge—a great number in the hold—all through, wherever we could stack them. They were about fourteen inches in height, weighed about 25 or 36 pounds, perhaps more. I helped stow the candle boxes on the boiler

deck; think I stowed them the same evening we left. Those in the hold came at different times. Can't recollect if I stowed any the first day I was aboard. The brown paper was stowed in the social hall. There were not over fifty bales of it.

I came on watch about 12 o'clock on the night of the fire. The starboard watch was James Gray and Dan.——. I disremember whether we wooded from the shore or a flat. I was on the larboard side; that was the shore side. We took in ten or twelve cords. There were eighteen, nineteen or twenty hands engaged in wooding. I piled up on the larboard; was engaged half or three quarters of an hour. The mate stood there all that time; heard his voice. Do not know where he stood. Can't say he was on the shore or on the wood-boat; I can't say. He was singing out all the time "Get in the wood, boys!" every two or three minutes, "Hurrah! boys, get in the wood!" Knew his voice well. I saw him on board the boat once—he passed me and stood on the guards directly after we commenced, and then he went ashore or on to the flatboat. Next time I saw him was just before all the wood was in, on the fore-castle, twenty-five feet from me, directing the men. He came off the shore or the flatboat. Heard his voice two three minutes before. He was not above decks to my knowledge.

All went below after wooding, but the watch, me and my partner—nobody but us of the deck hands; only we and the mate were on watch. The mate remained on the lower deck after wooding. He had moved from the fore-castle to the hatch, and stood there. I saw him walk from the fore-castle to the hatch. Do not remember that he moved off that hatch. He was still standing there when we heard the alarm of fire. The firemen went back to the deck stove after wooding to warm themselves. My partner stood on the hatch with the mate. Don't think my partner was standing on the hatch when the mate got there. I started to warm myself at the fire doors, and the mate sent me to pump; was pumping when the alarm was given.

It was from a half to three quarters of an hour after we rounded out till the alarm. I pumped all the time, and was glad of the chance. My partner was standing on the hatch ready to help me. The hatch is eight or ten feet from the fire doors. The pump is by the hatch. We were talking about steamboats. The conversation was mostly between them; I occasionally put in a word. Recollect they were not talking of any particular steamboat. Were talking about it's being a very unpleasant life. My partner was nearest me. He was leaning against a staunch-*ee*. He and the mate were facing each other. My partner's side was towards me. Believe they had their hands in their pockets; can't say what pockets. Did not notice that they took their hands out of their

pockets. Suppose they had them in ; it was a cold night. They did not differ about steamboating being an unpleasant business.

The first alarm I heard was the tapping of the bell—the big bell. Heard two or three or four taps by the bell ; heard the pilot's bell too ; can't say which first—think the big bell first. There was a very short time between—two or three minutes between the taps of the big bell and the pilot's. Heard the pilot's voice cry "fire" two or three times distinctly. We stood at the hatch, and could see from there where the fire was. It was on the boiler deck by the larboard chimney. I saw flames on the boiler deck, near the chimney ; pretty close round the chimney ; a little aft, on the larboard side. I was forward of the chimney, amidships. The bulkhead was burning four or five inches from the chimney. The flame was five or six feet high and two or three feet wide. My partner was looking forward ; the mate was facing him. I was looking forward, and as I turned I saw the flame. The flame was on the right of the mate. We were about twenty feet from the flame. The flame did not make any noise, nor crackle. There was a set of firemen near the fire. They would be looking aft as they stand before the fire doors. There was not much of a light at first ; could see some reflection on the lower deck ; it did not make much light. Holland said, "John, get the hose as quick as you can." I went to the blacksmith's room, on the starboard side, for the hose ; think it was the starboard side ; ran up on the boiler deck—was frightened—I came round on the larboard guard, forward, to get to the boiler deck. All above were trying to put the fire out—thirty or forty people were there. Some were on the outside ; do not remember whether the mate was inside or outside of the social hall. I threw the hose down ; it was no use ; no water came in it.

There were buckets on the roof—on the hurricane deck. I did not go up there ; other men did. I got the draw bucket below ; it was on the forecandle ; got it after I carried up the hose. I cast it over and threw the water on the fire. I stood outside the social hall, near the chimney, and threw the water up. Went down and got another bucket, and started with it, but did not go up.

The captain, mate and clerk were hurraing to me to put out the fire. The captain was on the larboard guard when I first saw him, clapping his hands and saying, "Hurra ! boys, put out the fire !" Saw the clerk, I think, on the starboard side, doing all he could—flying round, trying to do something or other ; frightened, saying, "Hurra ! boys, put out the fire !" The mate was amongst the crowd, doing all he could ; think he took a bucket from a man's hand and threw it on the fire. Men were handing him buckets. He was hurrying the men up and down with water. I saw the captain, mate and clerk, and heard them all encouraging the

men to put out the fire. I saw the captain when I first ran up with the hose. Saw the clerk the second time I went up. Saw the captain also the second time. Can't say where he was. Saw the mate when I came up with the hose. The captain was coming forward when I was going up with the hose. I met him; I ran as fast as I could for the hose. Neither the mate, captain nor clerk came down when I started to go up the third time.

Some of the thirty or forty people were running for water. Did not run against each other. There were ten or twelve buckets on the upper deck. They were running up and down with the buckets. All the water they had came from the lower deck.

Can't recollect who came down first. I run forward to the fore-castle; stood there; did not know what to do: was in view of the stairs. Three or four minutes after I came down, others came. Could hear the men up above putting out the fire, and the captain, mate and clerk, encouraging them.

I stopped a month at the house I rented at Fulton; forget the landlord's name. He was an old man, about your size, pretty tall; might have been younger or older than you (Mr. S. is probably about forty-five;) hair gray; there was no other family in my house; my wife and myself lived in mine. I expected to stay longer than a month when I hired—I was discontented. The landlord lived next me; I did not like the house. Had no difficulty with any one. There was nothing to make me leave, more than I had some business in Kentucky. When I left the house, my wife went with me; we went to Burlington, on account of her having some property there. We moved our goods in removing from Burlington to Cincinnati; left our goods in the house on leaving Fulton. It was two or three weeks after I left, before I went back to Fulton. I did not understand that any officers had a warrant against me; did not understand there was a charge against me connected with money.

When I left the house, it was in the month before this last month.—Do not know if it was November; think it was 3rd or 4th December. I first went to Burlington from my house a week before I left the house. Commenced keeping house November 1st; first went without goods; afterwards sent one load there. I have a house in Burlington—did not stop in it; it was vacant. I and my wife have been at the Monongahela House since.

To Mr. Walker.—I do not recollect the mate or my partner shrugging his shoulders, and saying it was cold.

To Mr. Stanbery. — Can't tell the name of any neighbor I had at my Fulton house. Do not think I would know the name of my landlord at Fulton, if I heard it. Do not know the drayman's name who moved my goods:

William H. Fuller sworn.—Have been acquainted with Mr. Kissane some eight or nine years — very well ; should say his general reputation is that of a correct business man ; have had no business transactions with him ; have been in the same general business myself.

Cross-examined.—Have heard adverse opinions of him more since than before this affair ; have heard it said he was a very shrewd business man—so shrewd he had got the best of some bargains. Before this affair, heard no more against him than against every business man ; never heard any specific charge against him, nor any general charge, except that he was unpopular with a good many pork men—I suppose from the fact that he has been very successful. It was never intimated that he made money improperly ; should say his reputation is equal to that of the average of merchants in Cincinnati.

To Mr. Pugh.—I never heard a charge of dishonesty against Mr. Kissane ; would have extended to him any amount of credit he wanted.

To Mr. Stanbery. — I imagine Mr. Kissane has been successful ; do not know that he was pressed about his candle business.

To Mr. Walker. — I have not heard his honesty questioned.

Henry Lewis sworn. — Have been acquainted with Kissane about ten years ; been in the same business ; his character as an honest man and a merchant, stands fair.

To Mr. Stanbery.—Have heard no unfavorable reports of him till after this affair. Have done an immense amount of business with him.

Charles J. W. Smith sworn. — I have been in Cincinnati 22 years ; have been acquainted with Mr. Kissane a good many years ; have had a good deal of business with him ; his character for honesty is good ; have never heard anything against him.

To Mr. Stanbery. — He is a merchant ; I do not know how he stands on 'Change ; think I should know if anything had been said about him. Have been Sheriff of Hamilton County ; had been in the sheriff's office some years before I was elected sheriff myself ; been connected with the office, in all, five years.

Peter McQueen sworn. — I reside in Cincinnati ; am a beef and pork packer ; knew Kissane ; have known him some years ; his reputation is good.

James D. Lehmer sworn. — Am in the commission business in Cincinnati ; know Mr. Kissane ; have transacted business for him two years, acting as his agent for the sale of the products of his candle factory ; I advanced money to Smith & Kissane on a shipment of 200 barrels lard oil, shipped on the Martha Washington in January, 1852, to Messrs. McCutchen & Collins, of Philadelphia ; I advanced it as agent for McCutchen & Collins ; they (McC. & C.,) insured it.

I have been acquainted with Mr. Kissane four or five years ; done

business with Smith & Kissane amounting to over \$100,000 in the last two years; it has been satisfactory to me; have found both members of the firm upright and honorable. As far as I have heard, Mr. Kissane's general reputation is good.

To Mr. Stanbery.—I have advanced them, in the last two years, \$100,000. Candles, lard, lard oil, and scap—there may have been some red oil, not much—these are the articles I have generally advanced on, to Smith & Kissane. On the Martha Washington shipment, made January 6th, I advanced \$4709.65 on 200 barrels lard oil—lard oil is not red oil. The dray tickets were brought to my store, and we took the bill of lading ourselves—Nicholson signed the bill of lading.

In January, 1852, I paid them \$4,400 besides, on goods placed in my store. I required the articles to be placed in my store on which I advanced. There were only such articles as I have mentioned; the charges I made them were, five per cent. for advancing on and selling their articles; I always sold the articles; five per cent. is the customary charge—two and a half for advancing, and two and a half for selling.

I got my commission from McCutchen & Collins for the advance on the Martha Washington shipment; I was then acting for them in obtaining shipments; I got one per cent.; got no commission from Smith & Kissane; do not know that they had any other agent than me for the sale of their manufactures; my advances were on star candles, soap, red oil, and lard oil only; I sent one lot to Memphis, to Fiske, on my own account. I first charged them to myself at Cincinnati at regular price.

To Mr. Pugh.—I advanced them, Dec., 11th, 1850, \$2,196 on candles; January 15, 1851, \$1,000; January 18, 1851, \$1,900 on 95 barrels oil; January 24, 1851, \$660 on candles; March 19, 1851, \$2,050 on 100 barrels oil, and made other advances, amounting to \$12,515.65 in all.

All this was on shipments to McCutchen & Collins. The oil shipped by the Martha Washington would have brought, as I have been informed, eighty cents per gallon in Philadelphia; it was insured for sixty-five cents per gallon; the price at Cincinnati of that oil I do not remember; think it was about sixty cents; between fifty-five and sixty.

Henry Nye sworn.—Live in Cincinnati; am a pork packer and general commission merchant; have had transactions with Mr. Kissane; his character is good, as far as any transactions of his have come to my knowledge; his reputation is good, so far as I know; I have known him six or seven years.

Cross-examined.—I know no unfavorable reports of him; do not recollect hearing any.

George Woodward sworn.—Reside in Cincinnati; am in business with my brother-in-law, Mr. Coleman; am well acquainted with Kissane; his character is perfectly good.

Christian Febiger sworn. — Am a clerk. On last Tuesday I assisted my brother to examine his books, for the purpose of discovering an error; my brother called my attention to an entry, and asked me when I thought it was made; my reply was that I thought it had been made within twelve hours; he pointed to the date, which was November 2—an entry of December 7 was quite black—an entry of December 31 also had turned black. The entries were both made with Arnold's writing fluid; the ink had lost its greenish tinge, and looked as if it had been written with light colored ink; it looked fresh. He said he used Arnold's writing fluid.

To Mr. Stanbery.—They still looked light; whether they changed afterwards I do not know.

L. Carneal sworn.—Josiah Lawrence, late President of the Firemen's Insurance Company, was my father-in-law; I know his handwriting; these letters are his:

The letters are as follows, viz.:

[1.] "MESSRS. SMITH, KISSANE, & MCGILL — GENTLEMEN: The premium on cargo from here to New Orleans by steamboat, and from thence to California by vessel, is 4½ per cent., with the privilege of cargo laying on board thirty days after the arrival of vessel.

" Respectfully, J. LAWRENCE, Pres't.

" Please send your propositions by bearer."

[2.] "MESSRS. SMITH, KISSANE, & MCGILL, OF SMITH & KISSANE — GENTLEMEN: Any insurance propositions you may have, please send them by the bearer.

JOSIAH LAWRENCE,

" Jan. 2, '52."

Pres't. Firemen's Insurance Co.

[3.]

" OFFICE FIREMEN'S INSURANCE CO., }
" CINCINNATI, March 10, '52. }

" MESSRS. SMITH & KISSANE — DEAR SIR: We will thank you to furnish us with a *particular* invoice of the property you insured at this office, shipped by the "Martha Washington;" some part of the cargo has been saved, but we cannot claim any of it till we have your invoice.

" Very resp't'y, JOSIAH LAWRENCE, Pres't."

Lawrence died in June last. I have made wicks for star candles. — Smith & Kissane, last winter, bought candle wick of me. He was owing me money about the time of the burning of the steamer. I hesitated selling him after that, having heard suspicions stated about that matter. Mr. Lawrence told me to go and sell to Smith & Kissane, and he would have their paper done, without my endorsement. He said he had examined the Martha Washington business, and was satisfied it was all right, as far as he could see. He told me I need not hesitate to trust them.

Cross-examined.—It is true Mr. Lawrence was a very excellent, kind-hearted, confiding man. He paid the loss. I had heard suspicions before that; heard them chiefly through Mr. Neville, a clerk and friend, and the brother of the Secretary of the Madison Insurance office. I can't say it was before or after Mr. Lawrence made the payment that he spoke to me. I do not know that the Firemen's Insurance Company was dissatisfied with the payment; have heard so. Mr. Lawrence said nothing about the bill of lading, or any document, as having excited his suspicions, after the cost was paid. It was some time before he died that he recommended me to sell to Smith & Kissane. Did not tell me what papers he had seen.

Isaac Vanausdol sworn. — Made shipments for New Orleans on the Martha Washington in January, 1852, as clerk for Henry Lewis. Was there in the afternoon of January 6th. They said they had too much freight to take all we wanted to send by her. I shipped fifty-three hogsheads, and wanted to ship more, but they would not take it. Saw lard in barrels and pork on board — those I noticed particularly. Noticed some boxes — made like hat boxes; had to clamber over a good many to get to the boat; took them to be shoes and hats. Noticed some leather they were carrying into the boat. This was all I noticed. This was on the 6th. Nicholson signed my bill of lading. Noticed Mr. Kissane was shipping a heavy quantity. His clerk was very angry at their taking our shipment.

To Mr. Stanbery. — They took fifty-three hogsheads for me, after some hard talk. I saw some leather — can't say how much — nor whether it was red or white; am not sure I know the difference. I noticed pork, lard, and boxes of candles of Kissane's; this stuff they had run on in front of ours, which occasioned me to speak to their clerk.

L. Pugh & Co.'s drayman was there, Thos. Anderson. I was then at the wharf twice; Pugh's drayman remarked I had got ahead of them. There were many other boats about the levee at the time. The Martha Washington's bow was in; can't say how the other boats lay.

To Mr. Pugh. — I engaged with Athearn & Hibberd for one hundred hogsheads — only got fifty-three on. Met Kissane's drayman hauling pork and lard; next time I went they were packing boxes; shoe and hat boxes were there. Mr. Kendrick was aboard the boat with me — the gentleman I have seen here.

Anderson had 18 to 20 draymen (more than Kissane's,) hauling boxes, &c.; could not tell the mark on the boxes; noticed the mark on some barrels and tierces to be Smith & Kissane's mark.

William Barber sworn. — I saw the Martha Washington the evening she left. Went aboard to go to Napoleon; asked the clerk the price — he said ten dollars. I asked if she was going that evening. The clerk

of the Charles Hammond said he would take me for five dollars, as I had been on the boat. Paid no more attention to the Martha Washington. They were taking on some freight when I was on board. I was on the Charles Hammond when she passed the wreck of the Martha Washington; heard no report of incendiarism.

John S. Powers sworn. — I reside in Cincinnati; am well acquainted with Messrs. Smith & Kissane; knew Kissane, I am not certain whether in '42 or '43; I was fifteen years a partner with John W. Coleman in the pork business; knew Kissane first of the two. Had seen Mr. Smith several years before then, but did not become intimately acquainted with him until about '44. Knew L. Pugh & Co.; did not know all the members of the firm; knew Mr. Pugh, Wm. F. Johnson, Kissane, and S. Smith. If there were any other partners, I do not know it. Was in the pork house of Smith & Kissane in January, 1852, on the north side of the Miami canal, on the north-west corner of Canal and Race streets. Their candle factory is west of Western Row, and their slaughter-house is in another part of the city.

I never saw the Martha Washington; I know Smith & Kissane were shipping pork, candles, and lard—that is only from information. Heard that they were shipping brandy, cigars, &c.

Mr. Pugh.—What did you hear said about Mr. Kissane's shipments on the Martha Washington?

Mr. Stanbery. — I must object to hearsay evidence on a point where the living testimony of Kissane's partner is accessible.

Mr. Pugh.—I shall introduce testimony in the order I see fit.

Mr. Stanbery restated his objections, and was sustained by the Commissioner.

Mr. Pugh.—If the Attorney for the U. S. (Mr. Stanbery,) had held his peace—(conclusion of sentence not heard.)

[Here Mr. Powers was shown four bills of lading for goods shipped by Smith & Kissane on the Martha Washington, in the bill of lading book of Messrs. Smith & Kissane.] — I first saw this — I wont be positive as to the day—but I think on the 8th of January, 1852, or about that time. There were four bills of lading, three signed by Nicholson and one by Cummings. The first is the bill of shipment of Smith & Kissane to Spalding & Giralda, dated January 7, 1852, of 300 barrels mess pork, signed Cummings—after it is, in pencil, "Correct, Nich.;" bill of shipment of same to James Connolly, dated 7th January, 1852, of 600 boxes star candles, 24,000 lbs., to be forwarded to H. Reeman & Sons; 3rd, bill of shipment of same to James Connolly & Co., dated 7th January, 1852, of 600 boxes star candles, 24,000 lbs., to be forwarded to Thomas J. Carson, Baltimore; 4th, bill of shipment of same of 119 barrels mess beef, 129 barrels prime beef. All these are in the bound book of Smith

& Kissane. I simply looked at them to see what he had shipped. Saw then again, after the news of the burning, one of the bills was torn out—two or three days after the burning—can't say how long. This bill (one is shown to him,) looks to me like one I saw in the book—can't tell what it contains; do not think I have seen it since last winter. I have seen this book (the invoice book of Messrs. Smith & Kissane;) saw this about this time; never saw their invoices made; made no special examination.

The river had been closed when she left, and was open but a few days afterwards.

Mr. Pugh reads an invoice of 300 barrels mess pork at \$12 per barrel, 300 prime ditto; an invoice of 600 boxes star candles, adamantine, to H. Reeman & Sons; an invoice of 300 boxes adamantine candles, 300 do solar sperm, to Thomas J. Carson & Co.; an invoice 300 barrels and tierces lard, to Charles Lane & Co., for \$5,122.47.

[Of the last Mr. Pugh remarked, that Mr. Lane took the bill of lading himself—a fifth invoice of 200 barrels lard oil, at 68 cents—to Messrs. McCutchen & Co.; invoices also of Doppler's bill of brandy, Meyer & Bros'. cigars, Lyman Cole's bill boots; also an invoice of a shipment on the steamer Hiram Powers of 119 barrels mess beef, 129 barrels prime beef, at \$1,032; another of 32 tierces sugar-cured hams, at \$3,396.55, dated 10th January, 1852. In the margin, in red ink, an entry \$2,000 per Captain Cummings, in full—\$1,000 advanced him.]

Mr. Powers continues.—I can't fix the time I saw Mr. Lawrence—it was after the holidays—later than the 22nd of February—about the 1st of March. Was going down street; Kissane came along in a buggy, and asked me to ride; I got in; went down Broadway—turned down Front street, stopped at an insurance office, over Kinney's store. Believe Mr. Chew keeps in one office there. Saw Mr. Josiah Lawrence in the street; Mr. Kissane approached Mr. Lawrence—said here is a letter of introduction of Captain Cummings; Lawrence said it was all right. I think Lawrence kept the letter.

Have been in California. Went in December, 1849; returned 2nd July, 1851. Saw Perkins in California, and before I went; he was a merchant in California; kept a store; I never was in it. He and Linyard kept together there; never saw Linyard there. Soon after my return several merchants asked me about saleable articles in California—Kissane among others. I told him what to ship; I told him to ship boots, (I got a pair of cowhide boots there for forty-three dollars,) sugar-cured hams, domestic brandy, cigars, butter, oil, and candles. This directed my attention to the books, after he had told me had shipped. California hats, I found, were called Kossuth after I got home; they were a good article to ship.

I saw the invoice the same day I saw other papers, or two days after ; within two or three weeks. I have seen Doppler's bill ; am not certain I ever saw the other, Cole's invoice ; my impression is I have not—probably enough I did. Am not certain I saw the cigar bill.

I know Horace Cole ; saw him daily in San Franciaco. I was appointed Sheriff of the Court of First Instance, a court existing under General Smith. Have executed writs for Cole then, as deputy under Hayes. I attached a vessel and some goods for him ; he was a trader. I left him in California. He had kept a hat store in Cincinnati before he left.

This bill of lading came out of the book, *perhaps*. I remember there were three signed "Nicholson." There are only two there now.

Cross-examined.—The one torn out is not written in the same ink in the signature and the body of it. In January, 1852, Smith & Kissane had an assistant.

[The Reporter is painfully conscious of the imperfections of so much of Mr. Powers's testimony as relates to the papers. The minutes were taken in Court, and the Reporter has not access to the papers themselves. He gives his best account of this evidence for what it may be worth, with this apology.]

[Mr. Pugh here read the letters of Mr. Lawrence, which were proved by Mr. Carneal, and are inserted in connection with his testimony *ante*.]

John Whateley sworn.—Was in January, 1852, with Messrs. Smith & Kissane, as shipping and weighing clerk at their pork-house. I shipped from the pork-house, on the Martha Washington, 300 barrels pork, in one lot, belonging to Messrs. Burdell & Co., of N. York, 250 in another, and the last shipped by Lyman Cole.

I do not recollect anything else from the pork-house. An order came to ship them—a written order. I got the bills of lading signed that day on the Martha Washington, for three different lots, by Nicholson, clerk—the two from the pork-house, and this one of the shipment for Mr. Perkins in California. This one torn out (the bill of the last shipment) was a leaf in this book (the bill of lading book of Smith & Kissane.) It was not signed at the same time ; two were signed in the morning, and the last in the evening ; duplicates of each of these bills were signed when the originals were. One copy of each was in the book ; the others were loose. Nicholson signed two loose bills for each lot, and one for each in the book. I left two loose ones on the boat ; am not sure he signed those two.

I sent a letter of advice by the boat to the consignees at New Orleans. I looked for some blank bills of lading, after my return from the boat, which I had carried in the book. Told Kissane that the blank bills that had been lying in the book, I had left on the boat ; I left several lying on

Nicholson's table there; told Kissane I would go back for them; he said there was no occasion to do that.

This bill, signed with blue ink, was shipped from the factory. There were two shipments of candles. We used black ink in the counting-room, blue in the factory.

There were two inkstands in the store — the ink in one blacker than that in the other; the large one usually had the freshest ink in it.

I wrote these words, "Hiram Powers," and "McGregor," about that time.

Cross-examined.—My business was in the pork house. I knew 300 barrels of pork were shipped to Burdell & Co. The bill of lading of the shipment of the 250 barrels for Cole is not here in the book. Two bills were signed at the same time. Kissane handed me the bills and book to get them signed, about dinner time. In the afternoon, I went down, and another was signed in the same book, after the two I got signed in the morning. Don't recollect where I went next with the bills of lading. This one (a shipment on the Duchess) came very near. Don't recollect any intermediate shipment.

I took no blanks in the morning. They were filled out at the factory by Kissane; five or six of them. Can't say if the clerk signed all. He only handed me the book. In the evening, I took the blanks. Can't say who filled the loose bills in the evening; I got them from Kissane. Two loose ones were filled for each shipment. These came out of no book. I left them after they were filled up.

I did not go with bills of lading for the 250 barrels for Cole. Do not know who did. That (the Chapins' bill of lading) was in the book here when I went to the boat. I went back to the counting-room from the boat. Kissane was there; no one else. I put the book on the desk. Kissane took it and looked at it. He looked at the bills of lading signed. Then he missed the blanks. I left them on the desk in the book, five or six of them; forgot them, to tell the truth. My mind has never recurred to it till since I came here, or knew I had got to come—not many days ago. Have had no talk about it. Have had no conversation with any body till Mr. Pugh asked me here, in Court. I never wrote in the service book: sometimes did in the bill of lading book. Smith & Kissane kept a cash book; drew checks; kept an account at the Franklin Bank. Believe Kissane kept the cash book. Have seen a journal. Do not recollect ever making entries in it. Do not know about their having a book for bills payable or receivable. Can't say if their accounts were kept in double or single entry. Do not know if they kept a letter-book, or filed letters. Mr. Lane was their clerk. I think he left before January 1852; he was book-keeper before he left. Have seen Cole before January, 1852, with Kissane, in the office. Don't know the time.

To Mr. Pugh.—I was shipping and weighing clerk. Had nothing to do with the books. Do not recollect whether the leaves were filled in the order of shipment in the bill of lading book. I took the dray tickets to Nicholson when I took the bills of lading. There was a second clerk, I suppose, on the boat. I gave Nicholson the dray tickets. I was at the desk when Kissane tore this out, (the California bill of lading.) Think it was in March. Don't remember that Kissane said anything when he tore it out. No one else was in the office. I was often looking in the book between Nicholson's signing and Kissane's tearing out the bill.

We generally leave two bills of lading of each set on the boat, one for the boat, one in letter shape directed to the consignee; sometimes not directed. I left loose ones in this case with Mr. Nicholson. Think those blanks that were filled were lying on the top of the blanks not filled that I left. At the time of the evening shipment, I left the blank bills, one in an envelope directed to James Connoly & Co.

To Mr. Stanbery.—In the morning, I believe, I left two bills of lading—neither in an envelope. Kissane gave me the envelope for Connoly & Co. in the book containing the bills of lading. I believe there were instructions on it, towards the bottom. Believe the clerk took out the bill from the envelope. I might have sealed it. I supposed they were instructions; did not read them. Do not remember the number of lines, or whether there was a date or signature.

In March, 1852, I saw Mr. Kissane tear out this leaf of the bill of lading book. I was at the desk. Do not recollect the time of day. Happened to be standing at the desk; no one else was there. I had not been long in the office. He was there when I came in. I was coming from some part of the pork house. Can't call anything else to mind I did that day. Kissane was by the desk when I came in. Think he had the bill of lading book in his hand, open; it might have been resting on the desk. I saw him tear out the leaf. I was not far from the desk. I said nothing to him nor he to me, that I remember. He tore it from about the middle of the book. I caught a glimpse of it as he tore it; I did not see it after he tore it. I saw it was this bill of lading. I saw the signature "Nicholson" and some of those marks down there. Did not notice what he did with the book when he had torn it out; do not remember whether he shut it up or not. He did not stand there long after that, nor I either. Did not see what he did with the bill. After tearing it, Kissane went to the fire. I turned towards the window and looked out. Can't recollect what I said.

C. F. Meyer sworn.—Am a tobacconist in Cincinnati; sold Mr. Kissane this bill of cigars, [the one before inserted], 128,400, in January, 1852; suppose they were shipped for California from my store. They

were taken from my store by Kissane's drayman. He paid me for them in a check I think; I do not recollect what bank.

Samuel Smith sworn.—I have known Mr. Kissane about ten years, he was formerly a clerk in the house of Lot Pugh & Co., and afterwards had an interest in the profits of that firm. I was a member of the firm. It was dissolved in February 1850, after the fire of the 7th December 1849. The bill of lading book of L. Pugh & Co. passed to my hands.—This is the book. I formed a partnership with Mr. Kissane afterwards. We commenced our factory the spring after the fire, we rented a pork house in July 1851. We have packed pork. I attended to the slaughtering business and to the factory. Kissane had charge of the pork house and of the outdoor business and finance of the house. Mr. McGill was taken into our firm last season—I mean the winter season.

Question.—Tell us your transactions with L. Cole?

Mr. Smith.—We sold Mr. Cole lard and pork: the lard first 150 bbls. on his own account in the latter part of December 1851. Cole first came to our establishment, might be in September or October 1851. He talked of packing himself, but the prices scared him, and he concluded to buy some. I saw a letter from James Lee & Co. of Boston, authorizing him to draw on them on shipments of pork and lard—he paid for the lard in a draft on Lee & Co.; can't say on what time positively, think eight or three days' time. The draft was paid, I suppose—2000 dollars I think was the amount. 'Twas shipped the last December or first of January; consigned as near as I knew to J. Lee & Co.—do not know whether it was shipped by way of New Orleans or not; think this bill of lading of 2d January, per "Statesman," is the bill of this shipment. The 150 bbls. were sold in one lot. Think Mr. Cole bought 250 bbls. pork at the same time—not shipped at the same time—am not able to say to whom it was shipped—believe to J. Lee & Co. Believe he bought about 8000 or 9000 dollars worth of us in all. Remember the draft for \$3000 on Lee & Co.: that was for 250 bbls. pork, 12 dollars per bbl. The 250 bbls. were shipped on the M. Washington: we did not take the bill of lading for it: presume Mr. Cole took it: we did not insure it: the dray tickets left at Cole's store.

We shipped also on the M. Washington, 300 bbls. mess pork to R. H. Burdell & Co. New York; that was sold to Burdell & Co. on joint account over \$12 per bbl.—to divide over that—Burdell & Co. insured it: we did not. There was also shipped to Charles Lane & Co. of Boston, by us, on the M. Washington, 90 tierces and 210 bbls. lard, sold to them at 6 or 7 cts. on joint account. Mr. Lane was in Cincinnati at the time. They bought it at 6½; we did not insure it. 200 bbls. lard oil were also shipped on the Martha Washington, and sold by us to M'Cutcheon & Collins of Philadelphia. Jas. D. Lehmer was their agent—do not know

who received the bill of lading for that—the dray tickets were to be handed to Lehmer. That was a sale I understood, forget the price, know it was a sale. Lehmer paid the money on it, I did not make the sale; it may be entered on our invoice book differently. My impression was it was sold. Some candles were shipped to H. Reeman & Sons of Baltimore: 600 boxes, (look at this paper.) That I think is Mr. Reeman's signature. The paper is in substance as follows:

“Received of Smith & Kissane bill of lading and invoice of 600 boxes candles, which we insure, to be sold for account of Smith & Kissane, January 8th, 1852.
H. REEMAN & SONS.”

We shipped the same number of boxes of candles to Carson & Co. of Baltimore, on our account. Received advances on both. They insured, both Reeman and Carson. The lard oil and candles were taken from the factory—the lard from the steam house—the pork from the pork house. No insurance was made by us on any of these shipments.

200 bbls. lard were shipped from our steam house besides, on the Martha Washington, sold to Lyman Cole. That was paid for in money or checks. I think 100 bbls. were to be shipped to New Bedford; Cole took the bill of lading; 100 bbls. were for Boston.

As to insurance on the two shipments of 100 bbls. lard each, I know nothing about it: it was on the Martha Washington or put on drays for her. First knew Cummings in August 1851—came to our pork house—had letter of introduction and credit to us from N. M. Martin of New Orleans—presume Mr. Martin is a produce dealer in New Orleans. He left \$2000 with us for the purpose of buying bacon and flour. The river however was low, and there was no chance to ship and we did not buy: either that was the reason or the prices did not suit. He was gone six weeks; when he returned he said he had concluded if he could find a boat to suit him, he would buy; he bought the Martha Washington.—We did not pay the \$2000 to him directly: we became security for another \$1000 to M'Gregor for him: we had had the use of his money for six or eight weeks and could not well refuse to accommodate him. We shipped M'Gregor 250 bbls. beef, and some casks of hams, thirty or forty casks of hams; \$3396.55 was what it was all invoiced at. We shipped it to M'Gregor to sell for our account and pay himself the \$3000. The beef was shipped on the “Hiram Powers.” This is the bill of lading. The hams were shipped on the “Duchess” on the 10th January. \$750 was coming to us from M'Gregor, and Cummings paid us the balance. These are all the transactions of our house with Cummings that I know of.

We have four large tanks for rendering up grease of all sorts. These tanks cost I suppose \$7000. We had three tanks at the Brighton house for sale; we had several talking about buying them. I saw a man by the

name of Stephens: he talked with us once about buying those tanks: think he came out to the factory: said he was going to take them to Texas.

I know something of Kissane's receiving money for Mr. Perkins, twice or three times from Canada, from some of Perkins' relatives. I saw one document in £ s. d. There were I think about \$1000 in each amount: saw letters from Perkins requesting Kissane to send him stuff to sell; heard Kissane and Cole in treaty for some boots and shoes, to be shipped to California. I heard them more than once talking of this. Cole said he had shoes and boots, and Kossuth hats he had taken for debt, and his object was to dispose of them. I think the understanding was that Cole was to wait for payment till Kissane got returns from California. Do not know the price agreed on—never saw the goods nor samples. I went into Cole's shop one day with Kissane to buy a pair of boots for myself: Kissane said of one sort that that was the kind he was going to get: saw Lyman Cole then: the store was near Main street on Pearl street: I only looked into one or two boxes: I stopped at Meyers' and looked at cigars: Kissane ordered them: know he bought brandy of Duppler.

They were shipping for the Martha Washington four days ending Wednesday night the 7th of January. Anderson was our "boss" drayman, and had been in our employment ever since we were in business. It was done under his guidance, the shipping from our house; he had four or five drays of his own and got others, fifteen or twenty in all, to help him. Kissane gave Cole a note after the shipment was made; I had no interest in it; do not know if the note has been paid, nor what was done with the money received from the Firemen's Insurance Co.—Kissane told me Earl wanted to borrow \$1200 of us. I told him I did not know Earl and was not willing to make the loan; Kissane said then he would loan him on his own account: presume he did: he said he did: did not say for how long. This was early in the spring. He got an assignment of a policy as security. He went to Madison or Louisville about it: heard him say he had a good deal of trouble to get the money on it. John Whately was in our employ all last winter as a kind of forwarding clerk. Lane kept our books till Dec. 1st, or so. He then went with Mr. Wade; Kissane kept our books after that. It was a very busy season in January 1852; judge things would lie over several days sometimes. Those two entries in the invoice book, dated the 10th of January, are in Kissane's handwriting; he was not very particular in making them regularly. I saw this bill of lading book about time of the date of these bills; saw the bills of the brandy and cigars; dont recollect seeing this invoice of the same; saw this bill of lading of the brandy, cigars,

books, &c. in the book in February. Mr. Lawrence sent up for it and it was torn out. I saw these (now handed me) also.

To Mr. Walker.—Cummings directed his goods to be shipped to a Mr. Cooley, near the mouth of Red River.

To Mr. Stanbery.—Our books (S. & K's) are day book, journal and ledger, that's all, I believe. We have a bank book—a letter book to copy letters in ; they are at the pork house.

The 200 bbls. lard sold to Cole was at seven cts. per lb. He paid cash, some \$3800 or \$3900 : part in money, part in check : can't say how much was in money. The check was on T. S. Goodman & Co. I was present. \$2700 or \$2800 was the amount of the check ; can't say if the payment was made on the day of the sale or after delivery. It might be two or three days after ; do not know if it was after the Martha Washington sailed. Do not understand bookkeeping ; do not know whether Kissane made an entry in the books of this payment ; don't recollect any document passed to Cole at the time.

I do not know how I stand with my partner, could not tell by my books. Do not know if there is any account with L. Cole in our books. Have no doubt an entry was made, but I did not see it. Suppose so from the nature of bookkeeping, as a matter of necessity. Can't tell the date of the transaction ; it was after the conversation on the subject of the boots, shoes and hats. The conversation was in the fall some time, in the latter part of November as near as I can recollect. Can't say who commenced the conversation ; Cole did not say how much he had to sell. The next time I heard them talk about it, they had agreed for about \$6000. Can't recollect which said first they had made a bargain. I understood the goods were not to be paid for until the proceeds should come back from California. I was present at the pork house when the note was given for the purchase of Cole, by Kissane. It was some time in January. Kissane wrote the note—reckon he signed " Kissane," not Smith & Kissane. It might have been the 20th of January ; it was about then. Recollect no note given at the time of the sale—do not recollect whether I had heard of the burning of the Martha Washington—do not recollect when I did hear that—do not recollect when the note was made payable. I understood Cole was to wait till the returns of sales. I understood them so. I saw the bill of lading torn out of the book ; no one was present but Kissane and myself. I do not know the time of day when it was torn. Mr. Lawrence sent a young man for it in the forenoon ; the young man did not wait. Kissane was not then in. I did not know but there was another copy. When Kissane came in he took out the leaf ; he then took the bill of lading he had torn out and started off with it ; I do not know if he sat down or not ; the bill of lading was taken down to Lawrence the same day it was torn out. I was

standing close to the desk I suppose when he tore the leaf out; it was in the spring; can't tell the month: February, March or April. Do not recollect who put the book away. I was satisfied it was this bill; was near enough to see that. Kissane tore it out before he went out, after I told him Lawrence had sent for it.

I did not know Earl. Kissane did not say what claim Earl had on us or him for a loan. We were not lending money as bankers—were not much in funds; were generally getting advances on our shipments. Do not recollect his saying where Earl lived, or in what business he was. I suppose Kissane took the \$1200 out of the concern; suppose our books will tell. Do not know where he got the money. He said he got an assignment of a policy from Earl. Do not know what security he got for the loan at the time. He did not tell me why he lent the money without security. I afterwards heard Earl was salesman for Filley & Chapin or Cole. Know nothing of his having got Earl's affidavit to get money from the Firemen's Company.

I had no interest in the shipment to California. Can't say if the money from the Insurance Co. was brought into our concern or not. If it was brought in, probably our books will show it; have never looked to see if the money is there in the books.

I do not know what Kissane did with the money he had of Perkins. Do not know if Kissane has ever got the money back from Earl. Know Dr. Wood; never said to him I knew nothing of the boot and shoe shipment. I did not see the boots and shoes at all.

Mr. Stanbery here gave notice to the counsel for the defence to produce the books of Smith & Kissane.

Nathaniel R. Meader sworn.—Was acquainted with the members of the firm of Filley & Chapin; sold them goods till they failed. Am a grocer; do business one square from Filley & Chapin's store, and about the same distance from their factory. Was on intimate terms with them; was often in their store and factory in 1850 up to December, 1851; was frequently in both. Remember the time of their failure; about the middle of December, 1851. They had then a large stock of boots, shoes and leather. I saw large quantities of sole leather in the cellar of their store; was there twice. Could not say to what purposes the cellar was devoted; saw nothing there but leather then—sole leather, in a pile and in rolls, both—it was rather dark in the cellar; could not speak of the kind of leather. There was a large quantity; I noticed it lying along in rolls, from near the stairs to the back of the store and sides, in piles also. The rolls I think were piled up. I noticed bales of sheepskins in the third story; could not say how many—a good many bales. I saw Filley; he represented that they had ample means to pay their debts, if they could get time, in stock and other means. Do not recollect

hearing him say how much they owed. Am uncertain whether my impression of the amount was derived from him or not. Think they owed \$24,000 or \$25,000. Filley often said they had enough to pay.

I tried to go through the cellar without a light—found I could not get along; ran against leather—went back and lit a candle; saw large quantities of leather. Had occasion to go to the back part of the cellar. There was a quantity of boxes of boots in the store; shoes were above. The boxes were piled four or five feet high. Think there were boxes in the centre of the store, behind the stairs, on each side as you went in. There was a large quantity of boxes in the store on Pearl street. Filley told me they had sold all to Cole. I was very intimate with Filley. The reason he gave for the sale, was want of money to pay hands and meet notes in New York. Don't remember that he told me they owed Cole money. I understood that they did, but do not know whether from Filley or not; my impression is, Filley did tell me. Can't say what amount; I think their stock was worth \$20,000 or \$25,000. Filley so stated to me.

Have no knowledge of them buying white sole leather, either from my own observation or from Filley. I remember their goods all disappeared from their store in the first week in January, 1852; saw them going out on drays. Think the factory was cleaned out at the same time. I was at the store about every day. Do not know where the goods went.

To Mr. Stanbery.—Am a grocer on Lower Market street; the store of Filley & Chapin is not in sight from my store door. I was going to the necessary in the back part of their cellar, when I went there, in the latter part of December. The stairs to the cellar are in the center of the store. I came back, got a match and lit a candle. Saw a good deal of leather. Went both times to the cellar on the same business.

Filley & Chapin owed me for groceries about \$150. Was there three or four times a week about that bill. He set different times to pay. I did not get it. Know of no chance now. Filley represented his stock alone to be worth \$24,000 or \$25,000, and said there was a large amount on their books besides; and they owed about \$24,000 or \$25,000. I went up to the loft to find Filley; went there two or three times.

Another reason Filley gave for the sale to Cole was, that the river was frozen, and they were not able to ship. I had a note for the \$150; my note fell due two or three days after they failed. Before that fell due, had an unsettled account against them—a running account on my books—some \$25; never got that. I sometimes lent Filley money. Possibly I went to the store four or five times for the unsettled account. I got the money they borrowed. I had frequently sold them goods on sixty days, and when the account ran up to \$100 or \$150, would take a note for the amount.

To Mr. Walker.—They employed 80 to 100 hands up to the time of their failure. Filley was not a truthful man to me; very far from it.

To Mr. Stanbery.—Filley told me many untruths about my money. Was less acquainted with Rufus Chapin; never spoke to him about the debt. Rufus was not so constantly at the store as Filley. Saw Amasa at the store. My account was with Filley & Chapin. May have asked Rufus. He promised me. He did not keep his word any better than Filley. Know nothing against Filley's general character for truth and veracity.

Adjourned.

TENTH DAY.—SATURDAY, JANUARY, 8th, 1853.

Samuel Smith, recalled.—Cummings left the money with us in August. I saw him leave it at the pork house in the counting room. I do not think Kissane gave him any paper; do not think he made any entry in the book. I saw the bank notes counted. It was bank notes. Cummings first counted it, and then Kissane did; do not know which counted first; both counted; I did not look at the kind of money, can't say what was the size of the notes, or kind of money, or how many notes. He left it in August to buy pork, bacon, whisky and flour. He gave no instructions about prices that I heard—'twas to be purchased and consigned to S. M. Cooley at the mouth of Red river. The river was low and the things were not brought when Cummings came back—we bought nothing for him. Our cash book is at the pork house. I do not know that this ever went on. Know of no account on our books with Cummings.

Thomas Anderson, sworn.—Reside in Cincinnati. Am a drayman—have been twelve or fifteen years. Have on an average eleven drays—sometimes thirty or forty. Has been in the employ of Smith & Kissane ever since it has been a firm—was one year with L. Pugh & Co. Have had full control of their shipments as drayman. I shipped from the 2d to the 7th of January, 1852, for them 800 packages—200 barrels lard oil and 300 barrels pork—in one shipment; then 200 barrels and 100 tierces lard, and then in two lots 1200 boxes candles. I think they were addressed to James Conolly & Co., N. Orleans. I shipped some cigars and brandy marked for California. They were left on the landing opposite the Martha Washington. The receiving clerk of the Martha Washington signed the dray tickets. Shipped 150 odd packages boots and shoes on the Martha Washington. Kissane ordered me to haul the lard for L. Cole, and leave the dray tickets with Cole. When I carried the tickets to Cole's store, I saw a gentleman, a smallish man, who says to me—

"Here's a lot of boots and shoes Kissane has bought; I want you to haul them." I saw a proportion of these goods at the river—90 or 100 boxes of them there, at four or five o'clock in the afternoon. The boxes were marked "Boots" on the end, and "W. P." on the top. They were directed to California. When I was at Cole's store, I saw leather going from there.

The brandy I took was marked "Perkins, California." I knew Perkins; that attracted my attention. "Perkins" was given in full on the brandy. Think it was "W. P." on the boxes—two letters; in a diamond, if I recollect correctly. All the pork was there between four and five o'clock; one lot of 300 barrels pork, I got the bill of lading for myself. Think it was to go to New Orleans; do not recollect the consignee. When I went with the vouchers for the drays, I told the receiving clerk to mark the bill, so as to have it signed. The clerk not there, I took it to Cummings, and he signed it. Kissane handed me the bill, and asked me to get it signed. He handed me the book, and there were three bills of lading in it. There was in a letter for the consignee, and one bill for the boat, and one for the house; there were two loose, and one in the book. I did not look any farther than to see if the bill corresponded with my vouchers. One bill was in an envelope, directed to the consignee. That is the bill of lading. I had this marked on the wharf. This was about noon.

To Mr. Walker.—The wharf was full of freight; noticed leather there; paid but little attention to it. Do not recollect any square bales. They were loading drays at Cole's when I went there with the tickets. I saw boxes on the wharf; did not notice what kind.

To Mr. Stanbery.—As to the 800 packages, I give it partially from memory. I rely partly on bills made by other draymen, who exchanged with me; Mr. Parker and Mr. Rowse were those draymen. They have five or six drays between them. They gave me an account of what they hauled in dray tickets; part of the dray tickets were left at Kissane's packing-house, and part on the boat.

After the burning, I inquired particularly of these men how many they hauled. Do not recollect how many they said—not within a hundred. Kilgus & Cliff drove for me and helped me make up the list of 800 packages. Kilgus hauled part; think he told me he hauled 40 loads of the barrel freight—four barrels of lard and five of pork is the usual dray load of barrels. I asked him if he could recollect the number of barrels. He said five of lard and four of pork—I forget how many of each. Kilgus said he hauled from the steam house of Smith & Kissane. Cliff was driving but one dray. He said he hauled part of the candles part of the lard, part of the boots and shoes, part of the cigars, and part of the brandy—he could not tell what proportion of each. (Christian

Depper has gone; he was my other regular drayman.) I employed him by the week. He gave me the account of what he hauled at the time the work was done. Don't recollect how much candles nor how much lard. I summed up 1200 boxes of candles in the whole. I got reports from the draymen and made a calculation. I made up my report of the candles from the reports of fifteen or sixteen drays. There would be three loads to 100 boxes, 36 loads in all of candles. Cliff hauled the cigars. I saw one load—two cases of the size of a W box of dry goods Cliff was driving. Said Smith & Kissane gave 'em. Believe they were marked for California. He had nothing on his dray but those two boxes. Think they were marked "W. P., Cal." same as the boxes—not in large letters; an inch or an inch and a quarter letters.

Kilgus and Cliff hauled the brandy. I saw one cask on Kilgus's dray; that was marked "Perkins, California." The mark was on the head of the cask, near the chime, partly circular. I went to leave the dray ticket for the pork and lard at Cole's. The boxes there were marked "Boots" on end, and "W. P." on the top; saw the ends of the boxes at the landing; they were in a pile. Saw the tops of seven or eight boxes. "W. P." on them, on top. Have an impression they were marked also "California." Saw ninety to a hundred on the landing, and met two of my drays carrying down with them others—say a hundred and fifty in all. This was on the 7th, near night. Cliff and Kilgus were driving these two drays.

I keep a memorandum-book; settle with my employers once a week; I carry the book to the office, and they charge me what they pay me; I surrender the memorandum book to them. They pay me so much per load—same for candles as for lard. From the factory and the lard-house I have forty cents per load—from the pork-house twenty-five cents—from the river to the factory, fifty cents, to the pork-house, twenty-five cents.

Think it was on the 6th Kissane handed me the bill of lading book; think so because it was the last day of my dealing with this boat. It was a little after dinner hour. Kissane handed it to me about twelve o'clock. I got to the river a little after dinner. There were only three bills of lading in all, according to my recollection; presume the marks on the bill corresponded with those on the boxes. I put the bill of lading in the envelope—sealed it myself. There was no other paper in it. The envelope was addressed to a house in New Orleans. I threw it on the desk. This bill of lading was like the others. I did not see any instructions at the bottom of it. Did not look any further in the book. The loose bill was put in this place in the book. I left the loose bill (which was not in the envelope or book.) on board the boat. The general custom is to give the marks on the bill of lading as the packages are marked.

Have had a conversation on the street, in Cincinnati, with Kissane, a week or ten days ago; nothing was said of a tight place. Kissane asked me if I recollected doing this business, and I said I did; he asked me if I knew who assisted me—I said, “some of them;” he asked if I recollected the shipments—I said, “part of them.” He then stated he was in a difficulty about this insurance; do not recollect the phrase. He asked me if I could find my memorandum book; he said he wanted the facts from me, as far as I knew them. Do not recollect that any one else was then present. I told my men he was in a tight place, and I wanted them to find this odd man, Deppy. Nothing was said about not being very particular. I told my men to recollect all they could, and no more.

Napoleon Bonaparte Cliff sworn.—My business is casting type now in Cincinnati. I drove for Anderson in January, 1852. Hauled boxes to the Martha Washington—different kinds—dry goods boxes—six or seven said to be cigars—four large, two or three small ones—hauled different kinds of stuff; hauled thirteen casks of brandy; helped to haul some pork, lard, and candles; the candles were hauled from Smith & Kissane’s factory, the lard from Smith & Kissane’s steam-house, and the pork from their pork-house; there was some lard oil too; nothing else that I hauled. I looked at the mark on the brandy—noticed “California;” did not notice the name. We said we should like to be going with it.

The cigars were marked for California; I noticed boxes on the wharf of different sizes, generally long boxes. Saw a good sized pile there, they were loading them on board; noticed the work. They were all going to California. Do not remember the name on them. Think there were 100 boxes there. Kilgus and Deppy were the other two draymen steadily in the employ of Anderson, with me.

To Mr. Walker.—I noticed lard and pork and lard oil being put on the boat from other drays. I saw some leather there; did not notice the kind or quantity; some of it was in bundles, square bunches; there were some small rolls I think—it was going on board the Martha Washington.

To Mr. Stanbery.—The only boxes I hauled are the cigars, hauled no other dry goods boxes; had hauled for Anderson some time; am not speaking of one day, but of all I hauled to the boat. The brandy was the last haul to the boat; Deppy was with me all the time. We finished it the last night, the night the boat sailed. We hauled pork, lard, candles, lard oil. I never hauled any shoe boxes. Some of these 100 boxes were three feet long, some smaller; none were candle boxes. Recollect the word “California;” there was another mark on but do not recollect it; do not remember if the mark was on the side or top of the box. The mark was made with black paint, tolerably large letters.

Frank Kilgus (or Jelges) sworn.—Have lived in Cincinnati six years, live on the corner of William and Plum streets; haul coal for William Walker; drove a dray till three quarters of a year ago for Tom Anderson, near two years. Boarded with my mother. I had one horse and dray in charge. I was working for him in January 1852; hauled goods to the Martha Washington, took a good many things to her; we were hauling to her three or four days; hauled oil, candles, lard, shoes, or boots rather, brandy, pork. There were more drays hauling boots and shoes, we took the last two loads of boots to the Martha Washington, a man who asked me to go with him and I. They were marked "T. P. Cal." the boxes were. Hauled one load of brandy, saw a man hauling cigars. The shoes and boots were hauled from the corner of Sycamore & Columbia streets; I hauled a load from there. I have seen the dray ticket; got it signed by the clerk of the Martha Washington, and the other drayman took it along. The two last loads were from the corner of Sycamore and Columbia streets. Got a ticket for each load, had thirteen or fourteen tickets.

To Mr. Walker.—There were other drays going to the boat; I seen 'em haul lard and pork, oil, bacon, some barrels. The wharf was filled nearly to the ring bolt in the middle.

To Mr. Stanbery.—Kissane came out of the court house this morning and told me to keep ready. They called me as I was talking to him; that was all the talk I have had with him. There was another man with us, can't tell his name. Chris. the driver for Anderson, told me to go for the boots and shoes; he met me near the foot of Main street, about three or four o'clock. I was going to the factory; he was ahead of me; I followed him; there were several persons there; one man there told me to take the boxes in two loads. The boxes were marked "T. P." "Cal." "T. & P." Noticed that on the boxes; what I saw was not W. P. On the candle boxes there was the brand of Smith & Kissane's, S. & K. do not know any other marks on them, nor on the lard, nor on the lard oil; only noticed it on the boot boxes; a man marked it on the boot boxes while I was there with the dray; the shoe boxes were already marked. Some were old and some new boxes. Some were branded.—Some were marked on top, "Boots." Can't say particularly if there was an "&" between "T" & "P;" suppose it was. This was the way the boxes were marked:

Cal.	T. P.	Boots.
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Some thus:

Cal.
T. P.
Boots.

These were small boxes.

Did not see the word "New Orleans" on them. The other drayman was saying he wanted to go to California. The T. P. were the biggest letters; could not tell which was the biggest of the others. This was the way they were marked :

T. P.
Cal.
Boots.

Some had a brand mark (on the top I believe.) Have never mentioned the marks from that day to this. Saw Mr. Gallagher, and he asked me if I had shipped the California stuff.

To Mr. Gallagher.—You told me to tell what was truth and nothing but the truth.

To Mr. Stanbery.—I have never mentioned the marks from that day to this. Before I commenced loading, I saw the marks on the small and on the large boxes. All I saw were marked "Boots." It read "California." I could not tell whether the whole word or not was written out, it is so long ago; can't tell if there were three letters, or four, or six, or one.

Mr. S.—Mark them on this paper. Witness marks "K. F. O. N. I." These were the letters I saw.

Dr. Alexander Wood, sworn.—Reside in Cincinnati; have done so far twenty years; have known Kissane seven or eight years; never heard any imputation on him till this week; have known him as a patient; always esteemed him. After Mr. Perkins left for California, I had a bill against him. Either before he left or after, Kissane told me he would pay it if I would call; I put it in Kissane's bill and he paid it; think this was in Kissane's bill of January 1st. Kissane said he had money of Perkins. Kissane and Perkins roomed together some time before Perkins went away; have seen him, Perkins, acting as clerk in the house of L. Pugh & Co.

Alexander M'Cabe sworn.—Am a tanner and currier in Cincinnati.—Knew the firm of Filley & Chapin and the different members of it; have transacted business with them to the amount of \$25,000 or \$30,000; in the year 1851 sold them upper and sole leather; sold them 400 sides in September, October, and November, 1851. This was all white sole leather—sold 400 and rolled 400 more that they got from the country merchants, also white; think they had at the time of their failure, from what I have seen, 1200 or 1500 sides. I know they bought of others besides me. At their failure they had, I estimate, 1200 or 1500 sides in the factory or in the cellar of their store. I know they had a large quantity of sheepskins in bales in the first and second stories of their store. There were a large quantity of bales, some bales have twelve dozen and some twenty dozen in them, sometimes between the two. If there were 1600

dozen, there would be somewhere about 100 bales ; think they had eighty or ninety bales ; was in third and fourth stories. Filley said he bought the sheepskins of Mr. Burton. Filley & Chapin owed me about \$4000 when they failed. Filley and Rufus Chapin both said they would pay me, but told me a great many lies. I would not believe any thing they said, only I saw so much stuff in their store that I thought I might get my debt. F. said they had enough to pay me. I was after 'em every day. I had a judgment note from them. Went to the sheriff and he told me he would seize on their stock. I would have seized but thought there was plenty of stock. Filley said there was \$25,000 or \$30,000 of there. Am certain there was so much. I was after them very sharp. Any man would run hard after so much money. Was at their houses on Sundays. All their stock went away between the 2d and 8th of January, from the store and the factory. There were 80 to 100 men employed in the factory. Filley said the sole leather had gone to New York to pay some notes there, and when they received the returns I should be paid. I had endorsed for their accommodation. Knew Lorenzo and Amasa Chapin. Filley told me they were employed at \$15 a week—they had nothing to do with the business F. said. I met Burton and Filley at the store in Dec. 1851, after the failure. Burton came from Cleveland, he asked me what ailed me, said I was afraid I'd never get my pay, he said " there's plenty here to pay every body, they owed me \$1000 and I would trust them again." B. said they had \$25,000 or \$30,000 worth of stock and enough to pay everybody dollar for dollar, and he was not a bit afraid. He said he had sold them thousands of dollars worth that year. Burton said to me that the Insurance Company in New York had offered him \$8,000 on the policy, but he said Kimball had the policy, and he and the Chapins would not assign it over. This was after the loss of the steamer Martha Washington. In August last I met Burton at the Dennison house ; Burton said he was very sorry for me, but if I recanted my affidavit he would get me my money. I asked how much he was sorry for me, if he was sorry \$1,000 or \$2,000 ; I said my evidence was the same first and last. He said if I would recant my deposition, he would get me the money ; said if I would go to Scarborough's office he would talk to me ; I did not go. He would not make any proposition at all ; asked me to recant and then he would talk to me. He said I was a very curious man, and did not know what I had sworn to. He told me there were certain things in my deposition, could not say if he spoke truly or falsely. He told me he loved me and loved the Chapins.

I had another conversation with Burton at the time of the arrest. He said he had in his pocket what would send me and Ben. Earl to the penitentiary. I told him I did not care a d—n for him or the peni-

tertiary. He said he had sent the Chapins off, and I would not see them for ten years, and if I did not look out he would send me to the penitentiary, although *he knew* I was innocent. He said if I did not recant my deposition, he would take me up, *certain*. All that Filley & Chapin ever said was that they'd pay me dollar for dollar, because I had done so much for them. Nobody ever offered to pay me my account to induce me to sign my affidavit.

Mr. Walker here read from the declaration of L. L. Filley, what he says of the agreement to pay McCabe his account if he would give a strong deposition.

Witness.—That is false. Filley told me the leather had gone to New York to meet notes there, and when he got returns he would pay me out of the balance. Rufus Chapin told me the same. Filley and Rufus told me they had sold to Cole.

To Mr. Stanbery.—I gave a deposition last summer; I was in my own store; Amasa Chapin called on me first to give my affidavit. I did not go with him; I was too busy and not in good humor with him. Somebody called afterwards, I do not mind who; think I went by myself. I told Amasa I would go the next day. Amasa told me to state the truth and nothing else. A person can't mind just what they do always, if they do not set it down in a book.

Amasa was the first to call on me; I went to Mr. Kebler's office, saw nobody else there, I do not mind any other. There is no difficulty in my mind about remembering the leather. I keep books of course; I took notes; I kept an account of leather I sold them. There was a pass book between us. I sold them ten or twelve dozen sides of leather a week. The pass book lay in my shop where draymen handed it in. I looked at the pass book and our accounts before I gave my deposition. That was the reason I did not go with Amasa immediately. I got the book and examined it; I had no other book but that, no other account to examine. I sold 400 sides from the latter end of August to the first of November; sold at once to them sometimes 150 sides, sometimes 200. Do not know how many entries there were in the pass book. They would send some weeks once and sometimes not so often; they wanted upper leather to make boots. As they needed leather they would send and get it; I sold them all upper leather in June and July; they got no sole leather till the fall—they wanted red sole leather for boots, I sold them no red sole leather. Could not say if they bought the 400 sides of me in one purchase or twenty; I specially looked at the book to see what I had sold them; I sold it in rolls, tied up six sides to a roll; price 19 cents per lb. Could not tell how many rolls I sold at a time. Several times sold them one roll at a time, sometimes two; not that fall—in the spring. In October I sold them at one time fifteen rolls; sold 'em 200

sides at one time not in rolls in October. They were weighed in my factory ; I put down the weights ; do not mind any other sale—transferred this to pass book. Can't say if this was before or after I sold the fifteen rolls. Rufus Chapin and Filley came to make the purchase ; they gave me notes ; them was the ones not paid ; have them still, about \$4000 ; could not say how many notes. There was about \$800 I left at Ramsay's as collateral. I got five cents a side for rolling the leather in the rough. I rolled the 400 sides for them about the last of August—that would be in the pass book. I took a draft from the pass book on a piece of paper, showing the quantities I sold them and the times of delivery. I think I took the papers, if I did not I could not have given the deposition. Do not remember whether Mr. Kebler saw it ; do not know it ; I looked at it when swearing. I endeavored to be particular in my deposition as to the number of sides I sold them ; was particular to make the same statement as I have made now. I fixed no time in Kebler's office except just as it was ; I have fixed the time here as it really was. The deposition I gave at Kebler's office was from a memorandum from my book, made in pencil. As near as I can remember there were 400 sides I sold ; and the same number I rolled.

In July or August I began to sell them white sole leather. I had none in November or December, because there was a frost and the leather could not be got out. I did not know why they took me there to swear. Did not know it was to be used to get the insurance—nobody told me it was to get insurance. Didn't mind that Kebler told me what they wanted it for. Did not know Filley & Chapin had any insurance. Burton was the first man who told me they had insurance. I think in July.

[Mr. Stanbery.—Your deposition is dated June 14th.] Witness said it may have been in June. I know my own sole leather when I see it. I saw my own and others in F. & C.'s cellar. Was in the cellar in the month of December. Was there in cellar pretty often after the failure. Saw the stock there till after the 7th January. I had an execution against them. I did not go into the store with the Sheriff. Did not go in with Sheriff Smith and my brother—my brother watched F. & C. for me. Scott & McKenzie went with the Sheriff in December, after they failed, with a note of \$570 that I was endorser on. He would have made a levy, only for me. I heard they went to their store. The Sheriff said he would have made a levy, only for me. They knew I was good. Do not remember the Sheriff told me he could find no goods. They came to me afterwards, and I paid the money on the note. I did not see Carpenter taking his debt. I never was there with the Sheriff. My brother was with him just to see what was going on.

To the Commissioner.—I did not know they were going with the ex-

education. Did not hear they went with the Sheriff till the next day. I told Scott & McKenzie to collect the debt from F. & C. They told me they would send the Sheriff.

To Mr. Walker.—The leather averaged 15 to 19 lbs a side.

Mr. Stanbery was about proceeding with his cross-examination, when the Commissioner said: "Mr. Stanbery, I think there is no occasion to examine this witness any further."

John Kebler sworn.—Am a member of the firm of Walker & Kebler. We have acted as attorneys of Filley & Chapin as early as 1850. I remember the sale of Filley & Chapin to Cole in December, 1851. Was called on by Filley and Chapin both. They told me they had made the sale to Cole. They had already made a schedule. Said nothing but carrying out, at the end of the schedule, a sort of bill of sale. They had been advised by another party to make a sale. The schedule was of, say 6 foolscap pages. They were in my office some 15 or 20 minutes. Cole asked if they could sell, and it was safe. I said if it was a *bona fide* sale, and could be proved to be so, it was safe. The whole sum had been footed up. They were bickering about a per centage to be allowed. Cole wanted a deduction made. Notes were made out at my office, and handed to F. & C. there—and the bill of sale was handed to Cole. I never knew these Chapins as connected with the firm of F. & C. I do not remember the amount of the notes. Think the amount of the sale was about \$18,000. All the business was in my office, not Mr. Walker's. I knew Filley very well. Remember no statement of Filley, as distinguished from R. Chapin, as to the value of their assets. Do not remember any conversation about a reservation of white sole leather and sheep skins. I had no knowledge of the shipments on the Martha Washington. F. & C. did not consult us about their affairs. I did not hear of these shipments till after Mr. Mason was whipped by Capt. Cummings. The first I knew of the insurances, Cole came with the papers relating to his claim on Stephens, and said Stephens had made the insurance. At the request of Cole, I visited the Insurance Companies, and found where Stephens had insured, and that the Insurance Companies would not pay. We commenced a suit on behalf of Cole against Stephens, and garnisheed the Companies. I was called on to attend an examination of witnesses at the office of Corwine & Holt, in the case of the Madison Company v. McGregor. The first deposition was that of Helman—since then we have sued the Detroit Insurance Office, at Detroit; Earl likewise brought to our office a policy from the Louisville Office. I sent the policy to James Guthrie for collection—Adam Chapin's policy. It had been in our office. The assignment by Earl was made on the policy. I did not draw it. There was also an

assignment of Chapin to Earl. I went to the agent of the Detroit Insurance Company. The agency had been removed from Cincinnati. I went to Detroit to put the thing through. That agent told me (I called at his office) they should not pay, and that they had that day received further communications, making it clearer than ever. A proposal to arbitrate was made—he thought favorably of it, but said the capitalist of the Company was away. Subsequently, the answer came, through Mr. Scarborough, that they would not consent, and Scarborough said the other Companies interested might think it wrong for their Company to settle. We then sued the Detroit office for Cole. We have sued the St. Louis Co. on the policy to Cummings. Burton came with Kimball to my office. I knew they had come from New York. B.'s object was to put through that policy. He urged the assignment of the policy to himself, saying he was the man to put it through. B. came frequently to the office of Walker & Kebler to advise about the way of convincing the Companies. He came as a friend of Kimball, and not of the Insurance Companies. I do not remember any particular conversation, but he pressed it hard. He spoke of the almost certainty of his being able to collect \$8000, if he had the policy in his hands. I went to work to satisfy Scarborough of the validity of the claim. It was in May or June, B. came to our office. He suggested no doubt of his power to get the insurance, and was very desirous of getting the assignment. Think he made it a condition that he should have the entire control of the matter,—am not positive. I think he must have said something about getting his own claim,—am not sure. Kimball would not assign it. B. afterwards said that the stuff was not shipped.

Knowing Scarborough to be the agent of the New York office, our object was to satisfy him. Burton gave me information to discourage us till after we intimated to him that Scarborough was the man. This must have been after the whipping of Mason. I believe the first rumor of fictitious insurance was got up by that whipping. I never heard Amasa Chapin had any concern in this policy to Kimball. Knew nothing of his interest in the New York policy till I went with him to Scarborough's office. I presume for at least two months after I was consulted about the insurances, I heard nothing of either Lorenzo or Amasa Chapin having any interest in it.

In my conferences with Scarborough—the first ones—I told him he might have all the papers in our possession. I told him he might have the books of Filley & Chapin. He did not want them—did not say he did. Subsequently, I understood that he wanted the books of Filley & Chapin. I have never seen the books. Amasa Chapin left it discretionary with me to show the books. But knowing he had copied largely from books I had lent him, I advised Chapin not to hand them to him.

I know some bills of purchases were shown him. Chapin brought to our office a yellow book, with some bills of purchases pasted on. It was the book of Filley & Chapin. It contained nothing but bills of purchase, and I showed him some of the white sole leather and some of the sheepskins. Have not seen the book since that time. I was told most of the bills of purchase were burnt by Rutus Chapin at the time of the sale, but some had been stuck in this book and were not burnt. (Question as to entries in this book objected to, and the book is called for.) I do not know where the book is.

After I told Holland he would probably be arrested, he said he had left word at his boarding house to tell the officer he would be at home at meal times. For the last two or three months, Amasa and Lorenzo Chapin were apprised that Burton would arrest them. I told them they must take notice of these things or their reputation would suffer.

To Mr. Stanbery.—I never had a conversation with them about any occasion for their arrest. I never thought of any United States or Ohio statute under which they could be arrested. They laughed it off. I knew if they had committed a crime, and Burton could prove it, they could be punished. I had never thought of the particular law under which they could be punished.

I have never seen Stephens. He has never appeared to me to claim the insurance. Cole said he was not afraid that Stephens would not pay if he had the money, but he wanted this security. I appeared in the deposition business in the McGregor case, because I knew the affair would be investigated, and I went to Mr. Worthington and asked for a chance to cross-examine.

I do not know how suit is brought against the Louisville office. I sent the papers to Mr. Guthrie. Earl employed me, and I spoke to Kissane as a party interested in that subject. Believe the assignment to Kissane was after the policy was first placed in my hands. Earl took it away after it was first left. Kissane wanted me to put the matter through. I do not know in whose name the suit was brought. Have seen a notice to take depositions in the case of Earl and Kissane *vs.* the Madison office. Earl and Kissane were the plaintiffs mentioned in the notice. Kimball engaged me in his case.

I am inclined to think Amasa Chapin had spoken to me in behalf of Kimball before I saw Kimball, and before Burton came. I had been advised by Scarborough that there was doubt about the shipment, before I saw Burton or Kimball. Kimball came out to Cincinnati with Burton. Think I had never seen Burton or Kimball before then. The whole community knew of this matter. The act of Cummings whipping Mason brought the matter out, and we knew the board of underwriters had agreed not to pay. I presume Amasa Chapin came with them to my office.

The same day I saw Burton I was apprized of a contract between him and the New York Fire Insurance Company. Never saw the paper; heard there was a paper. Burton unquestionably suggested how we could prove this claim to the insurance. By witnesses, books, &c. He was earnest for proofs. The matter was entirely with me; I was getting up the proofs. It would be very natural that he should speak of bills of purchase as part of the proof; suppose he did. He never asked for any false testimony.

The Chapins said the white sole leather had been accumulated from countrymen who had brought it on flatboats and wagons, steamboats, &c., and that all the papers could not be got. Whenever a tangible question of fact was presented by Scarborough, I believe I cleared it up. Scarborough said he would like to see the books. I told Amasa so; Amasa said he was willing. I had put the pass books of Earl and McCabe into his hands, and knew he had made extracts. Chapin said they had failed and did not want their affairs exposed. I told him not to show the books. I do not call books tangible facts. Scarborough told me he had made extracts from the pass books. I do not impute any wrong to him, but I would not let any book go out of my office to have extracts made from it.

I have never seen Filley & Chapin's books myself; have never asked them for them. I learned the facts in the case from the testimony of witnesses. McCabe was one of the witnesses to prove the shipments and sales. After Burton had been some time persevering in his efforts to get the policy assigned to him, he said the goods were never shipped. He then first intimated a doubt. The only reason he ever assigned—that I remember—for believing that they were not on board was this, that he came to Cincinnati on the 7th and went to the store on the 8th of January, and did not see the goods. He thought the boat sailed on the 8th at night.

This is a note from me to Mr. Burton. [The note requesting Mr. Burton to call at the office of Messrs. Walker & Kebler.]

The editor of the "Sun" was here called by Mr. Stanbery by consent, and he testified that Lorenzo and Amasa Chapin offered him for publication a particular article and he published it. It was not read.

The Court then adjourned to Tuesday, the 11th inst., at 2 P. M.

ELEVENTH DAY. — TUESDAY, JANUARY 11th. — 2 P. M.

John Arnot sworn. — In December, 1851, and January, 1852, worked for Smith & Kissane; in their factory and steam-house; was foreman. Kissane came in one day with a gentleman to look at our steam-tanks—a short man with whiskers, a black little man. This was about New Year's, a day or two after or before. He looked at the tanks. I showed them to him. He said he had a notion to buy some, to take to Texas, I think, do not remember the place exactly. Kissane had another place with two tanks in it out to Brighton, which he wanted to sell. They had a buggy, and went off together.

From the steam-house we shipped 500 packages, in two different lots, on the Martha Washington — 300 barrels and tierces in one lot, and 200 tierces in another lot. We sent two lots, of 600 boxes each, of candles, also, on the same boat. I made most of the dray tickets; Mr. Smith made part of them. Smith had charge of the business in the slaughter-house, steam-house, and factory. He was seldom in the pork-house. The pork-house is on the corner of Race and Canal streets. The steam-house on Western Row and Maple-street; it may be a quarter, may be a half a mile between the two places—may be a mile.

This man who wanted the tanks said he would go back, and see if he could make an arrangement about some sheep, and then come back and see if he would take them. He asked me if I would go with him.—Told him I did not want to leave, but would find him a man to go. Did not see him again. We make 140, 150 — may be some days 160—boxes candles per day.

To Mr. Stanbery.—My business is to run up and down from one house to the other—from the factory to the steam house—and attend to the business. In the morning Mr. Smith would come out, and tell me what he wanted done, and I would have to tell the men to do it, and to oversee the work. We had twenty to twenty-three men, and eight or ten women and girls in the factory.

Three hundred barrels and tierces of lard, and 200 tierces lard oil, were the shipments I spoke of. They commenced shipping night after the New Year. I do not know if on Saturday or Monday. We began on the lard first, the 300 bbl. lot. We had a great many drays sometimes; they did not haul it all in one day; in hauling the first lot, do not know how long they were engaged. We had two or three gangs of drays. We had some left after the first day. It did not take all of two days to haul the whole 500. All went to the Martha Washington. I stayed at the steam-house, far off from the river. I see on the dray tickets where it went to. Did not go to the river. There are sometimes eight or ten

drays in a gang—sometimes twelve. We hauled the 300 first, and the 200 afterwards. There were different shipping marks on the two lots. I recollect what the number of the barrels and the tierces were, because it was only about fourteen days before Kissane told me the boat was burned. I had no memorandum, but only took it on a piece of paper. After shipping the lard, we commenced on the lard oil, 200 barrels; do not know the shipping marks.

Question.—How do you recollect the numbers?

Answer.—Both Smith & Kissane told me they had so much lost on the boat—same day—after we heard she was burnt. They hauled two days on the candles (the same days with the lard oil)—one lot, of 600 boxes, was marked “adamant”—one lot, of 600 boxes, “sperm.” They first hauled the 600 boxes adamant; hauled them away before we touched the sperm. I recollect the marks “adamant” and “sperm.” We had some more candles besides those we sent to Mr. Lehmer a day or two after; they were marked “star candles.” We sent to Lehmer—I do not know—133 or 60 boxes. We make even dray loads when we ship them away. I do not know if there were four or five dray loads to Lehmer. There might be a few boxes more sent away about that time to different stores. Do not remember any other shipment.

Question.—Name any other shipment you ever made, except these two of candles, and state the number of boxes.

Answer.—We sent some others afterwards—do not recollect the number of boxes. There were 600 in each lot of adamant and sperm I have spoken of. I know because I sent 'em on the drays, and took the tickets.

When the boat was burnt, nobody told me how many boxes they had on board. I did not take the dray tickets for all the candles; Mr. Smith took a part of them; I do not know how many I took myself. We took a piece of paper and marked how many were gone, and how many left. We do this on every shipment.

Question.—Do you make a return of the number of boxes of candles to Smith & Kissane?

Answer.—We do.

Smith attends to taking the numbers, and we pile 'em up. He attends to it in making shipments, when I have no time. The steam-house is across the street from the factory. I am as certain of the number of barrels and tierces of lard as I am about the number of boxes of candles.

To Mr. Pugh.—Before we made these shipments, we had, may be, 1,500 or 1,600 boxes candles.

Robert Lemon sworn.—Reside in Cincinnati, No. 37 Lower Market St.; am a boot manufacturer. In 1851 was cutter with Filley & Chapin; L. L. Filley & Rufus Chapin composed the firm; were all the members that ever I understood were in it; I had been 4 years in all with Filley; was with him before his partnership with

Chapin; do not remember when F. & C. commenced business; Lorenzo and Amasa were at work cutting alongside of where I was; they had nothing to do with the store; they were paid by the week, one \$15, the other \$16; Amasa did not exactly cut, he put the boots in the boxes—attended to that part of the business; sometimes he cut. In the year 1851, from October to the end of the year, there was an amount of business done there I never saw in any boot factory in Cincinnati; have been in most of them. From 100 to 150, perhaps more men, were constantly employed there; this continued to December, and perhaps longer; I never knew any men to be discharged; we made 75 to 100 cases Kip Boots, 10 to 12 cases of Calf per week; I knew of no falling off in the business; F. & C. dealt at their Store in all kinds of leather used in the boot manufacturing business; know of nothing else. They dealt in hats. I consider that a part of the Boot & Shoe business; most large concerns of that sort deal in hats. They had, in December, in the latter part of it, a great quantity of Sheep Skins, they had been accumulating three months; we had found it more profitable to make boots without linings; they cost six cents per pair more with linings than without; the Sheep Skins were in bales, averaging 12 to 16 doz. a bale. Up to the 7th of January, I knew they had bought a great quantity of Sheep Skins, in the factory I should judge there were 25 to 30 bales. I was in the store every day; was in all parts of it; they had more bales of Sheep Skins in the store than in the factory; they were in the cellar and garret; they had upwards of 75 bales, I think, in the factory and store. We had a large quantity of sole-leather of both kinds; in factory up to the 7th of January, there was a large quantity they bought and got McCabe to sell it; it was white sole-leather in the factory; I did once think there were 1000 sides in the store and factory; I had access to the books generally; had seen some bills of leather they had bought; had seen the leather in the store; they kept it on the Pearl Street side as you go in, and down in the cellar; this 1000 sides was white; do not know what become of the leather and sheep skins; I did not know anything about the M. Washington, understood the goods were shipped; knew of their packing boots and white sole-leather in rolls; knew that from 100 to 200 cases boots, and about 30 rolls of white sole-leather were marked ready for shipment, and were taken away, sheep skins and every thing else. I know nothing of shipments from the store, only from the factory; I saw some white sole-leather marked "N. Y.," that's the only mark I saw; I asked Filley what he was going to do with their stock; he told me they had hired me to attend to cutting, and to mind my own business; he was marking the leather with Earl. I went to borrow money once from Filley, after the shipment, and he said the goods were all burnt aboard of the M. Washington; he knew it would be all right, as they were insured, said they should not lose anything; I saw Filley about the store after the failure. Boxes at the factory were marked C., I think; presume it was in a diamond, do not know; that is the way we generally mark them; knew there was a sale to L. Cole in December; presume the state of the river was one cause of the accumulation of goods; the Fall shipments had been light, I believe the M. Washington was the first boat that went out after the river opened. The store was about the same as the factory after the shipment; there was nothing there; I should think (could not come to any correct estimate), there were from \$30,000 to 50,000 worth of goods in the store and factory. There was a larger stock than they ever had before, or than I had ever seen in any other factory, at the time of the shipment.

There were in the store more boots than in the factory; never counted them; only know what leaves the factory; should think there were better than 400 cases in the store and factory altogether.

Lorenzo Chapin left for the East the morning the Martha Washington sailed; did not see him for three weeks afterwards. I wanted to send a letter to my brother, and he left and did not take it. If he had been at the store, should have seen or heard of him; understood he had got a letter of introduction from Filley, to go and see a young lady and get married to her. I knew what he was going for, and Filley told me afterwards. The lady lived, I believe, in Philadelphia. Think he was gone nineteen or twenty days. Filley was regarded as the *boss* in the business. Lorenzo and Amasa had no more authority about the premises when the concern was Filley & Chapin, than when it was Filley alone. I know they were paid their salaries weekly.

Know A. B. Carpenter very well. I met his partner, Field, one day, in an auction store, and he said it was a pity a young man who understood business so well as I, should work at a salary. I thought so too. We arranged a meeting at the Bank Exchange, on Sunday; we did not have a meeting then, but on the next day. Carpenter said he could not give any definite answer then, as he was waiting for a man to come to town.

Field says to me, Mr. Burton and Mr. Filley have come.

Burton came in just then. Burton spoke to Carpenter and asked if he had any bills on Montreal. Carpenter said he had not, and Burton went out; said, "I am going to Montreal to-morrow." Carpenter asked me if I knew him, and said "that man knows you." Carpenter told me he had seen the documents, and the Chapins and Cheney would be in Columbus within twenty days, and they should have no one to take care of the business but me, and we would form a partnership; and if they came into the store, I should take my foot and kick them out. I said I did not think they would go to Columbus yet awhile.

We had another meeting, and took account of stock. I proposed to carry on Carpenter & Field's business on Sycamore street—to buy them out. Carpentersaid I had better not go into business yet—better have some one to stand behind the scenes and operate for me. There was \$1,300 of stock in the place, and to be paid for in six weeks. I said I had better stick to my salary. He said, "you are a young man, out of debt, and have a good character, and you can get plenty of credit from S. S. Clark, Timothy Cronin, and others—you can run all through the city of Cincinnati, and get a credit of \$10,000 or \$12,000, and Burton will get a credit of \$20,000 in New York, and then there will come a panic in this country, and you can shut down, and lay it all to Franklin Pierce." To see how far the man would go, I signed articles of partnership, and then put an article in the paper dissolving it, next day—wanted to let people know what sort of folks they were.

To Mr. Stanbery.—I was asked to give an affidavit; can't tell who asked me nor at what time. It was before this figuring with Carpenter. I can't say where I was when I was asked, except that I was in Cincinnati. I was sent up to Kebler's office; can't recollect who sent me. No man would approach me in the way of telling me what my affidavit was to be; I understood what it was to be about; knew it was about the Filley & Chapins' affair. Can't say if I went right away. Think

I went to Kebler's office by myself. I don't recollect whom I found there, it is so long ago. Burton was there one day when I was there. I went to Kebler's office only on this business; can't say whether Burton was there the day I found Kebler or not.

One of the Chapins told me I should be called on to give an affidavit; can't say which one.

I had access to the books at the factory; looked at the bills on file. When I said books, I meant the books that related to the cash paid out and the leather bought in, the wages of the Chapins and other hands. There were books in the factory and in the store; I mean I had access to the books in the factory; can't say how many there were. If a man wanted his work set down, and there was nobody else to do it, I set it down. The men kept their own pass books. Sometimes there are seven or eight men working together, and one man keeps book for the whole. There were such books in the factory.

When we bought upper leather, the bill was brought into the factory. When anything was bought at the East, the bill went to the store. Leather brought into the factory, was entered in the cash book. In the latter part of the fall of 1851, five or six of us had a hand in keeping the books. We had one book for the accounts of the hands, and a cash book for cash and leather. Sometimes things were not kept up very straight. I was in the employ of Filley & Chapins till Cole bought them out, and then all hands were transferred to Cole.

Do not know if new books were opened in the factory; were transferred to Cole; I had a new pass-book handed me with Cole's name on it; I never saw any inventory taken in the factory; saw Filley, and Cheney and Earl marking the leather, and putting it in rolls after the sale.

I did not see any such thing as persons taking down accounts of stock; mine was the cutting department; presume there was some manufactured stuff there; on the 13th Dec. saw no one taking an account of unmanufactured stuff; 100 to 200 cases of boots were marked; do not know who marked them; think they were marked on the side-walk or in the lobby; did not notice the marks till I saw them on a dray; had a full view of them; saw the mark on more than one; could not say if on one or 100.

(Mr. Stanbery tells witness to make the mark.) Here's the top of the box on this paper. Wit. (makes a diamond); presume it was a C.; can't say on what part of the top of the box it was; presume the C. was inside of the diamond; the mark was on the butt end, not on the top of the boxes; that was the only mark I saw; it was on from 100 to 200 cases I saw these marks. I helped to lower the boxes down, myself, from the second and third stories, outside; I stood in the doorway above; it was then I first observed the marks; some were marked above; I handled some of the boxes; it was not unusual to let down boxes, and I can't so well remember the marks on them. I saw people marking them on the pavement; suppose I saw the brush and cup of paint; could not tell who they were, or any of them; think some of those on the pavement were marked differently; some of them were California boots; could not tell how they were marked; can't say it was San Francisco or Sonora; can't tell how they were marked; those marked with a C, I do not know what kind they were; know those on the pavement were California, because they

were in large boxes; those in small boxes were kip, and what we call Short California boots; saw the boxes I let down afterwards on the dray; I could only see the boots on the sidewalk, when I went down to the door of the store, to get the drayman, or a drink; I got the drayman; don't know his name; I stood at the window at the side of the building, on an alley; the large boxes were in front of the store; when I went out for the drayman I saw them marking the boxes then; all the cases were marked that I let down; I never saw K—— till I saw him here; do not recollect anything about any white sole leather bought of them; believe F. and C. were always hard run for money; their hands were frequently kept out of it; know they pledged boots; know they took up the boots pledged to Nourse, in Dec.; presume they came back to the store; I did not count the large boxes; the boxes were handed off, can't tell at what time of day; think it was the 7th of January; the day before the boat sailed; did not know the name of the boat; think the boat sailed the 8th; it may have been in the evening they were sent; all the men about the place lent a hand in sending them off; all the men were working by the week.

The white sole leather was in the second and third stories; some in rolls, others in sides. The second story, over the jeweller's shop, is all in one room; the third story is all in one room. We had quantities on hand all along from November to January. Saw Filley and Earl marking some six days before it was sent away; can't say if before or after the sale to Cole. Filley and Earl did the marking; the mark was "N. Y.;" there were other initials on it. That was the time Filley told me to mind my own business; could not tell any other mark but N. Y. Both Filley and Earl were marking and tying up in rolls. I assisted in lowering down the leather into the alley; could not tell who helped me; several of the boys on hand helped me; it would not require more than three. Think we lowered about thirty rolls from the second story; let down no red sole leather. Do not know where it went to—the red leather. Did not see any at this time; it all disappeared mighty quick. We had sheep skins to let down likewise; could not say how many, nor how marked. About twenty bales were brought down from the upper story to the second story, and let down from there.

They cleared out the factory and the store after these goods were sent away. We still kept the hands; none were discharged either at this time, or the time of the sale to Cole, that I recollect. We bought fresh leather of all kinds; the hands were not idle; don't know who we bought leather of afterwards. Presume some came the next day, do not know where it came from. The factory was cleaned out of every side of leather; there is always work on hand that can't be cleaned out that way.— A man takes out his soles, uppers, &c. and perhaps keeps it a week, and in the meantime we are getting more ready. Don't recollect whether I was to work next day or not; a man does not recollect losing a day's work for a year. I remained till Cole sold to Cheney; this was about eight weeks after. Cheney was a cutter as I was, had been a cutter under the Chapins and Cole. The Chapins I believe were away awhile after they sold out; I remained with Cheney; am with him now. Recol-

lect seeing some men from New York come there; never saw Carpenter there nor Vallette. Saw Westcott before we sent off the stock, some time previous. He was there to get boots; do not know if the white sole leather was there when Westcott was, because I can't fix the time he was there. Could not tell whether he was there before or after the sale to Cole.

Know Mr. Parvin; have never told him any thing about the amount of stock Filley & Chapin had when they failed, nor represented myself to him as Cheney. I went to Parvin, or Johnson rather, his partner, to sell or exchange eight or ten dozen sheepskins we could not use. I went to a German trunkmaker who said he would take them; next day the Dutchman would not take them, and said Parvin told him they were Burton's skins, and not to have any thing to do with Cheney. I went back to Parvin and he said he did not say so. He asked if I was Cheney. I said the goods were his, did not say I was Cheney. Never told Mr. Parvin that Filley & Chapin never sold or shipped any of Mr. Burton's sheepskins.

James M'Cormick sworn.—Resided in Cincinnati in the latter part of 1851; am a boot-maker; worked with Filley & Chapin in their factory the last part of the year and after the end of it; was there till Cole came, and under him; could not tell how many hands were employed; there were twenty-seven in my room; there were hands in all the rooms. The room under mine I think was larger than mine. These men continued to work till Cole bought out. Do not know how many cases of boots and shoes were made in a week. Guess the full number of men was at work when Cole bought. Remember a shipment in the early part of January; see a large quantity of white and red sole leather and a large pile of boxes of boots and shoes; saw piles of sheepskins in bales; there was a large pile. There was white and red sole leather in the second story, could not see how many rolls. I saw it going away on drays, and young Henry Chapin said it was going to Orleans; I saw boxes going. There was a pile of white and red leather in the second story; there is only one room in that story. The pile was at the side of the wall in rolls, white and red together. It disappeared. Did not notice whether there was more white or red; did not count the rolls. Saw boxes in the same room with the leather, and in the third story. I saw sheepskins going away on drays, could not tell how many; only saw them going round the corner towards the levee. Question—How many bales? Answer—Can't confine myself to any number of bales; can't confine myself to any thing.

Mr. Walker here presented an affidavit of Charles S. Abbot. It was not read, and the question of its admissibility was postponed.

Seely J. Howell sworn.—Reside in Cincinnati; have resided there

over ten years; have generally been in the leather business; was anxious to get back into the business at one time. Filley & Chapin applied to me to take charge of part of their business. This was in the latter part of November, and in December, 1851. I was at that time frequently in the factory and store in the month of December, 1851. They had a large stock of leather, sole leather and different kinds of shoe leather. The leather was in the cellar and on the first floor of the store. Should judge their sole leather (it is impossible to give a correct estimate) was from 1000 to 2000 sides in the cellar and on the first floor of the store above. There was a large quantity of red, and a great many rolls of white. Saw some bales of sheepskins there. I was all over the factory; could not give any idea of the quantity of manufactured stock. Their's was the largest establishment I ever saw in full operation, in November and December. My information was before the sale to Cole, from about a month before their failure. Know nothing of the shipments on the Martha Washington.

To Mr. Stanbery.—My information was before their failure; I was in the police then; was anxious to get back to the leather business. I had conversations with them a month or two before they failed. Saw a large amount of leather in the cellar; did not see much leather nor many sheepskins in the factory. Was in all the rooms; do not think there was any more than what they were cutting up. Did not count the rolls in the store. Did not ascertain whether more of it was red or white.—There was upper leather in the cellar, calf skins and I think sheep skins; could not say how many rolls so as to give any idea.

To Mr. Walker.—Have had a conversation with Mr. Burton; don't remember any thing was said about Lewis Choate. He said he was backed by a cousin of his worth \$200,000 or \$300,000, and who owned two or three banks in the state of New York. Mr. Chandler spoke to me at the Neil House in Columbus; we were sitting there together. Burton came and took a seat on the sidewalk by us; he said to Chandler, "you are implicated in this thing and I am sorry for it; if I had not pursued the course I have, I should have been implicated myself." After the rest had gone, Burton and I sat there talking, and that was when the other conversation took place about his cousin; after they went out, he said nothing about his cousin's being interested in insurance. He said he had got into this affair and was bound to carry it through—said if he got out of money his nephew would furnish all he needed.

To Mr. Stanbery.—Do not think he explained how he was connected with the business.

Andrew Duppler sworn.—[His bill to Kissane of brandy is shown to him.] This is my bill. Mr. Kissane came to me and asked me if I had any brandy. He said he wanted some to send to California to Mr. Per-

kins. I sold him this bill. Guess the brandy was delivered on the 5th or 6th of January, 1852. I saw the brandy on a dray—did not notice the drayman. Guess the mark was "A." "Wm. Perkins, California," on the head of the brandy.

To Mr. Stanbery.—I knew Mr. Perkins. I told him I had brandy. I had it not on hand at the time. Got it of Mr. Ward, between 5th and 6th streets, on Main st. I bought 800 to 1000 gallons—13 casks. He did not deliver it at my place. I did not give Mr. Kissane an order for it. I had the dray ticket made out. The owner of the brandy marked it. I told him to mark it, "Wm. Perkins, California." I saw two dray loads of the brandy, and saw the mark on the casks. Guess there was an A. Did not hear of some of the casks coming back, and not being taken on board.

Question.—Did K. give you a memorandum of mark, or did you carry it in your head?

Answer.—I had the memorandum of the mark on a piece of paper.

The affidavit of Mr. Abbott, the Editor of the Cincinnati "Nonpareil," is now presented by Mr. Walker, who says they offer it for no other reason than because they can't afford the expense of summoning him from Cincinnati. The expenses of witnesses had been excessively great.

The Commissioner.—That expense will fall on the United States, if affidavit is made that the defendants are poor.

Mr. Walker to the Commissioner.—I asked your Honor the other day if we could have the process of the United States for our witnesses.

The Commissioner.—I understood you to ask if I could make an order. I answered I thought I could not.

Mr. Stanbery.—I have no objections, provided it is understood the door is not to be opened for the admission of affidavits as evidence where witnesses could be got here.

Mr. Walker would give no pledges.

Mr. Walker adds: I will not ask for the reception of the affidavit if the United States will pay the expense of the bringing the witness in person.

The Commissioner.—If the witness is in Cincinnati, I think he should be brought.

Mr. Pugh says: "I offered an affidavit, a week ago, of a witness who had been summoned for the United States, and refused to stay, and now I want to know if the United States can read affidavits, and the defence not?"

Mr. Stanbery.—I never argued for the reception of affidavits, except *ex necessitate*. If the witness is sick, we are willing to have his deposition taken; but we want notice, if that is practicable, to cross-examine the witness, and will attend,

Mr. Pugh.—A week ago, the gentleman showed us an affidavit of Mr. Carson, and two bills of lading annexed, and he is in Baltimore. I withdrew all objection, and allowed it to be read.

Mr. Stanbery.—The shipment to which that related had been proved by the defence. There must be something behind this immaterial affidavit of Mr. Abbott to induce all this exertion. I have not objected to evidence of the contents of their own books, when the books were not here, after they had had notice to produce them. I have endeavored to make as few objections as possible; have been desirous not to apply the strict rules of evidence, but must object to the defence proving their case by mere affidavits, where the affiants can be had.

The Commissioner.—I have always thought the rule improper, that the United States should not bear the expenses of the witnesses on both sides; but it is the rule. There is a reasonable discretion with the Commissioner about the admission of evidence, but gentlemen must understand perfectly well how far that discretion goes. When the witness can be had, he must be produced.

Adjourned to 7, P. M.

EVENING SESSION, 7, P. M.

Capt. Charles Kendrick called and sworn.—I saw the Martha Washington the day before she left, and the day she left the last time. I had been trying to buy her; went back late in the evening. I offered Cummings \$10,000 for her. He said he wanted her for his own use, and meant to build a new boat for her engines. Her guards were about 18 inches above water when I saw her. The sun was a half an hour high. I saw boxes on the guards, and bbls. of pork. Noticed drays coming down loaded with leather. Holland had his men out and carried the leather aboard. I noticed shoe and boot boxes about—a row of candle boxes as high as my head, and across the social hall inside. I was back in the engine room; it was full of freight—lumbered up—the freight was not stowed.

To Mr. Stanbery.—Know John Brown; never knew him till after the arrest of these men. Went to see him at Mr. Walker's and Mr. Kisan's request. I saw the candle boxes on the 7th of January. On the 6th, I saw a heap of freight of all kinds; saw pork and lard; boxes were on her on the 6th. On the 7th, noticed the candle boxes on the boiler deck and in the social hall; they were right across the hall—there was a passage on each side. It was very much lumbered up in there. The sun might have been an hour high on the 7th, when I was there. Can't say how many candle boxes I saw. Think there were over fifty in the social hall. On the 7th, noticed the leather as I was standing on the

gangway plank. The drayman wanted to throw it down on the levee. Holland said no, and they carried it on and threw it down the forward hatch. I could not tell how long I stood talking there. Saw deck hands and firemen take the rolls of leather. Do not know how many rolls. Did not notice the marks.

Reside in Hamilton county, at what is called Ludlow's Station, in my wife's house; since I was married—about eight years—have lived there. I offered Cummings for the boat \$5,000 cash and \$5,000 in sixty days, with my father-in-law for security. Had just been wrecked out of my boat. Was cheated out of my insurance by the Knox Co. Insurance Company: Mr. Morse, who was there, was the man I had to talk with about the business. He was in the concern. The company failed, and paid nothing, and took the money for the engine and boiler saved besides.

I did not offer Cummings anything for his freight. My father-in-law is John Ludlow. Nobody was by when I made the offer. Ludlow went down with me on the boat. Knew I was going to make the offer; was not by when I made it. My father-in-law offered me the \$5,000 cash I offered Cummings. Have not bought any boat since; because I had afterward business of my father-in-law's to attend to. My father-in-law resides between Cincinnati and Carthage; he is a farmer. He does not trade much. I do not know where he had this money, but know he always can get it when he wants it. Any body who knows him knows he is good for almost any amount.

To Mr. Walker.—Mr. McGregor told me the Martha Washington would carry 700 tons, and Irwin said 650; I thought 650.

Albert M. Helman sworn.—I reside in Cincinnati. Was in Filley & Chapin's employ to December, 1851, then in Cole's. Had been with Filley from July 26, 1849, till Filley & Chapin began business; was with them till they sold to Cole, December 15, 1851. They employed me as book-keeper, but I did a little of everything. They had as much to do with the books as I had. I attended to the out-door business; made sales and purchases for them. In the latter part of the year 1851, they dealt in boots, shoes, leather, hats, caps, and all sorts of findings for boot-makers. They did a very heavy business; made from 80 to 100 cases of boots per week. The best month for selling is October. Before they sold to Cole, the river was very low, and they could not ship to Louisville, where they had been accustomed to do a great deal of business. They had not many goods at Louisville at the time of their failure. They have had as many as 230 men at one time in their employ. In December, 1851, they had from 220 to 225. At the factory, there were several superintendents. Lorenzo and Amasa Chapin were there—Lorenzo superintended the cutting department, and Amasa

the packing. One of them had \$15 per week and the other \$15.38. I have paid them myself. Filley told me they were not partners in the concern. Filley & Chapin told me at one time to see what stock they had on hand. I made an estimate of the business they had done up to the last of November, 1851; they did upwards of \$90,000 that year before taking the stock. They wanted me to take account of stock; Amasa helped me at my request. I estimated it at \$33,000, not including tools and fixtures; that was a rough estimate made the latter part of November. Think it is rather under than over the true amount. Filley told me the debts were worth \$35,000 or \$40,000. I supposed the stock and debts would carry them through. The \$33,000 did not include the debts.

I remember Lorenzo Chapin going East, after the sailing of the Martha Washington. I had backed several letters for Filley and for Chapin to a lady at Philadelphia. Filley told me Chapin had gone to marry her. I had been gone two or three weeks. Went about the first of January or last of December, on a collecting tour; returned about the 13th Jan. Lorenzo came back a week or ten days after I got back. Heard Filley repeatedly say he was going to ship white sole leather and sheepskins to the East. This was before they failed. I know we had sole leather—we had it in the roll in the cellar of the Main street store, and in the factory. There are six sides in a roll generally. The sheepskins were in the loft, and, if I mistake not, some in the third story in the factory, and some in the cellar of the Main street store. Presume there were near on to 200 rolls altogether. There were over a thousand sides on the 1st of November, and they bought after that.

When I made the estimate, there were over 1,000 sides. They bought it off steamboats, canal boats, flatboats, and wagons, and wherever they could buy it, on time, on their notes. Filley was always on the look out for white sole leather. They made some purchases after November 1st. They traded boots and shoes for white sole leather. They had a very heavy lot of sheepskins on their hands, done up in bales—presume there must have been 1,400 or 1,500 dozen skins on hand. They bought of Burton 350 or 400 dozen. I asked Filley what he was buying so much white sole leather for. Filley told me he thought he could make money by shipping it to the East to some one to watch the market, and pay the firm's notes there. There was no great diminution of their stock from the 1st of November till I went away. The river had been closed some time. When I returned, the stock had been taken away; there were left only 100 or 125 boxes full, or partly so, and a great quantity of empty boxes. Filley said they had shipped all the leather and skins they had to New York.

I knew of the sale to Cole the time it was made; it amounted to \$18,000, or a little over. Filley had told me he owed Cole between \$3,000 and \$4,000. Filley did the business with Cole chiefly. Filley made the invoice of the sale; 'twas in his handwriting, and he handed it to me. Cole gave some notes for the balance, after deducting what they owed him. There were some notes given; do not know if the payment by Cole was all notes or partly cash.

All the bills of purchase from the East, I pasted into the invoice book of Eastern sales, and the bills of the home purchases I filed away.—Rufus Chapin burnt these; they were in the way of Cole, and in my way. Cole complained they were laying around in different places. This was shortly after the sale to Cole. Rufus Chapin gathered up all the bills he could find, and I helped him. He carried them to the store, and began burning them. I asked him what he was about, and said he ought not to burn them—he might want them—creditors might make a difficulty with him, if these vouchers were out of the way. He said he did not know what to do with them; had no place to put them, and he guessed there would be no difficulty.

At the sale to Cole, there was some stock in the rough. The firm was in full blast; had been accumulating manufactured stock. I was there when they got news of the burning of the Martha Washington. Filley, Adams Chapin, I, and two or three others were sitting in the store, at the corner of the desk. Chapin went out, and when he came back said that the George Washington or General Washington was burnt up; said he got the news at a printing office; some one said he guessed it was a mistake; Chapin said he might be mistaken, and would go to the office again. He came back, and said that it was the Martha Washington. Filley said he guessed it was a mistake—then said he had considerable leather on board the Martha Washington, but it was insured—the stuff might as well burn as his creditors get it. The last time I saw Filley was in March.

He said they should not lose anything by the burning. I never saw the protest of the burning of the Martha Washington. Filley told me he had it; he took it East with him; he said he was going East, and was going to take it on with him; said something about going to arrange some insurance business. This was February the 7th, I think. I know he did take it on.

To Mr. Stanbery—I reside now in Cincinnati, in the employ of S. F. Cheney, in the same building that was occupied by Filley & Chapin; could not tell what his stock is now; I have been here two weeks; they had been working it up pretty fast; I am cutter in the establishment, and attend to Cheney's books; I was employed as book-keeper of F. & C. Filley and Rufus Chapin made entries in the books; the other Chapins may have made entries also; F. & C. had a ledger, sales-book, cash-book, day-book and invoice-book; they had no letter-book; had a bank-

book and a check-book ; had a book, also, with the names of their customers in it ; in the sales-book were entered the sales that occurred in the store ; the books answered for the store and the factory partly ; there was a ledger kept in the factory ; also a work-book and a cash-book ; there was no day-book in the factory ; in the work-book was entered only the work the men did ; not every man ; some men kept pass-books ; in the cash-book in the factory were entered the cash paid the hands ; and there might be, also, some entries of purchases of leather ; they transferred to this ledger only the accounts of some of the clerks ; do not know what was done with the books ; do not know what has become of them ; believe I saw the ledger and day-book in a Squire's office a little while ago ; the last time I saw the other books, I do not know ; think I have seen them since the sale to Cole. It appears to me I saw them in Cole's store, in the safe ; think I saw Rufus Chapin put them in the safe ; do not recollect how long after the sale ; think he took them at the time from the second story of the Main street store ; think Cole let them have an office there on the second story ; I do not recollect if Chapin brought them all in one armful ; I was standing behind the desk writing ; Cole had a new set of books ; I was engaged on them : I do not know whether the safe was their own, or whether they sold it to Cole ; the safe stood open in the day time ; I was in the habit of going to the safe daily, and putting Cole's books there in the evening ; I do not say this was the last time I saw them ; said I did not recollect the last time ; think I have seen one or two of them since ; the last time I saw them, I do not know when ; I saw the ledger and day-book since in the Squire's office ; I do not know where I last saw all the books ; saw them all together when they were put in the safe ; 'twas in the evening ; do not know how soon afterwards ; I went to put my books in safe ; presume they were in the safe the next morning ; the safe was locked the next morning, and I could not unlock it ; Filley came in and told me to go to the Post Office, and I gave him the key and went, and when I came back again the books were gone when Cole's, and Filley's, and Chapin's books were all in, the safe was pretty full ; when I came back from the Post Office I found Cole's ledger about half out of the safe ; F. & C.'s books were gone ; do not know who was in the store when I got back ; I was angry at whoever had thrown my books round that way ; Amasa brought the ledger and day-book so the Squire's office ; I went to the office to get his help to collect a letter bill of F. & C. ; up stairs they had stove and desk ; that was the place they reserved to do their business in ; they had some of their papers there ; I was present when the bills were burnt ; I do not know if Cole was there, or any third person ; do not know if any Chapin was there except Rufus ; Cole occupied only one room in the Pearl street store ; it was there the bills were burnt ; Cole told Chapin to take them away in my presence I think a little before he burnt them ; when Cole asked Rufus to take them away, Rufus said he had no place to put them ; did not think they would be of any use to him ; they were in the desk, and in the drawers of the desk, some in the safe ; they were all their old papers in the store ; I do not know that they removed any ; Rufus went to work, and I helped to collect them, after Cole told him they were in the way ; think it might not have been immediately after Cole told him to take them away ; Amasa Chapin assisted me to take account of stock about the last of November ; we began in the store ; did not enter the inventory in any book ; I carried a piece of paper in my hand ; I gave the paper to Rufus Chapin ; can't remember how many rolls of red

sole leather there were; it was mostly in sides; think there must have been 1000 sides in all; more white than red; the white was in rolls; we valued the white at 19 cts., 18½ to 19 per lb.; the red at 14 or 15; we valued the boots; we had some as high as 60 dollars per case; had Hungarian at 36 to 38 dollars; they range from \$25 to 38; we valued the sheep skins at the price paid for them, \$2 75 to \$3 25, or whatever was paid. I did not assist in making the inventory of what was sold to Cole; there was an inventory taken then; do not know who took it; it was in Filley's hand-writing; did not see the parties engaged in taking it; can't say how often I talked to Filley about shipping white sole leather and sheep skins to the East.— It seemed to me right enough to ship white sole leather, but I could not understand about the sheep skins; have never known sheep skins shipped to the East; they were short of cash; they bought leather of McCabe; do not know that I can name another they bought of.

Mr. Stanbery—Name a man. Witness—I am not posted up on the men they bought of; I do not know that I can name one.

Mr. Stanbery—Name any body but Burton they bought sheep skins of.— Witness—They bought out of town; do not know of whom they bought; I was present at the time of the sale by Burton of 300 or 400 doz.; was about the store; know how much he sold them from the bills I saw from Burton to them; Filley handed me the bill immediately after the sale; I was at the desk; think they were bought about December 1st; believe I drew notes for the amount; filed the bill on the files with our general bills; do not recollect the amount of the notes; there were two at any rate, perhaps three. Burton was to lift one of the notes himself. It is frequently done, that a man sells goods and agrees to pay one note himself. Burton was to pay this note and renew it. B. went out and got the money on it; F. & C. were to pay it finally, I presume. I do not know any one else who would pay it for them. I do not know that 182 doz. were not sold by Burton. They were sold.

There was one bill for 350 or 400 dozen. Think the notes were signed F. & C., payable to Burton. Have never seen that bill since. Gave a deposition about this business; do not know in what case; in Kebler's office I gave one, and one in Corwine's office. I do not know what the first one was about; that was in Corwine's office; do not recollect what I did there; recollect giving the deposition; thought they were arresting me, and was scared. When I first heard of the destruction of the boat, Adams Chapin came in and said a boat of the name of Washington was burnt. Filley said he did not care if it was the Martha Washington; said the goods might as well burn as the creditors get them. He spoke of insurance. I said I guess it must be a mistake. This was in the evening about dark. No hands were discharged when the sale was made to Cole; a few may have quit. There was no great difference in the amount of business done afterwards. I left the last of December; the hands were there then. When I came home, they were not at work; do not recollect that any of them were. Work was stopped. Do not recollect when they began again. They were not entirely out of stock when I came home. There might be some kinds they were out of. Did not understand how long they had stopped work. Filley said Cole had sold boots and shoes to other people; he did not say to whom; mentioned one; said he had sold some to his brother; he was in San Francisco; named other men; can't recollect just now. Kissane was one; do no

recollect the amount sold; think he bought a pretty large amount. Some were to go up Red River to Schooley, or Cooly, or some such name—some to G. W. Stephens. About the beginning of February, I do not know if I was at home; don't recollect any shipment to Louisville at that time. F. & C. stored some of the stock; sent some to Louisville; some to auction houses to raise money on.

They had a contract with B. F. Baker, at Louisville; they were to ship him 25 cases a week. This order was filled, and concluded on the first of September '51. They agreed to deliver five hundred cases to Baker & Co. They never told me they had not boots and shoes enough to fill the contract with Anderson; I knew better; knew they had more than they could sell. I know Capt. Cummings; have seen him very often about the store of Filley & Chapin long before they failed, a great while; may have seen him in the spring, or when they first took the store. He was there before the M. Washington sailed.

I never knew Kimball till he came here; have heard of him; never recollect seeing him till I met him here. Have seen Holland once or twice after the M. Washington burned; think he came and inquired for some one; he did not stay more than a minute. Was told it was Holland at the time; did not recollect seeing him more than once or twice.

Think I got acquainted with Nicholson before the boat sailed, on board the steamer M. Washington. Before I went away I went down to see Cummings. In the fall before they failed, he had made C. & F. an offer, through me, to build a factory, and several dwelling houses for their hands, and rent to them. He made the offer in writing; no price was fixed; think he gave it to us in the store. I do not know why he made it through me, perhaps he thought I could figure better with them. He authorized me to make the contract for him partly. I spoke to Filley about it; asked him if their expenses were not very heavy. He said "yes;" I told him I knew a man who would build a factory, &c., for them, if they would come up to their contracts. He said they were paying very heavy rents, and if they could get out of the city it would be better for them, and all hands. I went down to the M. Washington to revive the talk about these contracts; she was lying somewhere between Main and Sycamore Streets; I did not see Cummings, I inquired of Nicholson where the Captain was. He was sitting by the stove. Said he was then Clerk of the boat.

I knew Cummings was going away and expected to be gone some time, and that if I got the contract concluded between Cole and Cummings, I should put money in my pockets. I was going to see if it would answer for Cole to take the same factory. Cole had not told me to go. I went to the levee because Cummings had told me he had bought the boat. It was evening, not dusk. I never take notice where I go on any business of anything, but my business. Did not notice the freight about the boat, or on board of it. The steamer started the next morning.

I do not know the day I left Cincinnati, it was about the last of December or the first of January. I went to Hamilton or Dayton; do not know if it was before or after New Year. I took some boots and shoes to Lexington to sell. I think it was after the sale to Cheney. I think I went for Cheney; can't fix the time. I sold to—I forget the name of the firm. Sold to a man by the name of Zimmerman. I did not tell him the goods came off the M. Washington. I think I took them on

the "Diana." I did not send them by express from Louisville. Took some of them from Frankfort. I went to a great many places, while I was away.

To Mr. Walker.—They were bound during their contract with Baker, to send to no one else in Louisville. By the terms of that they could not have sent to Anderson. Whether they did or did not send to any one else there I do not know. The statement in Filley's declaration (read by Mr. Walker,) that Adams and Lorenzo Chapin got me drunk before I gave my deposition is false. Lorenzo never asked me to drink; Adams did not ask me to drink; I did not get drunk.

Adjourned to the next day at 9, A. M.

TWELFTH DAY.—WEDNESDAY, JANUARY 12th, 1853, 9, A. M.

Seeley J. Howell, recalled.—In the conversation with Chandler, Burton said to Chandler that he did not himself believe he was guilty, and he never would have been implicated if it had not been for others.

To Mr. Stanbery.—This was after the trial commenced, 4 or 5 days ago—before Chandler was discharged.

Benjamin W. Kimball sworn.—I am a brother-in-law of Capt. Cummings and the Chapins. I heard of the Martha Washington may be the 20th, between that and the 25th of January. First saw the protest at Owego near the middle of February. L. L. Filley brought it to me. From the 12th to the 20th of February he brought it. I had been to New York to see the Insurance Companies, and make the insurance. I had a conversation with Filley in New York city, at the Pacific Hotel. After receiving the protest, and calling at the Insurance Office, I saw him. Had no conversation in particular at Owego, as to the protest. He wanted me to call at the Insurance Office and get the money. I called and had a conversation with them. They felt disposed to quibble; suspected it was not right, and that the leather was not shipped. Told Filley the conversation. He said it was singular; told him I knew nothing about it till I received the bill of lading. I wanted him to tell me the facts. He said it was all right; the leather was shipped. I requested him to send me the bills of purchase and other papers to show the Insurance Company that it was correct. I had a letter from Filley, dated at Cincinnati, after returning home. I have not got that letter; he told me the shipments all through was correct. Think he said he had seen part of them shipped or marked. I requested him to get the bills of purchase to satisfy the Company it was all right, and he promised to do so; he gave me the protest and went across to Ithaca, saying he was going to see his father, and would meet me in New York; I have never seen him since.

Filley & Chapin were indebted to me at the time I received the papers \$1450 besides the \$125 insurance I paid. They owed me \$1450 for money lent. I lent them \$950 in July '50, and next \$500 in October. Filley told me the object of the shipment; said it was first to indemnify me for the money I had lent them; and then to keep it from their creditors. He said nothing about expected profits or any other expectations, but said it was necessary to ship it, to keep it from their creditors. Do not know that he said anything about the solvency of the concern. I am a brother-in-law of the Chapins. Mr. Cummings married the Chapins' sister.

The first I knew of any of these affairs, was that I received the bill of lading; and all I know since is by conversation with others.

Filley said they had sold out to Lyman Cole, but did not sell the leather and skins. He said Filley & Chapins owned the leather and skins—mentioned no one else as having an interest in them. He mentioned that they were short of funds, I think, as the reason for the sale to Cole. I understood they could not carry on their business. He mentioned something about the difficulty of making sales of the goods, or of getting them to market; said the river was frozen, or had been, and sales were slack.

First saw Mr. Burton somewhere near the first of April or the last of March. It was in New York, (after I saw Filley.) I had known he was there; Adams Chapin told me. Adams introduced me to Burton. I called on Burton. There was a conversation regarding the policy. Burton wanted to know if I held it; told him I did, and handed it to him. He asked if I had had a difficulty in getting the money, and I told him "yes." He asked why they were not disposed to pay. I told him they felt there was something wrong in the shipments. He thought there would be no difficulty at all in getting the money. He said he knew enough about the shipment of the leather, or that they had the leather on board, to satisfy them; and if I would transfer the policy to him, he would get it; said he did not know much about the sole leather; he knew about the sheep skins, he said, but the sole leather he did not know much about. I never agreed to assign it to him. In a conversation afterward, he said there was an offer made him by the companies, jointly. He said once he had \$8,000 offered him for the policy, and at another time \$6,000. Thought there would be no difficulty in getting \$8,000. About the first of May, at Owego or Deposit—(at Deposit it was,) he said he had had an offer by the company, to investigate this matter. He came there and wanted me to pay him \$1,000 for Filley & Chapin. I told him I had nothing to do with Filley & Chapin. He said he wanted it and must have it; I refused. He said he had had an offer from the company if he would look into the matter, and if I did not pay, he must accept their offer, and draw on them to cash a draft that fell due about the first of the next week. This was on Saturday. The offer he spoke of from the companies was \$3,000 cash, and twenty per cent. on all the policies he could upset. He said they had made him that offer, and showed me a document which he said was the contract. He stopped with me from Saturday morning to Monday. I looked at the paper but did not read it, though I think he said it was drawn up by the attorney of the Mutual Insurance Company in New York. It was not signed.

Burton said he had sold Filley & Chapin, within the year 1851, between 2,000 and 3,000 skins—I mean dozen.

To Mr. Stanbery.—Before I went to Owego I resided at Deposit. Before then, at the Narrows, by New York. Once resided at St. Louis; was in partnership there with Mr. Balcomb. While in St. Louis, Balcomb and I received goods of the Chapins' house of 1845, or 1846, and accepted drafts on them. I was then related to them. About that time I got acquainted with Capt. Cummings—in 1845, '46, or '47. At St. Louis, while with Balcomb, I was in the liquor business; that was all the business I was in while there. There was a bowling alley connected with our establishment; it was a place of amusement; I suppose our wh establishment might be called so.

I recollect going to the office of the company. I had the bill of lading and bill of sale with me. There was a letter from Filley & Chapin attached to the bill of sale. Those papers are with a lawyer I employed in New York; his name is John Newhouse; think he has all those papers. I left New York, to come here, on the 29th of last month; I was telegraphed for from Cincinnati; Mr. Kebler telegraphed to me; I got it on Wednesday, the 29th Dec.; have been here ever since; have made no attempt since I came here to get those papers; do not know that I have told any one where those papers were; do not recollect that anybody has asked me, since I have been here, where the papers are; have made no effort to get them; the letter was not attached to the bill of sale when I gave it to my lawyer; I tore it off for Mr. Burton, in New York; he wished to see the letter; it had been doubled over and was very much worn; the bill was almost detached at that time; I then handed him the letter; he handed it back that or the next day; he wanted the letter to carry to the Insurance Company; I do not recollect that I covered the letter with my hand at the insurance office; I do not recollect that Cole's name was mentioned in that letter; that letter is with my lawyer or at my house; this invoice had not Lyman Cole's name on it; it purported to be from Filley & Chapin to myself; it was dated about the 6th of January. 26,000 pounds of white sole leather, and 1,600 dozen of sheep skins were mentioned in it. Sheep skins were invoiced at \$3 per dozen; the leather at 20 cents per pound. I received the invoice at Owego. There was no letter except that which was attached to the bill of sale. The bill of lading came with it. Think I went to New York the day after I received those papers. Think Lyman Cole's name was not on any of those papers. I proposed to insure this property as my property; never said I had an interest of only one-third. I told the President and Mr. Tappan that Mr. Cole was interested. I did not tell them any one else was interested. I told them Cole and I owned it, jointly. Mr. Cole did not own anything in it. I owned \$1,450 in it; \$125, the amount of the premium, I paid. The reason why I told them Cole was interested, was on account of Filley & Chapin's creditors. I first heard Cole's name when I received the bill of lading. Then I heard that Cole had bought out Filley & Chapin. I heard it by a messenger who was going from Cincinnati to Philadelphia—Lorenzo Chapin. I did not say at the Union office that I owned one-third, Cole one-third, and others the balance. The first time I saw Cummings was in the year 1851; can't say where. He was East in the summer of 1851; he called to see me. In 1852 he was at my place, in June, 1852. Do not know of his being at Deposit early in that year; did not see him there; had not seen him before May, that year. I first heard of the burning of the Martha Washington somewhere about the 24th, 25th, or 27th of January. I heard of it by a letter of Mrs. Thayer, my wife's sister, to my wife. Mr. and Mrs. Thayer went to Cincinnati from Massachusetts, to see their friends there. Mrs. Thayer being a sister of my wife, when she got there she wrote, and merely mentioned the fact of the burning of the Martha Washington. I saw it in the New York papers, the next time I saw it. I do not know that I had any news of it by letter till Filley came on. Mrs. Thayer only said the Martha Washington was burnt. I do not know that I ever read the letter; either read it or heard Mrs. Kimball read it. Mrs. Thayer said it was lucky she had not got to Cincinnati before, or she should have gone on the boat. She stated no particulars of the burning; did not

name the place where the boat was burned. I did not receive a telegraphic despatch about the burning; could not say I wrote to New York then.

Mr. Stanbery.—Did you write this letter?

Kimball.—Yes sir.

[Mr. S. here held up before the witness the following letter, and then, without allowing him to read it, handed it to the Commissioner.]

“Owego, January 28, 1852.

“Union Mutual Insurance Company:

“Gents: I have this day received news of the burning of the steamboat Martha Washington, on the Mississippi river, a short distance below Memphis, which is the boat the leather and sheep skins were on, that were insured by you on the 12th inst., from Cincinnati to New Orleans.

“The extent of damage done to the leather and skins, I have not been apprised of, but I presume it may be a total loss, as I am informed the boat was entirely destroyed.

“You will confer a great favor by advising me of the proper steps to be taken by me, in regard to the business.

“The boat was burnt on the night of the 14th inst.

“Yours, very respectfully,

“Owego, Tioga Co., New York.”

“B. W. KIMBALL.

Could not say I wrote to Cincinnati then to enquire about the matter; presume I wrote to Cincinnati; if I did it was to Filley & Chapin; should not think strange if I wrote to Cummings; if I addressed him at all, I addressed him at Cincinnati; presumed he would be there; can't say I did write.

Mr. Stanbery.—Is this your letter?

Mr. Kimball.—(Identifying another letter)—Yes sir; should presume it was. I was looking for letters from Filley & Chapin, or Cummings; knew he or they would write me.

Did not tell them at the insurance office in New York, that I had been to Ohio and purchased the leather. I insured to New Orleans.

Mr. Stanbery.—Did you tell them you did not know the name of the consignee at New Orleans?

Witness.—I think I told them the name was on the bills they had before them—it was Wright & Co. I insured to New Orleans, only because that was as far as it was going on that boat. The reason I did not go any further was, I was not familiar with business, and did not know but I might make a different disposition of it. I took no steps to insure it any further. I presumed the property would come to New York. I did not know they would insure till they knew what boat or vessel it was on. I told Mr. Tappan I did not know what disposition would be made of it. Should not think strange if I told him I did not know but it might be sold in New Orleans. I had given no instructions to sell it in New Orleans.

Mr. Stanbery.—Who did you suppose would sell it there?

Mr. Kimball.—I had not given any instructions to any one. I may have casually made that remark.

Mr. Stanbery.—What was the reason you did not insure the goods all the way to New York?

Witness.—The reason why I did not insure round to New York?

Mr. Stanbery.—Cannot you repeat it?

Witness.—I have told you once. I can repeat it again. I told you the reason why I did not get it insured round was, that I did not know enough of insurance to know they would insure without knowing what boat or vessel the goods were in. Another reason I may have mentioned was, that I did not know but they would be sold in New Orleans. I did not write to the consignee at New Orleans to insure; had made no preparations; had no expectation of going to New Orleans myself; calculated to insure at New York; made no attempt to do so. Do not know at what time the goods would have got to New Orleans. I presume they would have got there in January at some time. Mr. Tappan did not express surprise that I did not insure to New York. I presumed they would not insure any further than New Orleans. Did not ask them if they would. Mr. Tappan did not ask me why I did not insure to New York at that time. There was very little said at that time. After the burning, I first saw Filley in the month of February, some time from the 12th to the 16th, in Owego,—from 10th to 12th, or somewhere along there—am sure it was in Owego. Owego is 60 miles from Deposit. Received Company's letter from Filley after that time. Do not know what has become of it—suppose it is burnt, or something. I think I wrote to the Insurance Company from Owego or Deposit. Went to New York the week after Filley gave me the protest; saw Filley round at different places in New York; saw him at the Pacific Hotel. I saw Adams Chapin in Deposit, or Owego, about this time, before going to New York. We did not agree to meet at New York. He was going to New York. I do not know what his business was. He wrote me from New York to come to New York. The letter was about the insurance. I have not the letter with me. I tore off the invoice in New York; I think at the Pacific Hotel. I showed Burton the policy in New York. Do not know but he saw all the papers; think he saw the policy at the time, if I recollect right; think I showed it to him; can't tell anything about it; presume I did. I came out here after that. Adams Chapin agreed with Burton to go home, and have the papers sent on—affidavits, or some papers, to show the shipment of the leather. Think Adams appointed a time, either to come on, or send those papers. Filley had agreed to send me the papers. Sometime afterwards, I got a package of affidavits from Filley & Chapin. Think I showed them to the Company in New York. I have forgotten whose they were; there were only two or three of them. They are in New York with the rest of my papers. Can't tell if Filley or Chapin sent them to me. I came

out here in May some time; came on with Burton. I do not know whether I brought the papers with me or not. Think I did not show the bill of lading, or the bill of sale, in Cincinnati. My object in coming out was, to get the papers to satisfy the Insurance Company.—Received a second batch of affidavits there, or they were sent to me immediately afterwards. They were Earl's, Cheney's, Choate's, Lemon's, and a number of others I have really forgotten. They are in New York; presume my lawyer has them.

To the Commissioner.—I do not know whether or not I brought any papers relating to shipments and insurance with me when I came to Ohio from New York in summer of 1852.

To Mr. Stanbery.—I had a conversation with Mr. Scarborough; have never set any definite sum for my interest in the policy; had but a very few words with Mr. Scarborough. If I said anything about it, I know I told him I had an interest in it. Further than that, I could not say. The Insurance Company at New York never requested me to send them that private letter of advice. Think I wrote them that the news came by a private letter. Really, I do not recollect whether they wrote me expressly, asking for that letter of advice. I said it was a private letter. It was not mine; 'twas my wife's. Did not ask her for it. Do not remember what was in it. Think I told them or wrote them what the letter was. When I got their letter, I did not ask my wife for her letter. Had no right to ask her for it. I do not know that the letter was ever mentioned by or to the Insurance Company afterwards. Lorenzo Chapin called at my house about the 11th of January, on his way to Philadelphia.

Mr. Stanbery. — Had you a letter from Filley & Chapin before this bill of lading came about the shipment?

Witness. — No, sir: I knew nothing about their failure or their business till this time. The letter attached to the invoice was signed Filley & Chapin. It said they had shipped on that day (stated the day, at any rate, that day, I think,) this stuff to me; it said they thought I had better insure them, in consequence of the dangers of the river — they advised me to get it insured. When it came to hand, they wanted me to sell it to the best advantage, and if I had any cash I did not want to use, to remit it to them. They did not specify what port to insure to; mentioned no dangers except of the river. I do not know whose handwriting the letter was in — whether Filley's or Rufus Chapin's, or some of the rest; it was signed Filley & Chapin.

I had some previous acquaintance with Mr. Cole; got acquainted with him, I think, in Mexico, at Metamoras, in '47, I think, during the war: I was doing nothing out there; went there for health; that was the first time I ever knew Cole. None of these other parties were there when I was—Nicholson or Holland; I saw Cummings there; he was en-

gaged in merchandize; had a sutlership somewhere back of Metamoras. I saw Adams Chapin, in the course of the summer, at Metamoras. Rufus Chapin was there a short time; Rufus was with Cummings, and so was Adams a part of the time. Do not know that they were doing anything in particular the rest of the time. Cummings was not married before he went to Mexico; he was married at New Orleans or Mexico—I think at New Orleans—might have been at Metamoras. Got acquainted with Mr. Earl at Cincinnati, in '46 or '47. Think he was in a shoe store—can't say what store. Never saw him on the Rio Grande. Never knew Holland till I saw him here. Met Nicholson in New York once; was introduced to him at the Pacific Hotel; can't say who introduced me to him; I can't recollect; it was a mere casual introduction; he was there with his lady; did not board at the Pacific; had but a small conversation with him; never seen him twice; don't remember that anything was said about insurance in that conversation. A gentleman was there, an acquaintance of mine, and formerly acquainted with Nicholson; I do not know whether he introduced me to him or not. Knew he was acquainted with Nicholson, because I have seen him talking to him—whether before or after I was introduced, I can't say. Was introduced to Nicholson in the general office room of the hotel. Do not know that I ever saw him before or since. I think when he was introduced, he was the clerk of the boat. I presume I did not see him over five minutes; I did not ask him about the burning; he was going up the North River in a carriage somewhere, and stopped with his lady in the carriage—did not stop over five minutes. Think Nicholson told me he was clerk of the boat. I did not know he was the clerk till that time; did not say he told me he was the clerk; said I did not know but he might have told me. I might have been in New York on the insurance business. Did not have the curiosity to ask him anything about the burning of the steamer.

To Mr. Gallagher.—The reason why I said Cole was interested in the shipment, was to keep it away for the present from the creditors of Filley & Chapin. I never told Burton anything about Kissane's cutting his heart out, nor anything like it. Do not think I knew Kissane at the time. Never heard Kissane make use of any threat whatever.

To Mr. Walker.—I never had any authority to use Cole's name to conceal the interest of Filley & Chapin.

To Mr. Stanbery.—Lorenzo Chapin brought me the letter of instructions and the bill of lading; the bill was in the letter; the letter was sealed.

Do not think I ever knew Kissane till I saw him here.

Benjamin A. Earl sworn.—I reside in Cincinnati; have resided there about eight years. Am in the shoe business; have been in the business under my own name, with Wm. Capen, of Boston, as a silent partner.

Quitted business on my own account about four years ago. Run a woolen factory about a year at Claremont, N. H. I commenced working for L. L. Filley in 1851, at the beginning of the year. I was, at the time I made my engagement with Filley, with Mr. John Simpson. Soon after I commenced work with Filley, Rufus Chapin came into partnership with him. I remained with them till their failure, about Dec. 13, 1851. They then sold to L. Cole.

Knew the firm of L. Chapin & Co. some years since. Lorenzo, Adams, and Amasa Chapin composed that firm. They failed while I was in business. They owed me largely, and are now largely in my debt.

Filley & Chapin owed me some \$100 when they failed. L. Chapin & Co. owed me \$4,500 or \$4,800. My old partner was saying, the other day, when he was here, we have received a dividend on the debt of 29 per cent., which had about paid the interest.

As to the policy of Adams Chapin in the Madison office, the first I knew of this, L. L. Filley called on me, and wanted me to go to their office, on the second floor of the Main street store. I went, and he takes out the policy, and shows it to me. The transfer to me was in the handwriting of L. L. Filley, and Adams Chapin signed it. They seemed to be equally interested in it. Filley asked me if I had any objection to take the assignment, and to go to Madison and collect it. He says, "You are aware of the large indebtedness of Adams Chapin." I said they owed me a little something. He then said, "I understand all your affairs can be settled for less than \$1,000," which was the fact. Filley said I should have money to pay off my liabilities. I was to have so much of this money, if I collected it. I had no other interest in the policy. I think the assignment was not made on the day it bore date. Filley thought it better to put it back, for fear some one might be smelling round the Madison office. The assignment to Kissane was made the day it bears date.

I owed Kissane some money. The assignment was drawn up in the office of Judge Hart, by Judge Hart himself, I think. I had borrowed money of Kissane, \$1,200; I wanted some, Filley wanted some, and R. Chapin wanted some, and they had the greater part of it. They did not know where I was going to borrow it. Kissane did not know I was borrowing for them. I promised to pay Kissane in four or five days, and handed him a note for the amount. I could not get the money of them when it was due. Filley & Chapin have never paid me. I asked them again for it. Kissane had been pressing me. They said Kissane did not need it; he was a moneyed man, and they would not pay him. I told Filley I would transfer the policy to him, and I did so. I told Kissane he should make \$100 or \$150 by the operation. He was very angry when he heard I had borrowed it for Filley & Chapin.

Filley remained about the store for some three months, in and out, after the sale to Cole. The last time I saw him, I think, was in March. He was out collecting a great deal. Sometimes I did not see him for a fortnight or three weeks. I went out to Walnut Hills to see him, at his request, once, after he had done coming to the store. Amasa Chapin told me Filley wanted to see me there.

I did not know of the sale to Cole till the Monday it was made; knew it first from Cole. Cole came into the store, and pulled out account of stock, and said he was lord of *most* all he surveyed. Filley & Chapin owed Cole thousands of dollars; I do not know how much; Filley said they owed him for borrowed money; Rufus Chapin said they owed him \$3,000 or \$4,000. Filley said he was obliged to sell to Cole to secure him. I asked Filley why they failed; said he, "We have a great deal of property, and I want to put it up where we can handle it, and settle with the creditors as I see fit."

I saw the sheriff in the store one day. After he went out, Cole says to me, "Did you see that hound? he has been smelling round to see if he can find something belonging to Filley & Chapin." Filley said they had taken an account of stock, and the firm had more than enough to pay all they owed, dollar for dollar. I supposed they owed \$25,000 or \$30,000.

I was there at the time of the shipment on the *Martha Washington*. They had large amounts of boots, shoes, hats, caps, and leather—white and red sole leather and russet sheepskins, and a few dozen fancy sheepskins. I never in my life went through their concern to make out an estimate of their property.

At the time of the shipment, they cleared out everything they had—leather, sheepskins, hats, caps, bonnets, boots and shoes. There was nothing left but a remnant of all sorts of shoes and a few seal-skin boots. I knew those things went off. I was the principal man in shipping 1200 sides or 200 rolls of white sole leather. It was partly kept on the floor of the Pearl street store. We had a *sight* there and a *sight* at the Main street store, by the side of the door; also a great quantity in the cellar of the Pearl street store. Filley & Chapin expended \$200 in fitting up the cellar for the leather room. There was white sole leather at the factory also, in a room they kept mostly locked, a sort of store-room. We had also white sole leather in the loft of the Main street store. Of the sheepskins, the great majority were in the cellar in bales. Have counted bales of sheepskins frequently—in all, 2000 bales of sheepskins, I suppose. Do not know that I ever found them vary from 16 dozen in a bale. There were some at the factory; I did not count all the bales. I know there was a hundred bales. Supposed they bought of Burton.

Filley & Chapin would always buy anything in the shape of leather

that they could buy on their notes.' I used to frequently buy small parcels of leather. They bought of many different men, so many I can't name them. Can't name any of them now.

I was the salesman of the concern Filley & Chapin shipped a large quantity of shoes on the Martha Washington by Adams Chapin, who told me he was going to take them to Red River and open a store there. I know this shipment was made under Adams Chapin. Did not see the goods go away from the factory. Found the factory empty on the 8th or 9th of January. This shipment under Adams Chapin was Filley & Chapin's shipment. Cole made a large shipment of boots and shoes, hats and caps, on the Martha Washington. The number of boxes in all that went from the factory and store I can figure up. There were 563 cases--200 of it is Filley & Chapin's shipment--the rest is L. Cole's.

This shipment was after the sale to Cole. They reserved out of that sale the leather and sheepskins and these 200 cases; 150 boxes were sold to Kissane by Cole in my presence, and I know they went from the store; 90 boxes of shoes and hats and all sorts of tag-rag and bobtail to S. M. Cooley at Grand Ecore. Won't be positive about the middle name of Cooley. 53 boxes were shipped to Horace Cole, of California. 70 boxes were sold by Cole to G. P. Stephens, of Brownsville, Texas.

I was present at the sale, and talked about the way the articles were made. Lyman Cole, Adams Chapin, Rufus Chapin, myself, and a couple of Dutchmen we had--working men--were present at the store when the goods were being shipped. Lorenzo Chapin was in and out occasionally. Filley, I think, left our place Monday or Tuesday before the Wednesday or Thursday the boat started. S. J. Cheney was also present. I think Robert Lemon might have been in and out.

Some things were sent down on Monday, Tuesday and Wednesday. We have a drayman--Barney Owen I believe his name is--who usually does our business, and who keeps a dozen or fifteen drays. I called on Barney or some of his men. We had other draymen who did a good of business for us. Some of Owen's men hauled some of the loads. He brought in an account for some dozen loads. I employed other men--do not know their names. Can't name a drayman who hauled a single load. 20 or 25 bales of sheepskins they can take on a dray. We have repeatedly shipped 25 cases of boots or shoes on one dray.

I was on the boat on Wednesday evening; between 7 and 8 in the evening; all the goods had then gone from the store.

I know S. C. Burton. He may have said something to me in February or March; can't fix the first time. He asked me if those shipments of leather and skins was made. I said it was; I told him it was all right. He asked if I knew who they bought them of. I said I knew they got a good many of the sheepskins of him. He said "I could get

the money if I could get the bills of purchase, or find the men they bought of. The office offered me \$8,000, and I advise the boys to take it." Burton claimed that they owed him \$3,000. I had a great many conversations with him.

Burton first spoke of arresting me in September or October ; he came to the store and said he had come to arrest me ; I asked why he did not do it ; he said he thought I was probably an innocent man, and he did not want to. I told him he was a devilish fool, that it was his duty to arrest me if I was guilty ; he owed it to God and man ; he left. He said afterwards he would get back my deposition if I wanted to take back my statements. He frequently asked me to dine with him at the Dennison house—I did not go. I met him again at the corner of Fifth and Main streets. I went over at his request to the Dennison house and sat down with him. He said, "if this thing comes into Court I shall have to swear I do not believe they ever had shipped that leather or the sheep skins." I said they did have the leather and skins, and shipped 'em, and I knew it. He then said it was a d—d rascally business that of Cummings whipping Mason—said Mason's father was worth \$200,000 ; says he, "I am backed up by richer men than you are." Said I might have a store and a stock of goods if I would swear as he would. He said, "Earl, if you will come out and help me, if we can make out fraud in this matter, we can get \$5,000, and you may have \$2,000 of it. I will give you security now for \$2,000 ; you shall have half." I told him the transaction was not fraudulent. That was the only time he ever made me an offer of money. Afterwards he said I should have to go to the penitentiary with the rest of them, if I did not come out and recant my affidavit ; said that Cole, Kissane, Cummings and the Chapins would surely go there. I said if I had done as he said I had, I would go and ought to go, but I had stated nothing but the truth from beginning to end.

I saw Burton after the arrest on Tuesday morning. About half an hour before he came in, Carpenter asked me to go and see Burton at the Dennison house ; my time was occupied and I could not go. About ten minutes after that saw Burton ; he came to the door of the store, stood and looked a minute or two and went off ; said nothing. In about ten minutes he came again, came up to me and said, "Oh, Earl, Oh, Earl, do you know me?" I said, "I've seen enough of you the last two years. Then," says he, pulling out some papers, "I have got Filley's dying confession, and the last thing he said was, "O! Earl! O! Earl! he says you were paid \$100 for swearing as you did, and that Holland burnt the boat." Burton then says to me, "Here is your affidavit, you can have it." I told him the whole story was as false as hell. He said I might have the affidavit, and if I wanted to retract, then was the time. He said

I was in great danger, but might save myself if I would, and that was the time to do it; I would not take the affidavit. I asked why he did not take Holland as well as the rest, if he had burnt the boat up. He said, "where is he?" I told him he was round there and he knew it. He said he was only waiting for a telegraphic dispatch to have the irons on me I told him he was a d—d scoundrel—I was mad. Burton represented that Filley's confession was made on his death bed. I told him I didn't believe Filley was dead. He said he was. I told him that I had heard Filley had been shot by the Chapins, or poisoned or what not, but I believed he was alive and would be here to testify in this case. I first heard Burton speak of the declaration made by Filley, at the time he called, after the arrest. Then he spoke of it as a dying confession.

I saw him a number of times after the failure; he was there soon after. He said there was enough there to pay; he did not doubt they would pay him, and he would sell them again. After Kimball had refused to give him the policy, was the first time I ever heard him express a doubt about getting his debt, or about the honesty of the insurance.— He said then they were a pack of "G—d d—d scoundrels, and they would never pay him. At another time he said he could get \$8,000 on the policy, and at another time said the Company would pay \$6,000 cash and the balance inside of six months, unless something should turn up. I advised Filley to take their offer. He said he had nothing to do with it; that Kimball had the policy and could do as he liked. Burton first expressed his doubts about getting his debt, and about the honesty of the insurance at the same time. Filley went away on the Monday before the Martha Washington sailed; before he went away, when we were marking the leather, I asked him why he did not have all his leather together. He said to keep it from the creditors, to prevent them from observing it. He said he meant to ship it East to pay their creditors; he said they might have a little something in pocket after paying their creditors. I did not know when they failed. I have no earthly doubt Filley & Chapin failed on purpose to swindle their creditors. Some of the leather was rolled up two months before it was shipped. Never knew that F. & Chapin had any interest in the Martha Washington. Filley repeatedly told me not to sell any white sole leather. When Carpenter came he told me not to let him have a side of that leather, and to shave him if I could. I think I *did* get back a little of the interest money we had paid him, in the sale I made Carpenter. Filley went up the river on the Maysville or Portsmouth packet, Monday afternoon. Do not know that Filley knew the goods were to be shipped on the Martha Washington. He knew they were to be shipped. I met him as he returned; we had not then sent it all. He asked what boat we had sent it on, and was told the Martha Washington. He said it was all right. He afterwards

talked about the high price of freight, and complained of that but not of the boat. Filley asked Cheney and myself if the weights of the leather were regularly entered. I brought a slate, and Cheney a roll of paper on which we had minuted them, and F. entered them himself on the book. Filley & Chapin were the only partners; Amasa and Lorenzo were on a salary. Never saw any written articles of partnership; never heard Filley say Lorenzo and Amasa were secret partners.

I called off the weights partly, about the time the boat left; Cheney and I called them off, not the Chapins. I know Filley was there on the evening of the 7th before tea; I did not go to the store after tea that night. He assisted in sending off the last of the goods to the Martha Washington that night. I knew Lorenzo-Chapin went to the East just after the Martha Washington sailed. I do not know that Filley & Chapin had any property with Anderson & Co. at the time of the shipments; they have had at times. Have seen a contract they made with Baker binding them not to sell to others there, with \$1000 penalty on each side. At the time of the shipments do not know if they had any goods at Yorke & Hewson's, or pledged to Nourse, or in the hands of Aday & Labrot.

Burton urged me to form a connection with Carpenter & Field; two or three weeks before the same proposition was made to Lemon. He said Carpenter had \$13,000; Field had some little. He came to the store and asked how business was. I said good. He said he had advised them to hire me, or take me in at all events, as I understood the boot and shoe business so well. Wont say positively, but I think he said he would put the Chapins in the penitentiary.

Adjourned.

AFTERNOON SESSION.

To Mr. Gallagher.—Kissane came to the store and Cole told me to show him the goods. Cole had said he was going to sell him goods to ship to California. Kissane came in and I showed him the goods, and Cole sold them to him by the samples I produced. It was on Saturday about ten o'clock; it was in January; do not remember the day of the month. He bought 150 odd cases of boots, shoes and hats. I packed the boots and shoes myself, or saw to the packing of them. They were of different kinds, calf, Hungarian, full welted kip, and No. 1 kip. Did not see to the packing of the hats; part went from the store, part from the factory. They were taken to the boat by Anderson's draymen. In the course of the afternoon, on Tuesday I think, Anderson's men came for them. It was Wednesday the day before the boat left.

There might have been some calf went from the factory as well as Hungarian boots. Do not know that the Chapins undertook to direct

as to this. As far as I know, it was a perfectly legitimate transaction between Cole and Kissane. There were about 150 packages sold him.

To Mr. Stanbery.—Have lived eighteen months in Dr. Kates's family. Have conversed with him about the affairs of Filley & Chapin. Repeatedly borrowed money of him for Filley & Chapin. Think he may have inquired of me about their affairs. I knew of nobody else but Filley & Chapin in the firm. I knew the public round thought the other Chapins were in it. I knew they were not. I've told Dr. Kates, Filley & Chapin were not smart business men. I did not say the others were "the real head devils;" I do not recollect anything of the kind, or intimating that the other had any interest in any form or shape.

I do not know that Filley & Chapin paid anything towards the purchase of the Martha Washington. Never heard of such a thing till I came here. Never told Kates one reason why they failed was because they paid so much towards the purchase of that boat. I had been borrowing of Kates. Do not recollect his inquiring about their stock. Do not recollect telling him that before the shipment their stock had run very low. Don't think I told him that before the sale to Cole they were hard run, could buy no stock, and could hardly pay their hands. Never said that the shipment was only old odds and ends. I said the shipment to Cooley was a great variety. In that we put \$1400 to \$2000 of stuff not fitted for the Cincinnati market. Did not tell Kates that Cummings told me to put it at \$1400. Did not mention Cummings's name unless it might be that Cooley was an old partner of Cummings.

I saw Cooley about two years ago, on his way to the East. He called at the store for Cummings. Do not think Cummings was in the store. Cummings afterwards told me he was an old partner of his. Never said that if the Chapins did not treat me right, I would make disclosures that would send them to the penitentiary. In November, I gave him a check of Filley & Chapin's on Gilmore & Co. for about \$200, made payable about the 20th December. They failed the 13th. I have told him I could make them pay, but never said I could send them to the penitentiary.

I asked Kissane for a loan because I had understood from my own observation that he was a man of means. I was on my way to a broker's office at the time, and met him casually. I had thought of applying to him before. Can't say why the idea first entered my mind. I asked him if he had any money he could let me have. He said he did not think he had. I told him I was going to a broker's office, where I had got money for Filley & Chapin on their check. He said he did not know about it; he would see; and passed on.

I went to his office the next day. He wanted then to know when I should pay it back. I said, in four or five days. I got from him

checks for the money. Do not recollect that any other person was present. I think I drew the checks; two of them. Do not remember on whom. He signed them, I think. It might be that the checks were those of other houses. Can't tell where I went to get the money for them. It might have been to Ellis & Morton's; might have been to the Trust Company; I do not recollect. Can't tell the time of day; it was about the middle of the day. Got the money, I think, the same day: think so because we wanted it. Can't tell where I got the money on the checks; think they were not to my order; think I did not put my name on the back of them. Think I got the money in paper; can't say what kind. Think Ohio, Kentucky and Indiana paper; am sure I got it in paper and not in gold. Can't tell on what banks the bills were. They were about half way between small and large notes, I should think. I took the money to Filley & Chapin's office. Do not recollect what time I got there. Filley & Chapin kept the greater part of it. I might have kept \$125 to \$175. Filley & Chapin gave me the privilege of retaining that. They owed me more than I kept.

They were both present when I paid them the balance. They divided the money between themselves, and divided out to me the share I got. Think it must have been in February. Do not recollect whether after or before I heard of the burning of the Martha Washington; guess it was after. I held at that time the policy on the Madison office; but no papers passed between Kissane and me as to the money. I gave Kissane the policy, and gave him a receipt for the \$1200. Think I did not give him the policy at the time I got the money. When I gave him a lien on the policy, he gave me up the receipt and I destroyed it.

It was quite a number of days after I borrowed the money; the time was out for which I had borrowed the money. I had known Kissane three years. I do not know that I ever borrowed anything of him before, but trifling affairs — \$5 or so. I did not tell Kissane I wanted the money for any one else. I gave him the policy, but did not assign it when I took the money; I assigned \$1,500. He never has paid me the difference between \$1,200 and \$1,500.

With regard to the 200 cases of boots and shoes taken by Adams Chapin, Adams told me he thought he would go with them to Grand Ecore. They belonged to Filley & Chapin. I know this as well as I know anything ever belonged to them. They had to pass through the factory when they were shipped. They were in the 2nd and 3rd story. Filley showed me, on a Monday morning, what they had sold to Cole. They told me they had excepted the white sole leather, the sheepskins, and some boots — 200 cases of boots; that they all told me — Chapin, Filley, and Cole. Did not say they had excepted the boots at Louisville, but at the factory. They only mentioned *white* sole leather, boots, and

sheepskins as reserved. There were not 200 cases completed and packed in the factory at that time; there was in the neighborhood of 200 cases completed; I call 175 in the neighborhood of 200. They were all manufactured, but not packed, all ready to be packed. Those not in cases were in piles in the room. It could not be easily ascertained how many there were in the piles.

These were the cases Adams took on the Martha Washington; they were shipped from the factory. Think they never came to the store. Adams said he was going to Grand Ecore. Did not say to whom he was going to sell them. I assisted in marking some of the boxes. They were marked "C., Louisville." That was the mark on the 200 boxes. Do not think I assisted in lowering them out of the factory. I was in the factory, and saw this thing going on. Can't say what day I saw the boxes going off; it was between Monday and Wednesday night. Shipped some boxes of Kissane's purchase; they were marked "T. P." Sonora, California"—"T. & P.," I think—to the care of some house in New Orleans. I marked some of them. I marked them "T. & P., Sonora, California." The boxes were all branded on the end. These were the Kissane boxes. I was present when Kissane bought them. I think it was on the Saturday before the Martha Washington sailed. Kissane called at the store. Kissane bought the goods of Cole. I think he had been in the store, talking with Cole about pork, two or three times before. Think he had talked of boots before. I showed him the samples. He bought 150 odd cases. He picked out the kinds. The great majority of them were at the store. I think he then told me how to mark them. I do not know how he arranged to pay for them; I think by note. Some time after this, some few days, he came in, and I think there were some notes passed.

I don't recollect the delivery of any bill of sale; do not know who made out the bill of purchase; Cole or Helman may have done it, or Filley or Chapin. (Mr. Stanbery shows witness the bill of lading)—the handwriting looks very much like Mr. Helman's. I have my regular Sales-book. I entered this in my Sales-book; I do not know where it is; in the possession of Filley or Chapin, I presume. I always had a small Sales-book, about six inches long and four inches wide, in my side pocket; can't tell where or when I saw it last. I had nothing to do with taking notes; don't know what entry they made when they took notes. The prices on that bill must be the prices agreed on—some \$40 for calf \$3 per pair Hungarian, kip legged \$25 or \$27. We used to sell the last for \$25 cash out of the store.

I think Cole told me, before Kissane came in, that he was going to, sell him, and probably on time, and I think he spoke about the prices I

was to charge — these prices are \$1 or \$2 per case more than the cash price.

I was present when Stephens made his purchase. I saw him first, two or three months before this purchase. I do not know that anybody introduced me to him. I saw him at some of the hotels—think the United States Hotel. I talked about buying a stove of him. I never had any *bona fide* transaction with him. He had stoves for sale, stored in some warehouse. Do not know but what Stephens said he had stoves for sale in some house where Helman knew the clerk. I was talking about going to housekeeping, and spoke of buying a stove. He said he would like to sell me one. I did not buy a stove of him, nor go to see his stoves. Can't say the precise time Stephens came to see Cole to buy these goods. It was about the last of December, or first of January. He sold him from 70 to 80 cases; [hats and caps, (I had but very little to do with hats and caps), about 60 cases of boots, and the balance were hats and caps. They might have been paid for in cash, or bought on time. I was present at the sale; I was engaged in getting them ready, at the store. They were already in cases at the store; can't tell the precise day I got them ready; some few days before the Martha Washington sailed. I think before the week in which she sailed. The cases were set by themselves, and piled up in the store. They were put so we could know them from others. I think I marked some of them.

The mark on Stephens' boxes was, "G. P. S., Brownsville, Tex." That is as near as I can recollect.

On Cole's shipments, as nearly as I can recollect, the marks were, "S. M. C., Grand Ecore, La." on 90 cases.

On the rest, "(Diamond C), San Francisco, California."

These latter were 50 odd cases shipped to Horace Cole.

I was at the store on the evening of the 7th of January when Filley came in. One or two dray loads of leather were still in the store. I might have marked some of the white sole leather "B. W. K., New York." It was marked, care of some house in New Orleans. The sheep skins were marked the same way; I was marking the leather and sheep skins at the same time; it was not all done at the same time; it was done the week the boat left. The first thing was to roll it up and tie it, and then mark it. We weighed it in the roll; I know there were 200 bundles of white leather put up, marked and weighed; part of the weights were put down in his book; part on a paper. It was not all brought together before it was shipped. Part of it was in the cellar; part in the Main street store; part in the Pearl street store; part in the factory; part in the store room, I think. There were no rolls at the Main street store door, and Pearl street store door. That was in sides. That in the Pearl street store was put in rolls and brought round to

Main street store. I saw the great majority of it put on drays; can't give the name of a drayman that hauled a single roll. They were Barney Owen's men, and Anderson's men. Think Barney had a dozen men in his employ at that time. I knew them to be Barney's men; did not know their names; suppose they are still in Cincinnati; have not seen them here. Owens went to the Insurance Company of which Mr. Lawrence was President, and certified that he had hauled 12 or 15 loads of leather, sheep skins and boxes. Do not know who hauled the sheep skins, except as far as I know about the leather. When all this stuff went out of the store, I suppose it was all on the books of Filley & Chapin. It is six or eight months since I saw them; they were then in Filley's office, up stairs, in the Main street store. I was on board the Martha Washington on the night of the 7th, right after supper. I saw some of the leather on the fore part of the boat, on the lower deck; do not recollect how many rolls; not a great deal; perhaps half a dozen; perhaps three; perhaps a dozen. I only went right up into the Captain's office. Don't recollect when I saw the sheep skins on her; can't say where on the boat. I was not on the boat 10 minutes; went to see if she would get off that night. They said they would. We had three or four spells of weighing the leather. Got through a few days before the week the boat left.

In December, 1851, Kissane never called at my house, nor where I boarded; he never was at my house over three times before or since. A short time, after I borrowed money, he called to see why I got it, and why I did not pay. The next day he came to the store.

To Mr. Gallagher. — At another time he wanted to know what they said about this affair in Madison.

To Mr. Stanbery. — Adams told me he might go to Grand Ecore, and might dispose of the goods in Louisville. Think the assignment to me was made about the 1st of February. It was dated back. Filley said the old L. Chapin & Co. creditors would be getting hold of it; he assigned it to me to prevent them and Filley & Chapin's creditors from getting at it. I went to Madison to the insurance office — represented that I owned the policy. Don't recollect I said I had paid for the policy, or that I was asked how I came to be the assignee of it. Don't recollect I was asked how I came to be assignee either time I went there. I employed counsel, and commenced a suit, on the policy, against the Madison office.

I know of a sale by Filley & Chapin to Ryan, of Louisville, in November, 1851, of red sole leather. Recollect shipping two or three dray loads; 'twas a large lot.

Mr. Stanbery.—Was it as much as 1,650 sides?

Witness.—It may have been.

I borrowed the money from Kissane at the request of Filley & Chapin; it was after they failed. I do not know what they did with it, or what they wanted it for.

[Mr. Walker here introduced the following letters from T. S. Goodman & Co., and the checks therein referred to, as follows, viz. :

" T. S. Goodman & Co., *Exchange and Banking House*,
 " CINCINNATI, Ohio, January 8th 1852.

" LYMAN COLE, Esq., Columbus, Ohio.

" DEAR SIR : Your dispatch of this date to hand. Furnish list checks, paid as requested [or annexed—very bad writing.]

1851.			
December	22	.....Check	\$100.00
"	23	....."	166 66
"	24	....."	16.00
"	24	....."	30.00
"	27	....."	160.00
"	30	....."	16.00
"	30	....."	24.00
1852.			
January	2	....."	55.00
"	5	....."	2,750 00
"	15	....."	166.00
"	15	....."	22.50
"	16	....."	15.00
"	17	....."	100.00
"	17	....."	65.00

" We do not enter upon our books to whom the checks are payable, only the date when paid and the amount. Your book has been balanced, and the checks returned to you.

Yours, truly,

" (Signed,) T. S. GOODMAN & Co."

" T. S. Goodman & Co. *Exchange and Banking House*,
 CINCINNATI, Ohio, January 11th, 1853.

" LYMAN COLE, Esq., Columbus, O. :

" DEAR SIR : Your favor of the 10th inst. received, and note enquiry :

December, 18	paid your check,	\$800.00
" 19 "	" "	240.00

" These were not included in our former statement, as your dispatch only asked for charges from the 20th December.

" Yours, truly, T. S. GOODMAN, & Co."

" [1]

" No. 69.

CINCINNATI, Dec. 18, 1851.

" T. S. GOODMAN & Co.—Pay to pork or bearer eight hundred dollars (\$800.) (Signed,) LYMAN COLE."

" [2]

" No. 70.

" CINCINNATI, December 19th, 1852.

" T. S. GOODMAN & Co.—Pay to pork or bearer two hundred and forty dollars (\$240.) (Signed,) LYMAN COLE."

"[3]

"No. 71.

CINCINNATI, December 20th, 1851.

"T. S. GOODMAN & Co. — Pay to boots or bearer one hundred dollars (\$100.) (Signed,) LYMAN COLE."

"[4]

"No. 78.

CINCINNATI, January 5th, 1852.

T. S. GOODMAN & Co. — Pay to Smith & Kissane or bearer twenty-seven hundred and fifty dollars (\$2750.) (Signed,) LYMAN COLE."

John D. Harmon, sworn.—Am a lawyer; reside in Cleveland; have resided at the South—in New Orleans—several years. Knew Cole in New Orleans, first; believe three or four years since. He came to me on professional business, as the owner of some property, and to consult me in regard to the steps to be taken to put himself in possession. I have since transacted business with him and for him, till within a few weeks. Have now notes for collection, and other documents of his, in my custody. The first piece of property he wished to get into possession, was estimated to be worth from \$15,000 to \$30,000. Have had notes of his for from \$12,000 to \$15,000 to collect. My estimate of his property is formed from these sources; and I know he has land in Minnesota, Illinois, Iowa, and elsewhere. Have known him as a money lender; always understood him to be worth about \$40,000. He is reputed to be worth that.

I became acquainted with G. P. Stephens, between two and three years ago, in New Orleans. Had claims of his amounting to \$2,000 or \$3,000, which I sued on and recovered.

I know Capt. Edwards; have seen him twice; did not know his first name. The first I heard of him was in the fall of 1849. He is about fifty years of age, I think. Supposed him to have been a sea captain.

Stephens, I think, has commanded vessels. The money I collected for Stephens, was for advances he had made to get the steamer Black Warrior out of a difficulty. Have supposed him to have means, or that he could command means. Knew of his having a claim against an estate in Tennessee, in Col. Gill's hands; Gill wrote that he expected to get the money on it. Stephens authorized me to sell it for \$800.

Edwards was engaged in pursuit of gold; some \$268,000 said to be buried somewhere in the island of Cuba, or some island in the Gulf. Heard he had lost two or three vessels in searching for it. Edwards and Stephens induced Cole, in November, 1849, to send out a vessel in search of the same treasure, and I afterwards sold her for him after she got back. I was in Cincinnati last winter from December 1st to Feb. 27th, boarding at the Walnut street House.

Cole boarded there also, and Kissane frequently took dinner there; heard them speak of pork and lard that Kissane was to sell Cole, and of boots and shoes, &c., Cole was to sell Kissane. I was consulted as I passed South in October, (21st to 28th,) by Cole; he said Filley and Chapin owed him between \$5,000 and \$7,000, I think; but little was said about them. When I returned in December, he stated the case—said they were in debt deeply, and their debts were falling due; asked my advice; I told him to make a *bona fide* purchase of their stock, and buy them out; told him he had better consult resident lawyers; I was in the store of Filley & Chapin, or Cole's, every day from the 1st of December to the 27th of December; was thinking of settling in Cincinnati, and was desirous to make acquaintances;

stayed there from five minutes to two hours each day ; generally not more than 15 or 20 minutes, I knew Filley ; heard him speak of their affairs ; also knew Adams and Rufus Chapin ; Filley told me the concern had enough to pay their debts, dollar for dollar ; said they had 25 or \$30,000 worth of stock, but their obligations were due, or to be due, soon to a very great extent, and they could not get money, and, therefore, they had sold part of their stock to Cole ; Cole had nothing to do except with the first floor on Main and Pearl streets ; he said what was above stairs did not concern him ; I always understood Cole had the first floor, and F. & C. all above ; I went with Cole to the store one day and got money, and then went with him to the factory and paid the hands ; I had charge of the one-dollar bill pile ; he took \$350 to \$400 with him ; he ascertained after he got there that that would not do, and swore a little, and sent for \$100 more ; that was the first week after the failure ; I went with him once more to the factory ; never examined the stock in the factory ; went all over it, however ; did not observe the stuff ; was looking at the mode of doing the work ; I was in the cellar of the store ; never up stairs ; in the cellar twice ; can't say what I saw ; recollect what my impression was we never have cellars in Louisiana, and I went down to see what sort of a place they had there. The stuff was piled up on both sides ; I supposed it was leather ; took it for granted. I knew Kissane and Cole were to ship on the Martha Washington ; Kissane had helped Cummings to negotiate with McGregor ; never heard any one but Captain Cummings mentioned as owning any part of the boat ; they were very busy with drays hauling goods to the boat ; only know of the shipment to Horace Cole from conversation between these parties ; was never on the boat ; heard the parties speak of giving Captain Cummings a good load ; was in the store about the time of the boat's sailing ; Cummings was in frequently ; about every ten minutes, in a great hurry. At the Walnut street house, Stephens was dissatisfied about the gold business ; said he was going by ship to Texas ; was going to get " old Cole," as he called him, into the matter, and asked me if I did not think Cole would sell him some boots and shoes. He was contemplating the gold hunting then, and is now. Said he meant to sell the goods at a high price to the Mexicans, and put the money into the gold hunt. I told him I did not think old Cole would go any deeper into that speculation. I think he is now in Chagres. I saw him in New York last fall, between the last of August and the 16th of November ; do not think I saw Edwards in Cincinnati ; Stephens boarded with Capt. McGrew ; Stephens was a sort of a politician, a sociable, pleasant man, and something of a stump speaker ; he has a brother at Warsaw, Illinois—Henry Stephens, a lawyer, quite an eminent one for his age, a young man ; have put letters into the Post Office for him, addressed to Henry Stephens. I never observed that they wanted to be private at the Walnut street house. Cummings, and Nicholson, and Holland were about there after the purchase of the Martha Washington, all their conversation I heard was in the reading-room of the Walnut street hotel ; heard Stephens speak of clothes ; getting ready-made clothes to ship ; my impression is, that he thought clothing, boots and shoes, and liquors, would pay on the Rio Grande ; do not know of his having any clothing ; heard of the burning of the George and Martha Washington very soon after the news arrived ; saw Filley as usual in the store after the burning ; I only know of Henry Stephens' reputation from hearsay ; don't know that I ever heard Filley say anything of insurances ; it was said in the store that the

loss was very hard on Cummings ; we had estimated that three trips would clear his boat ; all of them said they would vouch for the way he conducted himself at the time of the disaster ; Cole was troubled lest his letter to his friends in the East had not arrived in time to get his shipment to them insured ; he afterwards said he had lost, \$2,000 or \$3,000 by the non-arrival of the letter, the goods were not insured ; Cole had been East, and made arrangements to ship goods there ; think he had a brother there. After Cole bought out the establishment of F. & Chapin, the Sheriff, or his deputy, called one day to make a seizure. Cole told him he owned what was there, and to seize at his peril ; the officer went out, and did not seize anything. I had not seen Lorenzo Chapin ; enquired for him about the 1st of Jan., or thereabouts ; was told he had gone East, for a wife ; had heard him spoken of as one of the most intelligent of the Chapins ; saw him the morning after he returned ; saw Cummings and Nicholson after the burning ; was laughing at Cummings about his dress ; he was dressed rather shabbily ; had generally been rather careful of his dress ; he said, " this is all I have got ;"—Nicholson had on a pair of pantaloons, meaner, he said, than he ever wore before ; said he would go home to his wife, and get fixed up. Never saw Cooley,—have heard of such a man up Red River ; know N. W. Martin, dealer in pork, hams, and the like, of 71, Poydrass street ; have transacted business with him.

Just about a week before I left Cincinnati, Cole said that he had sold out ; I asked if he had saved himself, he said " yes." Heard Filley speak of the shipments on the Martha Washington ; did not hear him say anything of hides or leather, or sheep skins. I took Filley to be a man of rather delicate organization—not strong in health—a very gentlemanly man ; rather liked Filley, what I saw of him ; used to talk with him a good deal. I always understood that the gold matter originated with Edwards. They wanted Stephens to go in the vessel as a responsible man, to take care of the gold, if they got it ; they had a very hard time ; the Spaniards got hold of them—took them for Fillibusters ; they were gone five months, and came back miserable and ragged enough. I bought them clothes.

To Mr. Gallagher—I walked down to Cole's store one day with Kissane ; have often heard them hurrying each other to get things ready for shipment ; the day before the sailing of the Martha Washington, there were drays at the store taking away boxes ; I once looked at the mark on the boxes, just glanced at it ; recollect my impression at the time, was, I saw them marked " California." After the shipment, I noticed a difference in the stores. After the Martha Washington sailed, they put up a partition between the Main street and the Pearl street stores, and Cole advertised the Main street store for rent. I got the idea that Filley and Chapin were the largest shoe men in Cincinnati ; never saw any difference between the stocks in the Main street and Pearl street stores ; the partition reduced the Pearl street store nearly one-half in size. Knew Earl was negotiating with Kissane for money, for the Chapins as I supposed ; do not know what was said ; Earl was trying to get money out of Kissane ; I never saw papers pass between them ; Kissane handed me a paper one evening, and asked me if it would be safe to lend money on ; I said I did not know ; and just then the gong rang, and we went to supper ; I looked at the paper, but with no idea what it was about. Kissane spoke of it also at supper.

To Mr Stanbery.—Kissane said Earl wanted money, and he wanted to know if that little document would do. He said Earl wanted money, and he had drawn up

a little document, and asked if it would do, or something to that effect. His meeting me was merely casual. He held a paper in his hand, and says he, "what do you think about that? Will that do, or will that effect the object?" Don't know that I took the paper in my hand. Either the gong rang, or Cole came in, or something else interrupted us.

This was, I do not know that I can say how long, before I left. 'Twas in February. I follow no business but the law; reside now in Cleveland; have been there but a very short time; have been at New York all summer. On the 16th of November I left New York for Cleveland, and have been residing there since. Knew Holland; he was on that gold expedition; was the mate of the vessel. Just as the vessel was about to sail, he was arrested for debt, and I was called on to get him clear. In November, 1849, I was in New Orleans. They say the island where the gold is, is off the Grand Caymans. He has never told where exactly. I have always supposed Cole put in \$2000 or \$3000 into that expedition. The vessel was a small schooner called the Pelican. Have sailed on her as a yacht, when she was owned by a gentleman who sold to Cole. I suppose she cost about eighteen hundred dollars when new. Don't know how many tons burthen she was. She was not built to go far; was intended to sail from Biloxi to New Orleans. Think Cole invested two or three thousand dollars in the boat, and in manning and provisioning her. Cole paid me to defend Holland; I never saw him till then. Think there were five men in all on board; Stephens, Edwards, Holland, the cook and one other man.

Cole left New Orleans before she came in from the voyage, and left me his agent to sell the vessel; which I did. The title to her was in his name; have seen it on the vessel's register at the Custom House at New Orleans, as I believe. When Cole left we waited some months before we sold the vessel; Cole went February 25th. A man named Fellows had proposed to buy her, and take the risk of what was in her. I only knew who came home in her from seeing Stephens. He came to my office and wanted to see Cole. Stephens, Holland and Edwards came in her. Stephens wanted money, and I borrowed some; gave him one hundred and fifty dollars to pay off the cook, and I think one other man. I afterwards saw Edwards for the first time. The vessel had a very long and hard voyage. They took provisions for only sixty days, and of course got out. I took a receipt from Stephens for the one hundred and fifty dollars. He said he wanted to pay the men. He stayed about New Orleans till after I sold the boat.

I advertised the boat on her return—found she would not bring much, and would not sell at once. Stephens stayed in New Orleans about six weeks, and then went to New York and came back. We together sold the Pelican. I put the money in my pocket, and paid the agent of the Consul at Trinidad from one hundred and forty to one hundred and sixty, for money he paid on her account. The boat had been carried into Trinidad; I received two checks in payment for her—one for the amount of the Consul's claim. The boat brought four hundred and twenty-five dollars, in August. We at first offered her for twelve hundred dollars. Think she was sold on the 16th of August; Stephens was in New Orleans at the time—I think Holland was. They said Edwards was there. I think Holland got a situation on the river, and Stephens and Edwards came up the river. I next saw Stephens in Cincinnati—Edwards in New York. Think Stephens and Edwards hailed me one day in New York, as I was going to the Post Office. Saw Stephens in Cincinnati

as I went South, in October, '51. Think the boat was sold in fifty-one instead of fifty. I have been a year *out* in my reckoning. I left on the 9th of August to come up the river with my wife. I may be mistaken as to the sale of the boat on the 16th of August. I am sure Stephens went from New Orleans before I did; I saw him off. Did not see him again till I saw him in Cincinnati.

Think I must be mistaken as to the year of the sale of the boat; I mean the year fifty-one all the time. It was all the same season. The boat must have been out in fifty—in November, 1850. I never saw Edwards but twice; the second time was in New York.

Saw Stephens again the last of November or first of December, in Cincinnati; saw Holland in Cincinnati. I left Cincinnati on the 27th February; went to Warren, Ohio, then to New York. My family were at New Rochelle; I rented a house there. I went into the city and out every day. Stephens hailed me at this time as I went to the Post Office; I think Edwards was with him. That was this last summer, some time; I took my house in June; think I saw him in August; it might have been July; saw him more than once; think a dozen times; have not seen him since I left New York. Stephens has a claim against a man named Dyer, for some three thousand dollars; think he has gone to Chagres to find that man.

I went to Cincinnati thinking to settle there as a lawyer; had letters to various lawyers there and elsewhere—one to Messrs. Walker & Keble, I have delivered. (mentioned the names of others.) Stephens said he wanted to get Cole into the gold matter again. I supposed Edwards was in Cincinnati, because I knew Stephens was still after the gold, and Edwards would be with him or know where he was. I told him Cole was about sick of the gold business.

The boots and shoes had a great deal to do with the gold. They thought the coast of Texas would be a good place to embark from, and a good place to trade in. Stephens had two plans; one was to sell the goods on the Rio Grande, and get money to fit out his vessel, and go from Texas, and the other to get some wealthy man to advance the money, say twenty or thirty thousand dollars, and get a vessel—a coasting vessel, and trade along the coast till he could find a good chance to go for the gold off the island without causing suspicion from the Spanish officers. He mentioned boots and shoes because Cole had bought out F. & C.'s stock, he hoped to get some from him on credit. Stephens said Cole did sell him a lot of boots and shoes; I heard Cole say he had let him have a lot of boots and shoes. He said what was gone was gone, and he had sold him the goods and would run the risk.

I understood from all the parties that Captain Cummings was an acquaintance of theirs, and they were going to ship by him. I have talked to Cole about Stephens being crazy about the gold. I do not know that Cole knew that Stephens wanted the boots and shoes for the gold-hunting purpose. I don't think I ever told him—Cole did not tell me amount sold, nor number of boxes, nor length of time of credit. I was at store on an average every day, as often as that; perhaps not every day. Stephens mentioned clothing; did not say who he would buy it of. Never heard him say a word about buying of Edwards.

I have told all I know about Edwards; I believe they say the hidden money is in Spanish dollars, or Spanish money. We always spoke of it as the Gold expedition
Adjourned to 9, A. M., of Thursday.

THURSDAY, JANUARY 13th, 1853.

J. D. Harmon's testimony resumed.—I have no books or papers to refer to. Previous to 1845 I taught school in Kentucky—then I went to Nashville and afterwards to Helena, Arkansas, where I rode on the circuit with Judge Jones. After this, went to Lake Providence, La.; was admitted to the bar in this state, (La.) in 1846; went to New Orleans where I lived till last fall a year ago. In New Orleans at first I had but little business; went into partnership with Judge Dunlap; lived at No. 3 or 11 Charles [or Chartres] st.; removed to 36 Camp st. First knew Cole in the fall of 1849 in New Orleans. In the summer before, Cole had employed an agent to attend to his negroes—he had some difficulty in collecting their wages and consulted me. Cole afterwards employed me to attend to some property he had in Montgomery, Alabama.

Mr. Stanbery.—Will you tell us what species of property?

Witness.—A circus. This had been sold some years before and bought by an Englishman. Cole secured his claim. There was, however, some difficulty about the matter. Cole forgot to take letters of reference from New Orleans to Alabama, and could not give bonds for \$25,000. A Mr. Crooks went with Cole, and to him was entrusted the taking of letters—he forgot them. But the circus men were afterwards arrested and the property secured. Crooks is now in San Francisco.

I said I had heard of such a man as Cooley, residing on Red river; think I did some business for a Capt. Leonard, and addressed some letters to Cooley for him. Can't say to what town I directed the letters, or where Capt. Leonard lived. I recollect the business very well. Never heard of Cooley's business; if he is a gambler I don't know it. I saw George R. Brewster in New York. I went to Cleveland on the recommendation of Mr. Jacob Perkins of Warren, O. who offered to make me his agent there. I said I knew G. P. Stevens; have mailed letters from him to his brother Henry, once in New Orleans, once in Cincinnati.—Was in Cincinnati on the 27th of February last; have not been there since.

A week or two after the burning of the Martha Washington, saw Cummings and Nicholson at the Walnut street house, Cincinnati; don't know which I saw first, nor whether they came together. First knew Cummings in New Orleans; he was sued there in December, 1850 or 1851, and came to me for advice. He said he was about going up Red river; think I had seen him once or twice before; think I never saw Nicholson till I came to Cincinnati. In October, as I was going down the river, I called on Cole at the Walnut street house; he had written to me to meet him there. Saw Stevens at the same time. I went to Oxford, (O.) to see Cole, and Prof. Lyman, a teacher there. The most I said to Stevens was about the gold expedition—we always talked about it. I

returned from the South on the first of December, and stopped at the Walnut street house ; don't know whether I saw Cummings there, but I saw him afterwards ; believe he staid with the Chapins. Saw Nicholson and Stevens at the Walnut street house before the Martha Washington sailed. First saw Holland in reading room of Walnut street house. I supposed Edwards was with Stevens ; believe Stevens said so.

My impression is that I met Kissane in Cincinnati a year ago last fall. The person who introduced me told me Kissane was doing as good a business as any man in town, managing the financial affairs of a large house. I first saw Earl after Cole had bought out the Chapins ; don't know where I heard Earl trying to get money from Kissane ; it must have been in the street or Cole's store, where I often called. I don't remember the amount or distinctly what was said. Kissane afterwards showed me a paper at the Walnut street house, on which there was an entry ; told me that Earl wanted to borrow money, and asked me, "how will that do?" In February and some two weeks before I left for the South, I understood Cole to say he "had sold out and saved" himself. I think Cole said he was going off ; I was not at the store afterwards. At this time I saw the same persons and book keepers as before ; think they called Albert Earl the salesman ; Cole did not tell me how "he had saved himself."—I never heard the terms of sale.

To Mr. Swain.—I was at Yale College, but did not graduate ; went through a regular course of study ; am a son of Dr. H. of Western Reserve.

To Mr. Stanbery.—I have brothers, Charles and Julian ; suppose there are a hundred men in town who knew me at Warren. I was at school at Athens and at Hudson. There is a member of the legislature present (Mr. Smith) who knows me.

Samuel J. Cheney was now called and sworn. I am a boot and shoe manufacturer and dealer. in Cincinnati, and have been since the 13th of February last—was employed in the same business before, first by Lucius L. Filley, then by Filley & Chapin, and afterwards by Lyman Cole. L. L. Filley and Rufus Chapin composed the firm of Filley & Chapin.—When they failed, they told me they had no farther use for me. I hired to Cole and afterwards bought the stock of him, and went into business for myself. I knew of no secret partners in the firm of Filley & Chapin. Lorenzo and Amasa Chapin worked as I did, by the week ; I worked chiefly in the factory as a "cutter ;" they were also "cutters" and "boot packers." I have seen the books of the concern, and have heard Filley say that Amasa and Lorenzo were not partners.

About the time of their failure, in December 1851, the business of Filley & Chapin was very large. For various reasons there had been a great accumulation of stock. Boots and shoes did not sell fast that win-

ter, and there had been an accumulation of sheep skins and sole leather, mostly white sole leather. They had not used the sheep skins to line the backs of boots to the same extent as formerly. In my judgment, there was in the store and factory from \$30,000 to \$40,000 worth of stock. At this time Filley said the firm had ample means to pay all liabilities, dollar for dollar. The white and red sole leather alone must have amounted in value to between \$10,000 and \$15,000. Two thirds of the sole leather was white; it was chiefly in rolls; six to eight sides in a roll; there must have been 200 rolls of the white. The sheep skins were in bales, usually sixteen dozen to a bale. In my judgment, Filley & Chapin at time of failure had from 75 to 100 bales. Do not know of any diminution of stocks of sheep skins or white sole leather, by sales in December or fore part of January. In January I assisted in shipping a quantity of freight; Earl and Lemon and others also assisted. I was engaged in preparing shipments. Can't say how long I had the skins and sole leather prepared. There were also shipped a quantity of boots and shoes and hats; do not know the number of cases shipped; we had a large stock, and after the Martha Washington sailed, both store and factory were pretty well cleared out. We were occupied two or three days in sending goods to the Martha Washington. I attended to weighing and marking the leather; weights were taken five or six days before the boat went out. Filley took down the weights, think he went out on a collecting expedition before the Martha Washington sailed. I am sure Filley wrote down the weights of the leather; he told me they were going to ship it to New York to "meet paper there," or to make arrangements there. Lorenzo Chapin left for Philadelphia the day after the Martha Washington sailed. Mr. Filley told me that he had gone to bring back a new wife to whom he (Filley) had, as he said, given him a letter of introduction. Lorenzo was gone two weeks and came back without the lady.

The white sole leather was stowed in the cellar of the store, and in the 2d and 3d stories of the factory. I was in the cellar frequently.—Amasa Chapin went out on a collecting tour some days before the shipment, and was gone ten to twelve days. I heard Filley say they had sold \$18,000 worth of stock to Cole, and that they were afraid the creditors would get hold of it.

Do not know how much they owed Cole. They were hard pushed for money during all the year 1851. I found it very difficult to get my own salary. At the time of the sale to Cole, quite a number selected the goods. Rufus, Lorenzo, Amasa, Mr. Filley and myself were there. Think Filley ought to have known what was sold, for he took down most of the inventory as I counted stock. It was on Sunday we counted stock, and Cole took possession the next day. I worked for him on the

same terms as for Filley & Chapin. There were threats from creditors about the time the property was shipped.

I know S. C. Burton—he used to trade with Filley & Chapin. In the early part of October last, I had a conversation with him, in which he commenced talking about insurance companies. He said he was sorry I had made the deposition I did; said he had better things in view for me; if I would recant and swear as he should direct, we could make a handsome thing of it—say \$5,000—of which he would give me half; told him I had sworn to the truth and intended to stand by it.

Dr. Jones came to the factory where I was, and asked me to go to the Dennison House. I think we went to Burton's room. Burton took out a paper and asked Jones to read it; he then said that he loved me and my mother; that this was an awful affair, and I had better make a declaration. The paper handed to Dr. Jones purported to be the deposition of old Mr. Filley made in Cleveland. We then went below to the office. Have never seen the paper since. In the office, Burton said he would answer every question if I would; we made that agreement. I asked him who was at the death bed of Mr. Filley; he said his wife and sisters. I then told him the goods were shipped on the Martha Washington as we deposed. He said, "Do you mean to say they *were* shipped?" I said yes. Burton then said he wanted nothing more to do with me; that he could have me arrested in twenty minutes, and that Earl was more closely connected in the affair than I was, for he had one of the policies. Burton also said, "Unless Earl is more friendly to me, I will have him arrested." I have not seen Burton since to speak with him. Burton spoke of love to Earl. He seemed to love the whole human family.

[Here, by consent of counsel, Mr. Stanbery called a witness for the prosecution.]

Horace Foote called and sworn.—Have been acquainted with Mr. S. C. Burton since 1836. I live in Ohio City; Burton has lived there fifteen or sixteen years. I know his standing; his character for truth and veracity is as good as that of men in general.

Cross-examined.—Never heard his character discussed, except in 1836-'37; I then heard reports as to his paying money—his veracity was not questioned. I should put Mr. Burton above par; he is a man of respectability. In 1836, he had made promises to pay debts which he could not perform; have not had a great deal of business dealings with him. His business has been a good deal out of the town where he resides; do not know of his pecuniary responsibility; don't know of any real estate in his name. He may have some.

Franklin T. Backus, called and sworn.—Have known Mr. Burton ten years. I live in Cleveland. Have never heard his reputation for truth and veracity called in question, or spoken of in any way.

Cross examined.—Never had occasion to examine or hear him examined in a court, and never had occasion to hear his reputation spoken of. Know nothing of his means. Have undoubtedly had conversations with men who had dealings with him. Know Mr. Harmon; he has not long been a citizen of Cleveland; he is a son of Dr. Harmon, of Cleveland; so far as I know, his character may stand as high as that of any person at the bar. Have never heard his reputation spoken of.

Questioned by Mr. Stanbery.—Have only lived in the same place with Harmon a few months. Don't know that I have heard any one speak of him who knew him in New Orleans.

Testimony of Mr. Cheney resumed.—In the conversation with Burton, he said I need not call on him again, and if I stood by my deposition, he could have me arrested in twenty minutes. I saw a paper purporting to be a copy of a deposition of old Mr. Filley, and said to contain the confessions of his son, made at Walnut Hills. Recollect that in the paper young Filley was represented to have said there was a humbug about the shipments on the Martha Washington. The "confession" was on four or five sheets, written on one side only.

Young Filley told me, after the destruction of the Martha Washington, that he was going to take a copy of the Captain's protest on to New York. Heard him say he could not make arrangements with insurance companies, and that "it was all on the square," and "the goods were shipped." Don't recollect hearing him say anything about the burning of the Martha Washington.

Cross-examined.—Was a cutter in the establishment of Filley & Chapin; got fifty dollars per month; continued to work for Cole at the same salary. My wife was then (at the time of Cole's purchase) gone East, and I was not keeping house; cannot tell the exact sum I had accumulated; can't tell how much money I had in January 1852, without referring to books; cannot give an idea of what I had—no use of giving an idea unless I could give amounts. Must have had some money; had some in my pockets. I kept no account at any bankers; can't say how much was due me; owned no real estate in Cincinnati; had no personal property of any account; paid no money tax; don't recollect the amount of my tax bill, nor what it was for. I purchased the establishment of Cole on the 13th of February; it was first proposed to me by Cole; cannot tell how long before the 13th of February he proposed it; it might have been two weeks. I was induced to purchase because I wanted to be in business for myself, and thought I could make money. There were tools, fixtures, and some stock. Cole was still carrying on the factory, and one of the stores. He had from 150 to 200 hands engaged; made some seventy-five cases of boots per week.

Cole had but a small stock of leather when I proposed buying him out; he had no white sole leather of any account—perhaps a dozen sides, and but very little upper leather, and but few sheep skins. There are twelve pairs of boots in a case. The hands were at work when I bought. In working up leather from 1 doz. to 5, the leather is given out to be crimped. Think I have an inventory of the stock I bought. I assisted in taking the inventory. Adams and Amasa Chapin also assisted

I think. Don't recollect that Earl, or Lemon, or Helman, was there when inventory was taken. Don't recollect that any one else was there except Cole and the two Chapins. Can't say how long before the 13th of February it was taken. Everything in the store and factory was inventoried. Can't say what the total amount was without looking at the bills. Could come within \$5,000 of it—'twas not as high as \$95,000. Make this last remark because I cannot tell the amount without the books. I paid in notes—not a cent in cash. I have made arrangements since, and partly paid up. Gave four judgment notes. Don't know whether they were for equal sums. The notes were all made payable to Lyman Cole's order, one day after date—(February 13th.) Nobody signed them but myself; can't give the amount of any one of the notes. Have taken up two of these notes—can't tell the amount of either.

Cole bought out Filley & Chapin, and gave notes in part payment. I bought of Cole, and gave my individual notes. Filley & Chapin wanted me to make my notes payable to them, and thus take up Cole's notes. I gave one note to Rufus Chapin, and one to Filley, for the amount of Cole's note—about \$1,600. I turned this note of his over to Cole, in part payment of my own. This made me very near square with Cole. I have the two notes I took up. I have since paid Rufus Chapin; can't give the amount without referring, and can't give the exact time; it was last season. Paid it with a check on Mechanic's and Trader's Bank. On reflection, I can't be sure of the Bank the check was on. I keep books; had a cash account, and suppose I made an entry. I paid some \$350 on the note I gave to Filley. Dr. Jones had that note, and demanded payment. Think the whole amount was some \$800. Do not know where the two other notes are I gave Cole, nor the amount. I should suppose Cole thought a judgment note was security enough,

I know Mr. Murphy, who was in a coffee house on Sycamore street. Might have had a conversation with him about Filley & Chapin's business. Don't recollect talking with him about a difficulty I had with Adams Chapin, nor of saying that Lorenzo and Amasa were partners with Filley. Saw Murphy since the arrest, and asked him if he was subpoenaed to come here, and may have asked him what he knew. He said he had had a difficulty with Adams or Amasa Chapin, and would have nothing to do with this case. Don't remember whether he referred to what I had said about the interest of Lorenzo and Amasa.

Filley first told me I should probably be called on to make an affidavit. Adams Chapin next spoke to me on the subject; he wanted me to go to Kebler's office and tell what I knew. Don't recollect the conversation with Adams.

Don't know why Lorenzo and Amasa did not give affidavits; they were about the store at that time. Did not ask Adams why he did not make an affidavit himself.

Lorenzo Chapin married my sister; she is now deceased.

There might have been shipments to the Martha Washington before she sailed. I commenced assisting to ship sole leather and skins on the 6th; helped to let down boxes from the factory. I may have said in the affidavit that I was on board the boat. I was there on evening of the 7th between 8 and 9 o'clock; went to see Captain Cummings and the cargo. In my affidavit, I said I saw sole leather on the lower guards; saw some in the engine room; saw a few sheep skins; could not desig-

nate exact spot where I saw them; they were tumbled about in every way; might have seen boxes of boots and shoes; took more notice of the leather, because I helped to ship it. Think the boot and shoe boxes were piled on both sides of the Social Hall. I could see over them. Have been in the clerk's office of the Martha Washington; took a drink at the bar with Capt. Cummings; can't remember whether there was any deck or roof over the boxes.

I think Rufus Chapin told me of the new arrangement on the Saturday evening before the sale to Cole, and wanted me to come to the store the next day (Sunday). I went there and found Cole, Filley, Rufus, Adams and Lorenzo Chapin; think Amasa was also there. We commenced to take account of stock; begun with the shoes; Filley put down amounts and prices; I had nothing to do with the boots; don't know who took account of stock in lower part of store; don't recollect whether I went over to factory or not. Did I say I went over? I might have gone there. I know Lorenzo and Amasa were at the factory. They told me the whole amount of stock was about \$18,000. They also said they intended to except, from the sale to Cole, the white sole leather. Cole took possession of the establishment on the next day. Did not hear of shipment of boots and shoes for Louisville.

[Mr. Stanbery asks witness about 200 cases boots and shoes marked "Louisville," and insured by Adams Chapin.]

Witness resumed.—Never knew of any being marked for Louisville. Believe there was a lot shipped from the factory for Louisville, but not marked for any particular place; they were marked C (in a diamond). Heard Adams Chapin say he would take care of them. Think there were some 15 or 20 other boxes went from there marked for California with a C (in a diamond). Can't say whether I noticed the mark before or after they were lowered. I assisted in lowering.

My conversation with Burton in October was, I think, on Columbia street, near the factory, out of which I had just come. He said we could make \$5000, and divide it, by taking a certain course with regard to insurances on the Martha Washington; may have mentioned this proposal since. After the arrests, Dr. Jones came and asked me to go and see Burton. Dr. Jones did not introduce me. I said: "This is Mr. Burton." Mr. B. said: "Yes, you know me, Mr. Cheney." I did not say I had seen Burton before, but had never spoken to him; think I did not. Jones was present in Burton's room. I lowered sheep skins from 3rd stories of store and factory, and may have marked some bundles; can't give the amount. Think Lemon & Helman assisted me. Can't give mark on the bales of sheep skins; think some were marked for Boston; saw "Boston" marked on some; can't say whether they came from 2nd or 3rd story; think Filley told me they were to be shipped to

a Mr. Daniels; can't say how many were marked for Boston, or whether the greater number were.

From 30 to 50 rolls of sole leather came from the factory. There were near 130 or 150 bales of sheep skins came out of the store—principally from the upper story; some may have come from cellar. Don't know that any were marked to Boston; think they were marked B. W. K., N. Y. Some were marked 4 or 5 days before shipment. I think Filley and Earl were in 3rd story when some were marked. Off and on, we were two days marking the sole leather. There were a few sides of red sole leather in the cellar; some calf and sheep skins. There were about 150 rolls white sole leather in the cellar; can't say I handled all the rolls. I did not see the red touched. Filley took down the weights of leather in a small book; not positive whether with pen or pencil. Mr. Filley and I both counted the rolls; think we both made it 150 rolls. We counted to see how many rolls there were; would not be positive that weights were marked on the leather. We went from store to factory, and from the 2nd to 3rd story of factory, counting and weighing. Filley took the account down. This was a year ago. We first weighed a few rolls, and then marked them. I marked a few. I wish to correct my statement as to 130 to 150 bales of sheep skins. I now say there were from 75 to 100 bales. After shipment, the factory was pretty well cleared out; there might have been a few sides left.

I heard that Filley & Chapin's papers were burned; did not see them burned—first heard of it after Cole bought out and I bought in. Filley told me he was sorry the papers were burned, for if he had them it would help settle or "show up" the insurance business. When I saw the papers were all gone, I asked where they were, and then Filley said they were burned—but did not at that time say he was sorry. I did not hear that the books were burned; these were taken up stairs after Cole bought out. Have not seen Filley & Chapin's books for a good while, except the cash book and work book at the factory. This cash book and work book served as ledger and day book. I bought a new set of books—a cash book and sales-book.

I wish to state with regard to one of the notes given by me for stock purchased of Cole, that when it fell due I paid a part and gave a new note at 30 days for the balance. The note was at the Mechanics and Traders' Bank, as I said, but was sent to Ellis & Morton for collection, and there I paid the balance of \$290. I had before made payments to Rufus Chapin; I believe I paid him part in boots—5 cases, I think—delivered them in the spring or fore part of summer, price \$20 per case. Think I paid the balance in cash at different times. Could not name any one time. The note paid at Ellis & Morton's was a new one given for the balance of one of the original notes.

Have not seen Rufus Chapin for a great while ; can't tell when I saw him last. The last time I saw him with Adams, he told me he was then from his place of residence in Wisconsin. I have seen Adams Chapin since in Cincinnati, perhaps three weeks since. He said he had concluded not to stop in town a great while. This interview may have been since the arrest of these parties. I suppose he thought I ought to know why he did not stay in the city. It was after dark, and in the western part of the city, near the corner of Fourth and Smith streets.

Here Mr Walker rose and remarked, that with the exception of some affidavits and one or two witnesses not now present, the testimony for the defence was closed. Before taking his seat, he read the following :

Memorandum of sales made for Filley & Chapin, by Thomas Anderson & Co., of Louisville, in the year 1851.

March 31st—	By proceeds of sales of boots due 10-13 March,	\$93 55
Do do	Proceeds of boots due 1-4 March,	750 74
June 7th—	do do 10-13 June,	1349 12
October 8th—	do do 11-14 Oct.,	750 70

Total proceeds of boots sold in the year 1851,	2944 11
December 26th—By sales of hats and caps, due 7-10 Dec. '51,	304 51

Total amount of sales in 1851,	\$3338 62
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Rebutting Evidence for the Prosecution.

Dr. Kates called.—I have resided in Cincinnati for eight years. Benjamin Earl frequently borrowed money of me ; presume it was for Filley & Chapin. He has told me the four brothers Chapin were connected in business, all had an interest in the firm of Filley & Chapin. Earl also told me the firm was hard run for money, for they had to raise so much money for Capt. Cummings. This was about the time the Martha Washington was purchased ; said he could hardly get enough to pay his board. I frequently heard Earl speak of the swindling transactions of Filley & Chapin ; said they could not collect the insurance from the Madison office, and had assigned the policy to him ; said he "had them on the hooks," and could send them all to the Penitentiary if they did not pay him a certain debt. Earl told me that previous to the last trip of the Martha Washington, Capt. Cummings had told him to pack up all the odd goods, "refuse stock" we had ; he said he packed up about \$1400 worth, and thought it was to go to Red River.

Cross-examined by Mr. Gallagher.—I always thought Earl a very honest man ; was surprised to hear him make statements here, that he knew were not so ; did not lend the Chapins money ; lent it to Earl, and looked to him for payment ; never heard anything against Earl's truth and veracity. Had no claims on the Chapins for money lent Earl. I have

said that if the Chapins had acted as represented, they ought to go to the Penitentiary.

Earl and his wife have been in the habit of frequently visiting my house; the families have ever been on good terms. I should be sorry for your clients if I should tell all I have heard about them.

John Murphy called.—Keep the Alleghany House. Have been in the leather business 25 years. Had a conversation with Cheney. He said Lorenzo, Amasa and Filley were proprietors; that Adams had no right in the concern. On Monday week Cheney asked me if I was going to relate what had passed between him and me. Told him I was. Was once engaged in that establishment as a cutter; was there in March, 1851. In the fall of 1850, Amasa went East and bought about 1100 sides of red leather. Never saw over 50 sides of white leather at a time there. It was worked up while I was there. In 1850, Filley & Chapin had a large lot of sheepskins; perhaps 50 dozen. The greater part of their boots were kip boots. Did not leave them because I was charged with stealing; never was charged with that. I left on my own account. At one time, Adams Chapin threatened to have Cheney turned out of the concern. I told Mr. Scarborough that Cheney had called on me since the arrests. I know nothing of Filley & Chapin's stock in 1852. I was a member of the Odd Fellows Society, and had a difficulty with one of the members and was turned out. Afterwards, they saw I was right and offered to re-instate me, but I refused to go back.

Samuel J. Roney sworn.—A roll of sole leather is four feet in length, and 18 inches high; 200 rolls of sole leather would be equal in bulk to 230 barrels of flour, or 14 cords of wood; the 1,600 dozen sheepskins would occupy the space of 130 barrels flour, or 10 cords of wood.

Mr Parvin recalled. — Had a conversation with Mr. Lemmon, about May, '51, and he said they never sold, or offered to sell Mr. Burton's skins, and that they never had more than they wanted to use, except 10 or 15 dozen hard skins, unfit for their use.

James Torrence sworn.—Am engaged in general commission business, We "tell" pork 320 lbs. to the barrel—lard, 350 to 390 to the tierce—340 the barrel; a sack of corn is generally \$2½ bushels, 56 lbs. to the bushel; a full box of star candles weighs 40 lbs; market price is from 20 to 21 cents—varies with the price of lard.

Cross-examined.—I give you the tables given by the State for the toll Collectors.

The Court adjourned till to-morrow.

FRIDAY, JANUARY 14th.

Lewis Choate called.—Have been on the river for the last thirty years; was pilot on the Martha Washington when she was burned. The boat was insured in my name, so that Captain Cummings's creditors might not embarrass him before he was able to pay them. I explained fully to Mr. Chew the reason of the policy being taken out in my name. Have known Captain Cummings a great many years; never heard anything against him till this affair.

Went to Mr. Chew's insurance office with Captain Cummings several times, to see about collecting insurance money after the destruction of the boat. A report had got out that the boat was set on fire. Mr. Chew said, finally, he was instructed not to pay the insurance money till the whole matter of the alleged fraud was ferreted out—he believed there was something rotten in it. I sent Holland to see Chew — Nicholson also went.

About this time I saw Mr. Mason, an Agent of one or more Insurance Companies. He told me he had conversed with the clerk of the boat till he had satisfied himself that a great fraud had been committed. Said Nicholson had told him that he (Nicholson,) had signed every legitimate bill of lading, and that his language had convinced him (Mason) that Captain Cummings had been a party to the burning of the boat. I said the parties ought to be arrested — that I should not hear the officers secretly accused any longer. Chew said there was not enough to justify arrest then. I told Cummings the reports that were about, and the next thing I heard he had knocked down Mason.

Think there was about 500 tons freight in the Martha Washington when she left Cincinnati. She was loaded very deep after leaving Louisville—I advised it, for a boat runs better with a heavy load when ice is running in the river. The Martha Washington would carry 600 to 650 tons.

I was at the wheel at the time the boat burned; Captain Cummings was with me in the pilot house; told him I smelt fire; he looked about, and said I must be mistaken. The smell grew stronger, and I assured him the boat must be on fire. He disappeared down stairs, and immediately the flames broke out between me and the shore, which, as I had turned the boat up stream, shows it to have been on the larboard side. I staid at the wheel till a line was made fast to a tree. I ordered Engineer to work the starboard engine slowly. There was no person alive in the cabin when the steamer struck the shore; I could hear the glass rattling like hail in the burning cabin, where the flames were roaring like a tornado. The next that I saw of Cummings he was nearly naked,

running about half distracted. Don't know how he parted with the coats he had on in the pilot house.

I sprang ashore from the pilot house — and a hard spring it was. I struck partly in the water and partly on shore. Never heard the boat was set on fire till at a meeting of the underwriters in Cincinnati. Saw nothing remarkable in the appearance of the mate or clerk. The captain and mate returned to the boat in a yawl, to save some passengers in the cabin — they were unable to get further than the lower deck, as the flames were then licking full 20 feet over their heads. That same night, immediately after wooding, I told Holland, who just then came up to the pilot-house, to look out for the dry cotton wood that had just been taken on, about the furnaces, for it was a bad night for a fire — a colder night I never knew on the Mississippi. I believe Holland to have been quite competent for the office of mate. It was his duty to watch the men while wooding. If goods had not been piled on the lower guards, I should have noticed it. I know that small boxes were piled around on the outside of the cabin deck—the outside doors of the state-rooms could not be opened on account of the freight.

I saw the boxes of candles or soap burning. There must have been 1,000 empty barrels on the hurricane deck. *I never had a suspicion the boat was set on fire*—if I had, I should have instantly entered a complaint.

Cross-examined.—The capacity of boats decreases with their age, but the Martha Washington had one boiler removed, and would carry as much when she was burned as she would when new. The boat drew over six feet when she left Louisville. On the boiler deck, on both outside of the cabin, and nearly as high as the cabin, was a pile of boxes, some eighteen inches square; there was room left to walk between the boxes and the rail. Passengers complained their outside state-room doors were blocked up with freight.

When at the meeting of underwriters interested in the Martha Washington, and heard that shippers claimed 200 rolls of leather, 1,200 boxes of candles, and 1,600 dozen sheepsins, 600 boxes boots and shoes, I said I could not see how they could have been stowed; I am under the impression they told me there were 2,000 (or some big number,) of long shoe boxes on board; it was under this impression that I said so much freight could not have been stowed. Cannot say I noticed much what freight was on the boat.

Mr. Chew, Capt. Ross, Mr. Carter, Mr. Lawrence, and others were present at this meeting of insurers. I never saw a roll of leather or a boot or shoe box on board of the boat.

At time of fire I told Holland to be careful of the dry wood near the fires. He said he had given the watchmen proper orders, and he immediately went down himself.

I first gave the alarm of fire. Captain Cummings says that at the second time of my telling him of fire, I shouted, "*By God, the boat IS on fire!*" All the passengers that ever got ashore, did so at the instant the boat struck the shore. At the meeting of the board of Underwriters I did say that "If I believed Cummings set the boat afire I would have taken his life;" I wanted my pound of flesh. If you (addressing Mr. Stanbery,) had seen the misery and suffering that night, on board the Martha Washington, you would not blame me—I am sure I should have killed the incendiary on the spot.

I did not help to put the fire out; nobody could do anything at putting the fire out. From the time I saw the fire break out till the boat was ruined, there was no time to give orders to put it out. If I could describe a hurricane, I could describe that fire, so fierce were the flames, and so terribly quick the destruction of the whole. There was no hose used on the boat that night, no pails of water thrown, *as sure as you are born*. The pails were all frozen and bilged. What was done on the boiler deck, below me, I do not know. In less than a minute after the engineer shouted back to me that there was no fire, the flames flashed ten or twelve feet above the hurricane deck. The cabin of the boat had been painted over, God knows how often; perhaps twenty times. It was not the coal tar paint on the chimneys I smelt. It was a pine and turpentine smell that first startled me.

The Martha Washington would stow some 3,000 barrels of pork.

On the evening the boat left Cincinnati, she was drawing six feet ten inches forward, and six aft; her guards were a good foot out of water.— We went over the falls and finished loading the boat at Green river and at Evansville. The Martha Washington was built by Capt. Hicks, and just filled the Louisville canal. She was a tub of a boat, over four years old.

On the night the boat was destroyed, I came on watch at 12 o'clock, just as the big bell rang for landing at a wood pile. About three quarters of an hour after wooding I smelt fire; we had gone five or six miles from the landing; we were then in the open Mississippi, and some 200 yards below Island 65. The night was the coldest I ever saw in that country. Our tiller-rope was, I think, partly of wire and partly of rope. It is not my practice as pilot to go over the boat.

Did not go in the engine room after the boat left Cincinnati. The carpenter was a good man, but don't think he knew the guage of the boat aft better than I did. Think the boxes were piled seven feet high on cabin deck. I remember no freight on the boiler deck; saw no boxes on that deck.

The distance from wheel to bulk head was some eighty to ninety feet. After I had assured the Captain that the boat must be on fire, he looked

over the corner of the deck and towards where the wood was piled and replied "Lew, there's no fire," or, "I don't see any fire." The last time I saw Nicholson before the fire, he was in the social hall.

To Mr. Walker.—I saw the flames flash up between casing and chimneys, or between casing and hurricane deck. Light boxes can be stowed on 2d deck; light freight is sometimes stowed in the hold when it is not stowed full of heavy freight.

George W. Shurragar called and sworn.—Reside in Cincinnati; Wm. Capen of Boston is an acquaintance of my family, and in the habit of stopping at my house when visiting Cincinnati. Benjamin Earl once called upon me and asked when Mr. Capen would be in Cincinnati; I told him soon, probably. Capen held a claim against the old firm of the Chapins brothers. Earl said he wanted to see about settling this claim of Capen's; said he also held a claim against the Chapins in which he had been secured by the assignment of a policy of insurance from the Madison office; that he had borrowed a sum of money from Mr. Kissane, to whom he had re-assigned this policy in security; that when the insurance money was collected Capen should be settled with.

Mr. Gallagher.—Do you know Mr. Kissane, and if so what is his character?

Mr. Shurragar.—I have known Kissane ever since he first came to Cincinnati; never heard any thing against his character until his arrest, prior to this examination. I had occasion, some few months since to investigate his character, and a very searching examination was given. It arose upon an application for a degree in a Masonic Lodge. I found nothing at all against his character.

A. C. Brown.—Am in the leather business in this city. A roll of white sole leather contains six sides, scant four feet long, and a trifle over twelve inches in diameter; the largest size rolls may be four and a half feet long and fourteen inches diameter. A bale of sheep skins contains sixteen dozen, and is two feet square, and scant twelve inches high. Am not particularly acquainted with S. C. Burton.

Hearing of Rebutting Testimony on part of Prosecution resumed.

Richard Thornton.—Am a leather dealer in Cincinnati. Country tanned white sole leather of the heaviest kind weighs about 100 pounds to the roll, more generally fourteen pounds to the side. The sole leather tanned in Cincinnati is heavier than that brought from the country; it weighs about eighteen pounds to the side. I generally put up sheep skins ten dozen to the bale. A bale is two and a half to three feet long, twenty by twenty-two inches high, and two feet in thickness; 100 bales of my putting up would about equal the space occupied by ten cords of wood.

Cross examined.—My best quality of skins sell at \$4.50a5.00 per doz.; generally mix first and second qualities; made measurement with regard to this case.

Samuel Beebe.—Resided in Cincinnati in January, 1852. Knew Anderson the drayman; never knew him to employ more than two or three draymen; changes them often; had German draymen in that month.—Have been in his stables and knew his drays and horses.

Cross examined.—Anderson may often hire other drays; he may have often hired as many as twenty drays. I am a master drayman and run five drays. Have had no difficulty with Anderson. Have hired as many as twenty drays when pushed. Anderson's stable will hold three or four horses. Anderson has the reputation of a good, honest man.

Wm. H. H. O'Neal called.—Never knew Anderson (who drayed for Smith & Kissane in January, 1852,) to run over three drays. I am a master drayman, and run eight drays.

Cross examined.—When pushed I have hired as many as fifteen or twenty other drays.

John Igleheart.—Have lived in Cincinnati some eight years. In January, 1852, lived with Mr. Chew; before that time lived with my father on Court street. Knew all Anderson's men, horses and drays; never knew him to have over four drays. My father's warehouse was on the canal, near Smith & Kissane's place of business. Have very frequently seen Amasa Chapin, Cole, Holland, Cummings and Kissane at the place of business of the latter. Have seen them there after dark.

Cross examined.—I saw Cole and Cummings at Kissane's establishment two weeks before I went to live with Mr. Chew. They were talking together; had never seen either Cole or Cummings. Next saw them at Chew's office after the burning of the Martha Washington. Was engaged in copying and other work for Mr. Chew. Afterwards told Mr. Chew I had seen Capt. Cummings with Mr. Kissane, and wondered what they were doing together. Four days ago I talked with Mr. Chew about this matter for the second time. Saw Cole and Holland at Kissane's warehouse a few days after I first saw Cole there. Had seen Holland there before. Saw Holland and Cole at Kissane's warehouse before the burning of the Martha Washington. Saw Holland at Kissane's twenty or thirty times, three or four times before the burning; am positive I saw him. Think I saw him talking with Mr. Smith, and where Mr. Magill and Mr. Anderson might have seen him. I thought Holland must be a clerk of Kissane's, he was there so much. Saw Cummings there a few weeks after the burning of the Martha Washington. Saw Cole at Kissane's five times, once or twice before the boat was burned, and several times afterwards. I told Mr. Chew I had seen gentlemen at Kissane's whom I did not know; that if I could see the Chapins I should know

whether they were the persons. I have been in the employ of Mr. Chew some time, nine months, perhaps more; can't exactly tell. Went there before Christmas; it was in 1851.

Mr. Pugh.—How came you to twice say you had been with Chew nine months?

The witness continued.—I cannot tell; I thought it was nine months and more. I think I have read Mr. Chew's testimony in the newspaper; I do not copy my testimony from Mr. Chew's; that would be a nice piece of work. Don't recollect what took me up to the canal when I first saw Holland at Kissane's office. Have talked with Mr. Chew and his son since coming to Columbus. Since coming into the Court room Mr. Scarborough asked me if I had before seen Mr. Chapin, and pointed him out; told him I had; never talked with Scarborough before.

I cannot say that I knew Mr. Cole by name until I saw him here in Columbus; just after breakfast this morning I told Mr. Chew that a man just then passing me was the one I had often seen at Kissane's, and believed to be Cole; he said it was Cole. I have heard the Martha Washington affair talked of a great deal during the past year.

Mr. Pugh.—What induced you to tell Mr. Chew it was Cole?

The witness.—I spoke of a man that Mr. Chew said must be Cole; I did not exactly describe him, nor did Mr. Chew. I have never seen Mr. Mason since he was knocked down by Capt. Cummings; Mr. Chew said it was a shame. I have always boarded at home.

[The witness underwent a long and severe cross-examination.]

Mr. Ray called.—Lard is very often packed in pork barrels, and will weigh 240 to 260 lbs. to the barrel. Mr. Torrence was mistaken in his statement.

Lewis Choate re-called and examined by Mr. Walker.—I think that at the meeting of Underwriters, Mr. Mason said there was a claim on insurers for nearly \$100,000 of boots and shoes, and that the boxes of boots and shoes would make a pile as big as a house. It was upon this I said that no such freight could have been shipped.

Cross-examined.—Mr. Mason said: "could over one hundred thousand dollars worth of boots and shoes be stowed on the Washington?" I am not mistaken as to the reported (by Mr. Mason) value of boots, shoes and leather. "It has got into my head strong." I think Mr. Hartwell, Capt. Ross and Mr. Carter, who were there, will testify to the same thing. Afterwards, other bills of lading were brought to me. It was not a rumor at New Orleans, to my knowledge, that the boat was set on fire; it was 4 months after the loss of the Martha Washington, that I heard it said she was set on fire. I never suspected it before.

Direct resumed.—A few months before the burning of the Martha Washington, I saw Holland coming up the Mississippi; I was introduced

to him; by Capt. Cummings, who told me he had hired him as a mate, and was going up to Cincinnati to take charge of the Martha Washington. Capt. C. said he had made a payment on the Martha Washington. Holland could get from \$80 to \$100 per month. Cummings and Holland came from New Orleans to Cincinnati together. It was Holland's duty, as mate, to be on the upper or hurricane deck while on watch.

Here the Court took a recess.

AFTERNOON SESSION.

Lewis Choate re-called by Mr. Walker.—I have had a conversation with S. C. Burton since coming to this city. He told me that he should not have believed me guilty of a connection with the burning of the Martha Washington, but he was led to that conclusion by the Chappins.

John A. Duple.—I left Cincinnati for New Orleans on the R. H. Winslow a little before the Martha Washington; both boats left Louisville at the same time: we went through the canal, the Martha Washington over the falls.

Mr. Stanbery.—Did you see Nicholson, clerk of the Martha Washington, after your arrival in New Orleans?

Mr. Duple.—Yes, sir.

Mr. Stanbery.—Did you, while in New Orleans, hear a report current that the Martha Washington had been set on fire?

Mr. Duple.—I —

Mr. Walker.—You may not answer that question. I object to the question; I do not see the right of the gentleman to ask it, unless it be the intention to try this case upon *rumor*—if that be the case, gentlemen may be content, for these defendants have already been tried, hung, and quartered by public rumor. I object to the question.

Mr. Stanbery.—The opposite Counsel have sought to discredit the testimony of Mr. Chew as to the statement of one of the deck hands, that it was currently reported on the bank of the river, where the boat burned, that she was set on fire. They have had witnesses to swear that they heard no such report on the bank of the river, or on the Charles Hammond, on which the shipwrecked crew and passengers took passage.

It has been charged that this prosecution was hatched by Insurance Companies; that they invented the charge of a purposed burning of the boat. We now wish to show that there was such a rumor before it was thought of by Insurance Companies or Mr. Burton.

Mr. Walker responded with great earnestness and power. He solemnly protested against such admission of rumors in different parts of

the world; how easy to find a rumor of anything and anybody! He must say he was astonished that the question had been asked.

Mr. Stanbery repeated that he wished to prove that immediately on the arrival of the crew and passengers of the *Martha Washington* in New Orleans, there was a report rife there—this proven, it could not hereafter be insisted that the Insurance Companies started this rumor.

Mr. Walker said he had once read a French essay entitled "A Reply to the Silence of Monsieur A. B." The gentleman seems arguing upon the silence; upon the *expected* arguments of counsel for the defence.

The Commissioner.—It will not be proper to prove a general rumor, unless the witness heard this report *on* the *Charles Hammond*, or from the crew of the *Martha Washington* *immediately* on their arrival in New Orleans.

Mr. Stanbery.—Did you hear, while on the *Hammond*, a report that the boat was set on fire?

Witness.—No, sir, not on that boat.

Mr. Stanbery.—Do you know Mr. Nicholson, clerk of the *Martha Washington*, and did you go to him in New Orleans to enquire about a rumor?

Mr. Pugh objected to the question, and argued its impropriety.

[The witness was finally allowed to state that Nicholson told him that he heard the fire while in bed, and before any alarm was given; he looked out and saw the flames rising over the forward part of the boat. Said he first gave alarm of fire himself, and then ran out and kicked at all the state room doors, first on one side and then on the other of the cabin.]

Dr. Jones called.

Before this witness was sworn, Mr. Gallagher warmly objected to the reception of his evidence, on the ground that, contrary to the order of the Court, he had been in the room while other witnesses were examined.

Mr. Walker said that he had not intended to object to this witness, but learning that he had been in the room during the afternoon session, he must object.

A long discussion rose on this point, in the course of which Mr. W. alluded to the absence of the District Attorney of the United States, and, while speaking of Mr. Stanbery in terms of high respect, remarked that the soul of this prosecution—the government—was Sidney C. Burton; and that should this case come before a jury, Mr. Stanbery could not appear for the United States without more authority. While this prosecution purported to sail under the flag of the United States, it was but a *privateer*.

Mr. Gallagher.—*A Pirate.*

Mr. Walker.—I do not use that word.

Mr. Stanbery said this was a serious matter and counsel would do well to devote their energies to the defence of their clients, and not to side thrusts at Mr. Burton. The powers of Mr. Walker, Herculean as they were, would all be needed to meet the evidence in the case.

The Commissioner ruled that Dr. Jones' evidence could be received.

Dr. Jones called.—[Before this witness was sworn, a long discussion ensued between counsel, as to the admission of his testimony. It was a rule of the court that the witnesses for the United States should not remain in the court room while others were giving testimony. Dr. Jones had been in the court room for some time before he was called. The witness was finally allowed to proceed.]

After he had been sworn, Dr. Jones said he knew Cheney. On the evening these defendants were arrested, he went to the Dennison House, where Burton showed me a deposition made by the elder Mr. Filley. I asked him if I could show it to Mr. Cheney, in whose welfare I was interested. No objection was made, and I visited Cheney and told him I had seen an important document, in which he was interested, and had got consent to let him see it. We started together to go to the Dennison House, and, on the way, we met Mr. Burton, who had nearly passed us, when I stopped and introduced Mr. Cheney to him.

Mr. Cheney said: "I know Mr. Burton, although I have never spoken to him."

I had the impression that they were acquainted. I am distinct in my recollection of what he said. I went with Burton to the Dennison House, where Cheney promised to come soon after. He came in about twenty minutes. We then went to Burton's room, where I read Filley's deposition in Cheney's hearing. At a certain point in the reading, Cheney said: "Does he say I said what was false?" Burton said: "Yes, and you know you did." Cheney replied: "That beats me." He added that he had not intended to say anything wrong. In the afternoon, Cheney came again, and had a private conversation with Mr. Burton.

To Mr. Walker.—L. L. Filley was my brother-in-law. Never saw Burton till December. I went for McDannel, and to see about his testimony. Have seen Cheney for two years past. Never knew much about his standing. My brother-in-law spoke favorably of him.

Question.—Did you ever hear Cheney spoken against by any person save Burton?

Mr. Jones.—I never heard Burton speak unfavorably of him except in his (Cheney's) presence. I do not know that Burton and Cheney were acquaintances before the arrest.

William M. Ward was called and testified.—Mr. Dupler called on me at my store and said he wanted to buy ten or twenty casks of brandy for Kissane, and wanted me to take the pay in candles. Kissane directed me to send it to the Martha Washington, and I sent ten casks to her, when the drayman returned with two of them, and said the boat would not receive them. Kissane then sent the drayman to take them to another boat, and the rest were taken away.

To Mr. Pugh.—The drayman took eight or ten casks, and brought back two. Kissane said he would send drayman for them. Part of them were on the pavement when I closed my store—believe they were gone next morning.

Reuben Wood, [present Governor of the State of Ohio,] was next called.—I have known Sydney C. Burton for 15 or 18 years; I believe he has lived most of the time in Ohio City—have seen him frequently—think his character as good as that of any other man. Have heard but little said about it.

To Mr. Walker.—I think I know what Mr. Burton's standing is; I think he is a very honest man, an active and industrious business man; never heard his character questioned in my life.

Geo. Barnum called and sworn.—I have known S. C. Burton 16 or 18 years; his reputation for truth and veracity is good.

Mr. Stanbery now announced that the testimony for the prosecution was concluded.

Mr. Pugh said that the defence might have to call a witness about the shipment of brandy, in the morning.

The Court then adjourned till 9 o'clock to-morrow.

FOURTEENTH DAY.

The Examination Closed and the Parties Held to Bail.

On the opening of the Court this morning, Mr. Walker rose and said that a proposition had been submitted on the part of the Counsel for the prosecution, to submit the case without argument; and upon a full consideration, the counsel for the defence have agreed to the proposition.

Mr. Gallagher said that the defence had telegraphed for two or three witnesses; but as the case had already taken up so much time, they were unwilling to postpone the decision any longer, and would, therefore, forego the benefit of the testimony alluded to, and submit the case to the Commissioner.

Mr. Wilcox then said he would adjourn the Court till noon to-day, when he would be ready to deliver his opinion.

The Court then took a recess till noon.

The Court assembled again at noon, when officer Bruen, of Cincinnati, and Deputy Sheriff J. W. Norris, Nachitoches Parish, Louisiana, brought into the Court room Capt. Cummings, who had been arrested some three hundred miles up Red River. Mr. Walker said that Capt. Cummings would abide by the result of the examination just closed.

Commissioner Wilcox then pronounced his opinion in the following words:

These persons are charged with an unlawful conspiracy to burn the steam boat Martha Washington, with intent to injure certain underwriters.

The offence does not consist in the actual burning of the boat, but in the unlawful confederacy. The crime is complete when the confederacy is made, and the burning of the boat is no constituent part of it, but merely an aggravation.

It is upon this charge of confederacy that the Attorney of the United States claims that the accused ought to be committed or held to bail.

The rule that ought to govern Magistrates on a preliminary examination of this kind is thus laid down by Chief Justice Marshall. [Burr's trial, vol. 1, page 11. The Commissioner read the rule.]

Taking this rule for a guide, it only remains to inquire whether a case is made out by proof, furnishing good reason to believe that the crime alleged has been committed by these persons.

It seems unnecessary, and scarcely proper, to go over with the evidence on either side; or to speak of anything else than the result which my mind has come to.

After as careful a consideration, then, as I have been able to give, it appears to me that the Attorney for the United States has shown, by proof, good reason to believe that the offence alleged has been committed by the persons charged; they must therefore, be held to bail.

Mr. Walker now addressed the Court, stating that he had been urgently requested by the Messrs. Chapin to ask the Court to fix the amount of their bail at a reasonable sum—one that would not be beyond their ability to give. Neither of them was worth over \$500 in the world, and whoever became their sureties would do so from confidence in the men. Capt. Cummings had also just stated to him that he had lost all he had in the world by the burning of the Washington, and being far from his home, might be unable to give large bail. Although two of the defendants—Mr. Cole and Mr. Kissane—might be able to give any amount of bail required, he hoped the Commissioner would fix the bail of all the parties at as low an amount as would answer the ends of justice; for any discrimination or graduation might be understood as implying a design to indicate different degrees of implication in the alleged conspiracy.

Mr. Walker alluded to that provision of the Federal Constitution, that, in no case shall excessive bail be required; and proceeded, briefly but with great force and eloquence, to argue the justice and the propriety of acceding to his request. The defendants would all appear at the next term of the Circuit Court—he knew it, as much as man may know a future event. The great improbability of a conviction was urged upon the attention of the Court.

The Commissioner said that possibly it might be improper for him to state what he was about to do, but he would say, that when he was first applied to for a warrant in this case, he hesitated. There were other reasons besides his residence at a point distant from Cincinnati. He endeavored to avoid—if he might properly do so—the responsibility. But when he learned that no other application had been made to Commissioners elsewhere, and upon a further hearing, he had issued the warrant. When the parties were first brought before him, their appearance, their reputed standing, their social connections—all conspired to impress him favorably; and he entertained little doubt but they would be able to establish their innocence of the fearful crime—for it is indeed fearful—with which they were charged. But as the testimony for the United States augmented from day to day, he was forced to change his opinion; and when the evidence for the Prosecution was all in, he could but see that the burthen of proving innocence rested entirely with the Defence. There was much conflicting testimony from witnesses for the Defence in regard to the burning of the boat:—when Lewis Choate's testimony in regard to it was concluded, he (The Commissioner) had become strongly impressed that the boat was purposely burned.

Personally, said the Commissioner, it would afford me a lively pleasure to fix the

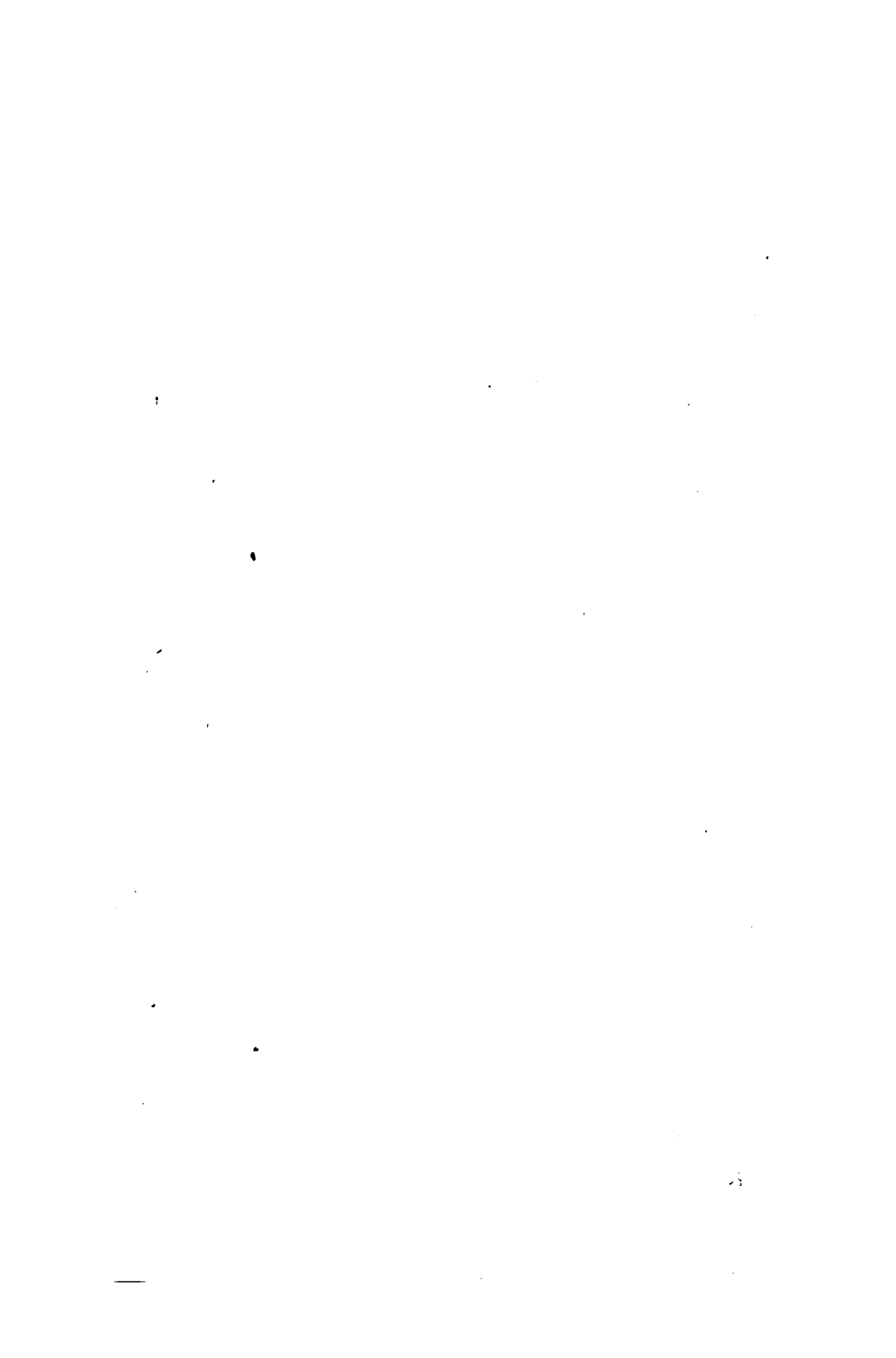
amount of bail very low. After a careful review of the whole ground, I deem it my duty to fix the bail as follows :

Mr. Kissane, \$10,000 ;
 Mr. Cole, \$10,000 ;
 Mr. Cummings, \$6,000 ;
 Mr. Amasa Chapin, \$6,000 ;
 Mr. Lorenzo Chapin, \$6,000 ;
 Mr. Holland, \$5,000.

During the afternoon, the parties severally gave the persons named below as their bail :

WM. KISSANE, \$10,000.	{ Samuel Smith, Oliver Brown, Geo. A. Pendleton, G. E. Pugh.
J. N. CUMMINGS, \$6,000.	{ Lyman Cole, C. S. Kendrick, Geo. W. Shurragar.
AMASA CHAPIN, \$6,000.	{ Oliver Brown, C. S. Kendrick, Lyman Cole, A. M. Helman.
WM. H. HOLLAND, \$5,000.	{ G. E. Pugh, Geo. H. Pendleton, Oliver Brown.
LYMAN COLE, \$10,000.	{ Geo. W. Shurragar, J. L. Vattier.
LORENZO CHAPIN, \$6,000.	{ C. S. Kendrick, Lyman Cole, Oliver Brown.

The Court then adjourned *sine die*.





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