

1881-018
Nansemond Co. (Suffolk)

Chancery Causes: David R. Wharton vs Andrew J. Rabey et al

Brothers, Herrell, Riddick, Savage, Bryant, Voight, Lilly, Doughtie, Wilkins,
Duke, Smith, Jones, Lassiter

Peter B. Prentiss Esq.

Clerk of court Suffolk

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David R. Wharton Esq:

Take notice that I shall
on the 8th day of October 1878
between the hours of 6 a. m.
and 5 p. m. before Peter B. Pantis
in the clerk's office of Nonesuch
^{county} proceed to take the depositions of
J. L. Doughter and others to
be read as evidence in my
behalf in a certain suit
depending in the circuit court
of Nonesuch County in which
you are plaintiff and I
am defendant - and if from
any cause the taking of the
said depositions be not com-
menced on that day or if com-
menced be not concluded on
that day then the taking of
the same will be adjourned
from day to day and from
time to time until the same
shall have been finished.

Andrew J. Roby
Sept-23rd 1878. per Wm H. Smith
att'y.

A. J. Raby Ltd
also } Notice to take Sept:
David R. Wharton

Executed & a true copy being returned to
David R. Wharton
23rd Sept 1878

J. H. Grant by the
J. H. Grant Esq

CHANCERY SUMMONS.

The Commonwealth of Virginia,

TO THE SHERIFF OF NANSEMOND COUNTY—GREETING:

YOU ARE HEREBY COMMANDED TO SUMMON *W. H. Brothers.*

to appear at the Clerk's Office of the Circuit Court of Nansemond County, at the Rules to be held for the said Court, on the first Monday in *September* next, to answer *a*
Bill in Chancery, exhibited against Andrew J. Rabez and him
in the said Court by *David R. Wharton*

and have then and there this Summons. Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this *31st* day of *August* 187*7*, in the *102nd* year of the Commonwealth.

Teste:

Peter B. Prentis Clerk.

Exacted & in time of book return, by W. H. Brothers.

Killybeg

David R. Wharton

2^d } Sum^d. in Chy.

W. H. Brothers & Co.

To Sept: Rules, 1877.

Cur. Co.

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF NANSEMOND COUNTY, GREETING :

YOU ARE HEREBY COMMANDED TO SUMMON *Andrew J. Rabey,*

to appear at the Clerk's office of our *Circuit* Court for the County of Nansemond, on the
first Monday in *September* next, 1877, being rule day, to answer a bill in chancery,
exhibited against *him* _____ by

David R. Wharton _____

and unless *he* _____ shall answer the said bill by the
next rule day thereafter, the Court will take said bill for confessed, and decree accordingly. And
have then and there this writ. Witness, PETER B. PRENTIS, Clerk of our said Court at his office, this
18th day of *August* 1877, and in the *102nd* year of the Commonwealth.

Peter B. Prentis, Clerk,

The Sheriff will, in his return, note the day on which this process is executed on each defendant.

Executed + copy of the within delivered to A. J. Raby
J. L. Hughes Esq

Kilby. 6.9

David R. Wharton

to {
Semi. in Chy.

Andrew J. Raby

To Sept. Rules, 1877

Pro: B. No. 1. page 102

Civ. Co.

The Commonwealth of Virginia,

To the SHERIFF OF NANSEMOND COUNTY, Greeting :
YOU ARE HEREBY COMMANDED TO SUMMON *J. L. Douglass,*

Peter B. Prentiss, a Commissioner in Chancery
to appear before ~~the Judge~~ of the Circuit *~~~~~* Court of Nansemond County,
^{Clerk's office} at the ~~Court House~~ of said County, on the *8th* day of *October* next, to
testify and the truth to say on behalf of *A. J. Raby* *~~~~~*

in a certain matter of controversy in our said Court, depending and undetermined between *and*

A. J. Raby *~~~~~* Plaintiff
and

David R. Wharton *~~~~~* Defendant

And this the witness shall in no wise omit, under the penalty of \$100 ~~each~~; and have then and there this summons.

Witness, PETER B. PRENTISS, Clerk of our said Court, at his office, this *23rd*
day of *September* *~~~~~* 1878, in the *103rd* year of the Commonwealth.

Peter B. Prentiss, Clerk.

W. J. Ruby Ld.

Co. { Sta.

David R. Wharton

To 8th day of Octo: 1878
at 11 O'clock A.M. at
the Clerk's Office of House-
man Co. Co.

Lee Bilton witness
of Secy

Whelan

" }

Relly L.

It is ordered that ^{the defendant} W. H.

Brothers have leave to file his answer.

Whit

7

Abf-

order

Geo. Brown,

Wharton

⁴
vs

Raby et al.

By consent of parties given
in open court ^{by their attorneys}, and
entire of record, it is
ordered that this case
may be submitted to
the judge of this court
for ^{decision or} decree to be made
when ~~to be~~ ^{is} in vacation

Wharton
at

Rahy at al
Apr 1880

We consent to
this decree

C B Hayden
Att. for Plaintiff

17 Creek }
N H Hickey }
for Def. &c.

Geo. B. Brown

Entered C. B. No 1.
p-482

David R. Wharton

vs

a J Raby

On motion of the Defendant by Counsel, leave is granted him to file his answer to the complainant's bill, which is accordingly done, & the cause is continued.

David R. Wharton

to
a J. Raby -

Deer -
is be entered
Oct 1877
Geo. T. Blod,

We consent to the within
order

John R. Kelly per
Wright & Rauls p. d.

Entered O. B. No. 1
p 370 -

Rec^d January 13th 1876 of Mr. R. B. Wharton sixty seven
(667) Dollars as part pay of the amount due on agreement
and contract for lease (bearing date 17th Octo. 1874) of the J.
L. Doughtie farm. which lease continues through the term of
five years. from 17th day of Octo 1874 - to the 17th day of
Octo: 1879.

Witness

Samuel Sarge

A. C. Vahry

"0"



State of Virginia.

Nansemond County. to wit;

Whereas, I have this day, purchased of David R. Wharton, of the above said State and County, for the sum of One Hundred and Eighty nine dollars and ninety six cents — \$189⁹⁶ — which sum, is found to be the consolidated indebtedness of said David R. Wharton, to me, at the present time, and by reason of this purchase, the said indebtedness, in its original form is now cancelled and satisfied; — The following property, to wit: One Chestnut colored horse, five head of fine cattle, consisting of grown cows and oxen, Twenty barrels of assorted Corn (long) and one thousand pounds of clover blade fodder. And whereas, by reason of the importuning of the said David R. Wharton, I am disposed to aid him as far as I can, without material injury to myself. Now be it known to all whom it may concern, that I have loaned the above described property to the said David R. Wharton, which is at all times to be subject to my order, and that or its equivalent to be delivered, as per my order, when required. In witness whereof I hereunto set my hand and seal this 16th day of Octo. 1874.

A. F. Rabby

Seal

11th Octo. 1874.

I, this day, acknowledge, to have sold to, and then received on loan from A. F. Rabby, the property above enumerated and described, upon the terms and conditions above given; And which property, or its equivalent, is to be, at all times, subject to his order, And I bind myself, assigns &c. to deliver, at any time when required, as per his order, the said property or its equivalent. And I further, agree to waive the benefit of the Homestead Exemption as to this obligation.

Witness, R. E. Kiddick,

" S. L. Doughter

(Signed) David R. Wharton
his Mark

Nov 20th 1874. I, this day transfer all the right, title, interest, power, and control vested in me by virtue of the writing, within, unto W. H. Proctor. And promise to have the same writing duly placed upon record, when required to do so, and defray the expenses of the same.

✓ A. J. Rabey

In the Clerk's Office of Naussement County Court, the 6th: day of February, 1877.
This Deed of Loan, together with the endorsement thereon was acknowledged by A. J. Rabey;
and the memorandum appended thereto, executed by David R. Wharton, was proved by the oath of J. L. Doughter, one of the subscribing witnesses; And on the 9th: day of February, 1877, the said memorandum was proved by the oath of R. E. Reddick, the other ~~other~~ subscribing witness thereto - whereupon said Deed of Loan, endorsement and memorandum are admitted to record.
Teste, Peter B. Prentiss, Clerk.

A. J. Rabey
Deed of Loan
1877

1877
Acknowledged in the
Office of A. J. Rabey - and
proved, as to D. R. Wharton, by
the oath of J. L. Doughter one
of the subscribing witnesses
and proved as to D. R. Wharton, by
the oath of R. E. Reddick, the
other subscribing witness, and
other subscribing witnesses, and
other subscribing witnesses.

Recorded Deed Book No. 5
p. 689

the first hand
\$2.25
all

David R. Wharton Esq.

Take Notice, That I shall proceed on the 7th day of October 1878
and between the rising and setting of the sun, at the residence of James
B. Jones in Gates County in the State of North Carolina
~~before~~

to take the deposition of James B. Jones & others

in my behalf
to be read as evidence in the suit now depending in the Circuit Court of the County of
Nansemond Va.

in which you are plaintiff and I am
defendant. And if, from any cause, the said depositions should not be commenced on that day,
or if commenced, be not concluded on that day, the taking of the same will be adjourned and continued from
day to day, or from time to time, at the same place and between the same hours, until the same shall be
completed.

A. J. Rabey
per Wright & Lawler
attys.

I hereby acknowledge service of the
within notice Sept 11th 1878.

Wilbur J. Kelly
Atty. for Ptt.,

The Commonwealth of Virginia:

To any Commissioner appointed by the Governor of said Commonwealth or any Justice or Notary Public of the State of North Carolina: Gentlemen, Greeting.
Know Ym, that, WE, Trusting to your fidelity and prudent circumspection in diligently examining James B. Jones and others or witnesses in behalf of A. J. Raby defendant in a certain matter of controversy depending in our Circuit Court for the County of Nansemond in the State of Virginia between David R. Wharton plaintiff and said A. J. Raby defendant, request you that on the 7th day of October 1878 at the residence of James B. Jones in Gates County in the State of North Carolina the witnesses aforesaid before you, you cause to come and diligently examine on the Holy Evangelists of Almighty God and their examination into our said Court distinctly and plainly without delay, you seal and certify ~~and~~ enclosed returning this writ.
Witness Peter B. Puntis Clerk of our said Court at Suffolk Nansemond

County aforesaid the 11th day of
September A.D. 1878 and in the 103rd
year of the Commonwealth.

Peter B. Prentiss. Clerk.

The Depositions of James B. Jones
Dr. R. E. Ridchick and John
W. Lassiter Taken before me Wm.
H. Polson a Justice of the Peace
for the County of Gates, State of
North Carolina pursuant to Notice
hereto annexed at the residence
of James B. Jones in the said
County and State on the 7th day
of October 1878 between the rising
and setting of the sun on the
said day to be read as evidence
on behalf of A. J. Raley in a
certain suit in equity depending
in the Circuit Court of Non-
sunder County in the State of
Virginia wherein David R. Wharton
is plaintiff and the said A. J.
Raley defendant.

James B. Jones being duly sworn
on the Holy Evangelist of Almighty
God deposeth and saith as follows:

1st Ques.

What is your name age, when do
you reside and do you know the
parties to this suit?

Ans

My name is James B. Jones, age 41 years,
I reside in Gates Co., North Carolina and
I know the parties to this suit.

2nd Ques.

State what you know in relation to the indebtedness of David R. Wharton to A. J. Robey.

Ans

I heard that Mr Robey had a Bill of sale from David R. Wharton. I heard this many times. From what I heard I had every reason to believe that Wharton was indebted to Robey. I have heard it ever since the sale at ^{or gave after} J. L. Dougherty's. My impression was that he was indebted very largely to said Robey. And further this defendant said not.

James B. Jones

Dr. R. E. Riddick being duly sworn on the Holy Evangelist of Almighty God Deposed and said as follows;

1st Ques.

What is your name age where do you reside and do you know the parties of this suit

Ans.

My name is R. E. Riddick, I am 32 years old, reside in Gates Co. N.C. and I know the parties to this suit.

2nd Ques.

When you called upon to witness any paper between David R. Wharton and A. J. Robey some few

days after the sale which took
place upon the premises of J. L.
Doughtie of so state what you may
know about said paper and its
purport.³

Ans.

I was called upon to witness such
a paper and hope to convince all
parties concerned as to my honest
and positive convictions as touching
the Wharton and Raby case.
As regards the testimony already
elicited from me in said case
on a former occasion I have
sought at the hands of the
defendant for an opportunity to
be granted unto me for the
purpose of correcting some
enormous errors in the deposition
before rendered by me (which
errors I feel sure was caused
by suffering my recollection
which had grown faint to as to
some particulars in the case
by reason of considerable lapse
of time. (which), to be erroneously
guided and betrayed into error
by parties seemingly to sympa-
thize with the plaintiffs side of the

case. Then you I am here to day
to correct - or set aside my for-
mer testimony and supplement it
with facts pertaining to some
very important points questioned
in the case which I treated before
rather evasively on account of
my recollection of events which
was much treacherous by lapse of time
aided by wrong data furnished
me with which to refresh my mind
as to main events involved in
the case to which I was called
to testify. And now I am glad
to have the privilege to state
in justice to truth and equity
that since I have given the
matter intense thought and
have diligently sought out the
true data by which to refresh
my recollection I am prepared
to depose correctly, as well as to
cite all parties concerned to
the grand cause which guided
me now or less in all mistakes
which I committed in rendering
the former deposition viz: The
impression which had been conveyed

in my mind that the Bill of
Sale which I witnessed was
for an amount - between eighty
and ninety dollars and that
deceased thus: At the time of
the execution and witnessing
of the second Bill of Sale I
am positively prepared to say that
some former writings between
said Wharton and Raby con-
sisting of a Bill of sale and
note were present and dwelt
upon and their connection with
the subsequent paper explained
~~that~~^{and} the amount mentioned in
those papers was between \$80 and
\$90, which gained a more
lasting hold perhaps upon my
mind than any other sum of
money mentioned at that
time. And more mention of
that particular sum was made
by parties in my hearing seeking
for Wharton, what my testimony
in the case would be. Therefore
it is plain to my now that my mind,
though unintentionally, on my part -
was betrayed into a wrong conclu-

sim about the amount of money
and about the Bill of Sale
which I did witness and which
I did subsequently prove in the
Clerk's office consequently I am
positively prepared to state that
the second Bill of Sale which
was for \$189 and some cents, shows
my genuine signature and that
is the paper which was intended
to live and remain in full
force and virtue between
Mr. Wharton and Mr. Roby
until cancelled. Concerning
what was done in the Clerk's
Office when I went there to
prove said Bill of Sale I believe
and I am of the opinion that the
Clerk (Pent's) and myself did
all in that connection that
was required whether I distinctly
recalled it or not - at any rate
I am satisfied that the proper
paper of \$189⁹⁶ was duly proven as
for as the said Clerk and myself
were concerned. Furthermore as to
the time of my witnessing the
said Bill of Sale of \$189⁹⁶

and the only Bill of sale which
I did witness I will say to the
best of my recollection that it
was some few days after the
sale at J. L. Doughter and I
came to witness the same by
request of Mr. Raby and Mr. Wharton
signed and acknowledged in
my presence and in the presence
of J. L. Doughter who was also one
of the subscribing witnesses. In
conclusion I now feel sure that
the second Bill of Sale executed by
Wharton and which I witnessed
calling for the sum of \$189 ⁹⁶/₁₀₀
was for the so-called "consolidated
indebtedness" of Wharton to Raby
at that time which must have
been understood at the time
by all present. And further this I deposit
with you. R E Riddick

John W. Loxiter being duly sworn on
the Holy Evangelist of Almighty God
deposed and said as follows:

What is your name, age, when do
you reside and do you know the
parties to this suit?

1st Ques.

Ans.

My name is John W. Lossiter, age 33 years, I reside in Gates Co. N.C. and I know the parties to this suit.

2nd Quest.

State ~~whether~~ whether you know anything of the Bill of sale referred to in their depositions?

Ans.

I do not.

3rd Quest.

Do you or do you not - know that you were present when A. J. Roby visited the plaintiff to receive a certain sum - which the defendant claimed to be due him by said plaintiff and whether or not upon that occasion Roby demanded of Wharton partial payment upon a debt - which appeared to be due Roby by Wharton of some magnitude?

Ans.

I was present on such an occasion and Roby asked Wharton if he was ready to pay that other amount or a part of it - I don't recollect - which Wharton reply was "Not to day Mr Roby" This conversation took place about the 1st of January 1877.

4th Quest.

From the nature of the conversation which you heard was you mind influenced with the idea that

Wharton was indebted to Roby to
the extent of considerable mag-
nitude?

Ans

From the evidence Mr. Roby said to
me on our return from it was,
Mr. Roby said that Wharton was
getting tricky or was tricky and
if he didn't mind he would
put him to his traps or crowd
him. Roby seeming to think that
Wharton had treated him badly,
on the part of the rent.
And further this ~~with~~ deponent-
with not.

John W. Lassiter

State of North Carolina
Gates Co to wit:

I, Wm. H. Polson a Justice of
the Peace of the said County and State
do hereby certify that the foregoing depositions
were duly taken, sworn to and subscribed
before me at the time and place mentioned
therein. Given under my hand and
seal this 7th day of October 1878.

W. H. Polson

J. P. (Seal)

costs \$8⁸⁵/₁₀₀

A. J. Raby L
Qs { Depositions
David R. Wharton.

After Exam. Deposition
Came to hand Oct. 8th 1878
Filed. *Wh*

The Depositions of Oliver Hamell, D. Robert
E. Reddick and David R. Wharton, —

taken before me, Peter B. Reuter, a Commissioner in Chancery
of the Circuit Court of Nauseland County, pursuant to
the notice hereto annexed, at the residence of Oliver Hamell,
in said County, on Thursday, the 28th. day of March, A.D.
1878, between the hours of Six (6) A.M. and Six (6) P.M.
to be read as evidence on behalf of David R. Wharton,
in a certain suit in Equity, depending in the Circuit
Court of the County of Nauseland, wherein ^{said} David R.
Wharton is Plaintiff and Andrew J. Rabey is Defendant.

Present Wilbur J. Kilby
Richard H. Rawls

Attorney for Plaintiff
Attorney for Defendant

Oliver Hamell, being duly sworn on the Holy Evangel-
ists of Almighty God, deposeth and saith, as follows:

st
1. Quest. by Plffs. Att.

What is your age, where do you reside, and do you
know the parties to this suit?

Answer,

I am nearly 73 years old, reside in Nauseland County,
Virginia, and I know the parties to this suit.

^d
2. Quest. by same

Were you present on or about the 16th. day of October-
1874, at a certain ^{sale} of property by Mr. A. Rabey, at the
residence of Joshua L. Daughlin, in Nauseland Co.
& if so, do you know of any purchases made by
David R. Wharton thereof; & state all you may

know about the same?

Answer

I was present at the sale referred to - (Exhibit "B" was here shown to the witness) I know he bought some corn - (I paid very little attention to the sale). I believe he bought, some Shucks, some corn, for sale ~~perhaps~~. I am quite sure, that he purchased property at said sale. On the following day, the property was delivered - and having had some corn stacked off to me, he wished there was any left that had ^{not} been previously sold to others, I went over to get such as I bought, & it was delivered to me - Mr. Raby came out, at that time I asked him to go in the house to exhibit a note - (Exhibit "A" is here shown to witness) that exhibit witness says, is the note which he ^{& his signature there is genuine} witnessed - Mr. Raby went on to say that a Bargain & Sale was made to secure said note. and that said Bargain & Sale, included 1 bay horse and, as well as I recollect, 5 head of Cattle - (Exhibit "D" filed with ~~the~~ the answer is here ~~presented~~ exhibited by the witness) & witness thinks that "it" is the Bargain & Sale referred to.

I was not called on, on that day, ^{nor since then} to exhibit any other papers, for Mr. Raby or Mr. Wharton -

Cross examined by Defendants Counsel

Did or did you not, witness, the Bill of Sale that was given to secure the note to which you

50
1. Examine.

refer?

Answer

I did not.

2^d Quest

Do or do you not know, personally, whether the
said note of \$89⁷⁶ above referred, was paid or not
by Wharton?

Answer

I do not know, of my own knowledge that said
note was paid by Wharton - he (Wharton)
told me that he had paid the note a few days
prior to that time. This conversation occurred
as ^{well} far as I can remember, about 12 months after
the sale.

and further this dependent South not.

(Signed)

Oliver Karmel

Dr. Robert E. Reddick being duly sworn in the
Holy Evangelists of Almighty God, deposes & saith
as follows

What is your age, where do you reside & do
you know the parties to this suit?

I am 32 years of age, reside in Gates County, North
Carolina & I know the parties to this suit.

2^d Quest, if same

Were you present on or about the 16th: Octo: 1874, or
the day after, at the residence of Mr. J. L. Bonk, or
where the sale above referred to had been made, & were
Messrs. D. R. Wharton & A. J. Ray present; & were
you called upon to witness any paper, & if so, state
all you may know about said paper & its

me.

Amherst

I was not present on the day of said Sale - the day after the Sale, I traveled to Suffolk, I met Mr. Noy near the Crofs Swamp, about 1 1/2 miles from the place of Sale - I often, exchanging a few words, he asked me, if I would not go back to Mr. Douglass - I replied, that I did not know how I could, just then - He stated to me that he wanted me to witness some instruments of writing - not specifying the kind of instruments, if I would do so, he would carry me to Suffolk, that evening - as a favor, I agreed to do so, - after reaching Mr. Douglass, he told me, that he wished me to witness a Bill of Sale, to secure some property - that Mr. S. N. Wharton had ^{personally} purchased at the Sale - He then presented (in the presence of Mr. Wharton) an instrument, which he claimed to be the original Bill of Sale above alluded to, I read the bill of Sale in my hearing - he then asked me to read it & I overheard it - I witnessed a Bill of Sale, specifying an amount somewhere between 80 & 90 dollars - I never other, at that or any other time. I did not ~~say~~ verify ~~my~~ or acknowledge the same, before any officer, then, as there was none present.

~~I witnessed~~ (Exhibit "D" referred to hereinafter, is a copy of the witness) who says, that he thinks (the witness) that it is the original Bill of Sale which he witnessed as

for the reason, that it specifies, about as near
the amount of money therein mentioned - which amount
so far, as I remember, was between 80 & 90 dollars.

Mr. Raby came to see me, last year, at
Millsville, Gates Co. North Carolina & requested
me to go to Suffolk & ~~ask him~~ procure, or a Sub-
scribing witness, before the Clerk of the County -
Co. of Hancock, the ~~above Bill of Sale~~
instrument of writing which I subscribed at I. L.
Douglass, & I did so, accordingly, before said
Clerk - I remarked to the Clerk, in his Office,
that I had come down to witness an instrument
of writing for Mr. Raby - he replied very well - he
(the Clerk) then took out an instrument of
writing, but did not read the same to me, & I
told him, that I would acknowledge my signa-
ture to the instrument of writing, believing it to be
the original instrument, which I had intended
as above; & so believing, did not ask to have it
read - not seeing it wrong - I do not even
remember, that I saw my signature - I subscribed no
other Bill of Sale & went to Suffolk with the intention of
affirmation of proving the Bill of Sale that I had previously
signed, as a witness. I went to know none other, as
I had intended no other between the parties - The above
Bill of Sale was given by Wharton to secure the purchase
price of the property bought of him; at said Sale
Nothing was said, at that time, concerning any other

6

undoubtedly between said Wharton & Raley.

Cross-examined by Defendants' Counsel.

Quest:

Did you mean to state in your examination in ~~chief~~
chief, that you overtook the said Cooper, at said
Longtree's the ^{next} day following said Sale?

Answer.

I intended to have said, that it was in a day or
two thereafter.

Quest

Will you please state, whether or not, Mr. Raley, when
he met you in the road, stated that the reason, that
he wanted you to become a witness, was because
you could read & write?

Answer.

I think that something was said to that effect.

Quest:

Do you write your name?

Ans:

I do.

Quest

You have stated, that when you went to the Clerk's
Office to prove said writing, that the Clerk did not
read said instrument to you, & that you
did not read it yourself, & that you do not
remember, whether the Clerk showed you your
name or not.

Answer

Yes. I do.

Quest:

If you neither read nor heard read nor saw any
signature, will you be kind enough to state
what you did & know before the Clerk?

Answer.

I acknowledged, that I subscribed ~~that~~ was the Bill
of Sale above referred to.

Quest:

If you ~~with~~ neither heard read nor read yourself
nor saw any signature, ~~saying~~ what led you to

Suppose that ~~the~~ the paper you acknowledged was
the Bill of Sale above referred to. 3

Answer.

When I went into the Clerk's Office I ~~asked~~ ^{said} to the
Clerk, after telling my business, that I was in need
of a bill - he then took the instrument of writing a bill of
sale, telling me, so far as I remember, that that was
the Bill of Sale or instrument of writing - I
not deeming necessary, or not knowing that it
was even necessary, did not ask him to read it,
I relying upon his statement that it was the
true bill of Sale, he asked me would I ac-
knowledge my signature, as a subscribing
witness - I told him, I would - he saying
that was all that was necessary. I left
the Clerk's Office immediately.

Quest.

When the Clerk was asking you the above
questions, did he have the said Bill of Sale in
his hand & unfold it, or not.

Answer.

During a portion of the time that we were engaged
in conversation relating to my buying the Bill of
Sale, or far as I remember, he had the Bill of
Sale in his hand (whether open or not, I cannot
say.)

Quest:

Did the Clerk ask you, whether you would acknowledge
a certain name affixed to said bill of Sale to be
your signature?

Answer.

As to the precise language that was used, during
our entire conversation, I cannot say: but only

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remember, his having asked me, would I acknowledge
my signature to the endorsement of writing,
to which, I replied, "I would."

Quest: Before making the above reply, did you see the
signature in question?

Answer. As before stated, if I saw my signature, I
do not remember. I may have seen it or
I may not have seen it.

Quest: Do you remember, some time previous to your
said visit to the Clerk's Office, that A. J. Ray called on you
at Montoursville & showed you a Bill of Sale endorsed
by you, signed by Louis Wharton, & explained to you
the circumstances, as to when you signed it as an
endorsement, & asked you to go down to Sulphur &
acknowledge it, before the Clerk?

Answer. I remember, previously, to the said visit to
the Clerk's Office, that Mr. Ray called on me at
Montoursville in relation to the said Bill
of Sale, requesting me to go to Sulphur
to acknowledge it & make some statement, as
to a supposed purchase that Mr. Wharton
had made. I explained to some extent the affairs
existing between him & Louis Wharton: but, as
to my seeing a Bill of Sale executed by him,
I do not remember.

Quest: Did he not show you, at that time the
Bill of Sale which you had previously
endorsed, the few days following the said

ask at doing this?

Answer.

I do not positively remember.

Question

Please examine the original of which "Exhibit C" is an attested copy, & say, whether your signature appears there?

Answer.

It is very much like my signature — I do not remember having previously signed an instrument of writing specifying \$187. but only remember as having signed one specifying an amount as before stated of between 80 + 90 dollars or thereabouts.

Question

Can you now remember, distinctly, all the writings that you have ever signed in your life?

Answer

The human mind is often, & necessarily, & without frequent recourse to Books, or some other means, by which we can refresh our memories, it often disappoints us. & I do not claim to remember every thing that I have ever written in my life.

Question

Could you recognize your Autograph if signed by your self in a blank Album?

Answer.

If no modifications were connected therewith I should have a faint recollection of it.

Question.

Now you say, that you cannot positively recognize your own signature when signed in a blank leaf without there being some attending circumstances to recall to your mind when you signed it.

Answer.

I can, emphatically. If there be no attending circumstances connected with the subscribing of my name upon the blank leaf of an Album or book of any description, but, afterwards would cause

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some fault, while I would not deny my own signature anywhere nor under any circumstances.

Question.

Suppose I had shown you this paper (then the original of said Bill of Sale is before the witness) allowing you to examine only your own name thereon, without a knowledge of the contents of the paper, would you have taken it (the ~~said~~ name) to be your signature?

Answer.

It approached as near my genuine signature from the style of the writing of the letters as perhaps it possibly can be. The reason why, I have doubted this signature is, because the amount therein for in this instrument of writing (\$189⁹⁶) ~~which is~~ is not, as I remember of having seen in the Bill of Sale, which I intended, I which called for an amount of between \$80 ~~up to~~ \$100 ~~and more~~.

Question.

Then you do not positively deny that that is your signature?

Answer.

No, I do not.

Question.

When you went to Suffolk to make the said visit to the Clerk's office, did not Mr. Rabey give you a letter of introduction to the Clerk stating that what your business was?

Answer.

I think he did.

Question.

When Mr. Rabey mentioned the matter to you at Martinsville, did he not

introduce it by presenting to you while you were sitting at the grave yard the said Bill of sale and calling your attention to your signature as to its recognition?

Answer

I remember our going out near the grave yard and Mr. Rabey introduced this subject just alluded to & he may have as before-stated produced an instrument of writing but I do not positively remember it, I know that night much was said about it and there I promised him to go to Suffolk to acknowledge the instrument first-alone alluded to in my examination in chief.

Question

Can you remember whether Mr. Raf explained to you the reasons why it became necessary to have the said Bill of Sale recorded?

Answer

Mr. Raf stated, that Mr. Wharton was treating him rather badly & it was necessary for this instrument of writing to be recorded but further

Re Examine of Puffs. att.

Question

Do you remember with what clause with the Bill of Sale was written, which you enclosed?

Answer

No Sir. I do not.

Question

What induced you to go to the Clerk?

Office to prove said Bill of Sale?

Answer. I was requested by Mr. Rely to go & have the paper proved & admitted to record.

Quest: Did he say what book?

Answer. Yes. He said the Bill of Sale that I had introduced.

Quest: How long after your attestation as a Solicitor of the Court, to said Bill of Sale, was it, when you were called upon to go & prove it.

Answer. Not quite three (3) years.

Quest: Is Exhibit "C" before referred to, such a paper as you were called upon by said Ref. to introduce?

Answer. It is in substance the same, & all in the amount of the money, which I think is sufficient.

And further this deponent saith not.

(Signed)
R E Riddick

David R. Stanton, being duly examined on the Holy Evangelists of Almighty God, deponent & saith as follows.

Quest: How old are you, where do you reside & are you the ^{Plaintiff} Defendant in this Cause?

Answer. I am in my 40th. year, reside in Hansonville County, & I am the ^{Plaintiff} Defendant in this Cause.

Quest: State all the facts in connection with the purchase of any articles at the said Lib. at H. Daughters, referred to above & how you were to pay

Answer

for them " "

Exhibit B is here produced & read to witnesses who says that it is a correct list of the articles purchased by him at said sale. I gave him a negotiable note (at 60 days, carrying 12 per cent interest, for the sum $\$89^{76}$, ~~the sum of~~ The sum of $\$88^{00}$ paid therefor being the purchase price which I was to pay for said articles & $\$1^{84}$ the residue thereof was for the interest referred to above. I cannot write my name - & Mr. Rely calls upon Mr. Oliver Howell to endorse the note - Exhibit C is the note referred to.

I gave him a Bill of Sale to secure said note of $\$89^{76}$ - Exhibit D is presented & read to witnesses who say, that to the best of his knowledge, it is the Bill of Sale here referred to - the one which I gave him to secure that sum of money ($\$89^{76}$) & no more. I never owed Mr. Rely any money for which I had previously executed a Bill of Sale - nor have I executed a Bill of Sale for any amount since - nor have I ever owed him any money since that purchase, except $\$5^{00}$ for one Bureau which was bought off to Mrs. Douglass & which I took off of her hand, & ^{and also} ~~that~~ ^{that} I sold him for rent (in addition to the $\$5$) for the year 1874, which I paid to him. ~~which I paid to him~~ ^{which I paid to him} the note for $\$89^{76}$ I paid in part ($\$60$) some days before - making

then in March following, when I was plowing, he
came to me & asked me if I could do any thing
for him - I told him that I had \$20⁰⁰ more
that I could then pay him - we went to the
house & I paid him the \$20⁰⁰, which was
\$80⁰⁰ less on the note; & when I went to pay
him for the rent of the farm, which I
owed him as above, I went to his house &
told him that I came to pay the balance
of the note, & the rent; when I showed
him both sums. I then asked him for
the last Bill of Sale & Note, which I saw
the note of \$89⁹⁶ he gave me the note &
marked it paid (and is Exhibit A" above
to show) I said Mr. Nef, I had rather have
the Bill of Sale than the note - as the Bill
of Sale was what I wanted - he said to me
^{that he had also kept it} when I paid him the \$20⁰⁰ ~~he had~~ he had ~~come it~~
~~up to the house~~ & that it would never
appear against me - I said to him to
give me a receipt against it - he said that
he could give me a receipt, but it would
do me no good, as the Bill of Sale was
destroyed - Humphrey ^W Savage was present
& saw me pay the money & heard all the
conversation. He called on Mr. Savage to bear
in mind that if it should ever come against
me, that it was destroyed. I never gave Mr.

David R. Wharton Esq.

Apr 2 - 1877

Dr Sir:

I adopt this method to inform you that you have so many times fallen short of your promises to me, with ^{regard} to making payment. that I am now forced to demand that a payment of \$50.00 must forthwith be made - or my assignee will proceed to withdraw the property mentioned in bill of Sale, Close deed of Loan &c. The kindness and leniency which I have extended unto you seems to receive in return - unthankfulness, deceitfulness, and a disposition to create loss on my part. Therefore unless you early bestir yourself to make promised payments unto the proper party authorized to collect & receive the same - all business relations (unsatisfied) which exist between us must be brought to as speedy a close as practicable. You can make payments, as I have before told you - to my assignee - W. S. Brothers - or if you prefer to settle with me, that can be also arranged - Now Sir, I reluctantly write in this way to any party - nothing but your course toward me has rendered it. My friendship and generosity toward you have been unmistakable - and you are bound to admit it. I am busy and may not come to see you on this matter any more, but hope to hear from you soon. Respectfully.

A. J. Mabey

"Exhibit F"

V
Rely any Bill of Sale whatever, except the one given
for \$89.⁹⁶ as aforesaid, which Dr. R. E. Riddick
& J. L. Douglass interfered. It was read
about in my presence & in theirs, when it
was signed by me & attested by them, immediately
for it was ready. It was more than 12
months from the time of the purchase till the
time of the full payment of the note by me.

Mr. Rely, during that time never asked me to
give him any other bill of Sale; & so far as I
knew he had no other; & when I paid I said not
in full, in presence of Mr. Savage, Mr. Rely
said nothing to me about any other bill of
sale, nor did he request payment of any other
money ~~than I had~~ except the \$50 above
nor did I owe him any other. On the contrary
he told me that the Bill of Sale was destroyed
and that it was destroyed by being torn up & burned -
and said Humphrey W. Savage was present when
Rely said it - this conversation occurred the 13th day
of June, 1876 - The said note of \$89.⁹⁶ was taken up
by me, at that time & finally paid, in full, by
myself - at the same time (July 15th 1876) I paid
him \$67.⁰⁰ for rent for the year, 1875 - (this is the
rent I referred to above, as having owed Rely) I herewith
filed R. J. Rely's note for that sum (\$67.⁰⁰) & marked it
"O", to which note Mr. Humphrey Savage is witness.

The above note for \$89.⁹⁶, the Bill of Sale to secure it

and the list of articles purchased at said sale (all of which are filed as Exhibits in the Cause) were all written at one & the same time, by Mr. A. J. Raby & with the same ink. I never approached him a few days after said note & bill of sale were given & asked him to grant me other favors - I never borrowed a dollar or a cent from Raby before the day of said sale, at any one time or from time to time; and as I owed him nothing, it was not included in ~~the~~ ^{the} articles note above given for the articles purchased at the sale - I never bought any cotton at said sale or afterwards from Mr. Raby - I never became indebted to him in any other way, except for rent & for the bureau as before stated nor did I promise him additional security - my indebtedness to Mr. Raby was already ascertained as above, & I therefore ~~did~~ had no agreement with him to ascertain my said indebtedness to him - There was no evidence of any indebtedness by me to said Raby - & therefore when said note & bill of sale above referred to were given, I did not agree to destroy or conceal any evidence of indebtedness or to give any new bill of sale, except the one above referred to above - nor was any such indebtedness ascertained - Mr. Raby never gave me a certificate, to the effect, that Exhibit "D" filed with the answer, had been destroyed - but he only told me so, in the presence of Mr. H. W. Savage, as above stated. I never importuned, begged or urged Mr. Raby to do any thing - except to recover the said ~~note & bill~~ bill of sale

after ~~the~~ said note had been paid. A few days after I paid said note, ~~the~~ ~~that~~ ~~was~~ Mr. J. L. Doughtie, one of the Witnesses to said Bill of Sale, was at my house & I showed him the note which I had paid - I am certain said Doughtie was at my house a short time after I paid said note - not to exceed one month - I told Mr. Doughtie, that I asked Mr. Raby for the Bill of Sale when I paid the note; ^(the witness) he also told Doughtie, that Mr. Raby told him then, that he had destroyed the bill of Sale - & Mr. Doughtie, taking the said note in his hand & reading it, said that that was the note which the Bill of Sale was given to secure, which he understood.

By consent, it is agreed, that the further taking of the Defendants, be adjourned, till the 3^d day of April, 1878. at the Clerk's Office, in Suffolk, Va.

Peter B. Proctor, Commissioner
March 28th: 1878

Clerk's Office, Suffolk, Va. April 3^d 1878.

Present: Wilbur J. Kelly, atty: for Plaintiff

" Richard H. Rawls, atty: for Defendant

The witness last examined (David R. Wharton) is now Cross-examined by Dettis: Counsel.

Quest:

Have you suffered from mental derangement since the transaction of the business in question?

Answer:

If I have suffered in that way, it was through the power of the Almighty, & not through Mr. Raby.

Quest:

Did your mental sufferings impair your memory?

Answer

My memory has been good from my earliest recollection
or childhood.

Ques:

When & where did you sign the first note of \$89.²⁶ and
the Bill of Sale? & who were the subscribing witnesses thereto?

Ans:

At the house of Joshua L. Doughtie when I signed the
note of \$89.²⁶ & the Bill of Sale to secure it - the subscribers
to the only Bill of Sale I ever signed
witnesses were D. R. E. Reddick & J. L. Doughtie - & I
signed it; I think, the day after the sale - ^{sup. to the note} Oliver Howell was the wit-

Ques:

Did you not, 6 or 7 days, after this time (day after the sale)
start to Mr. Raby's ~~to meet him on the road~~, & propose to him,
~~that you wished to make some other arrangements, & that~~
~~he not return with you~~ for the purpose of making some other
arrangements which you had already proposed I agreed to
make, & did you not, at that time meet him on the road?

Ans:

I commenced digging my potatoes, at the Doughtie place, when
J. L. Doughtie came the morning, & said to me, that Mr. Raby
had promised to meet him there that morning - he Doughtie
remained until about 9 o'clock, A.M. - he said that
he hated to walk down to Mr. Raby's, mighty bad, & was bound
& compelled to see him, on some business - & he asked me
to take him part of the way to Raby's - I told that I was
mighty busy - but, to help him & save him a walk.
I would carry him - We met Raby on his way, ~~to~~
near the Swamp & C. F. Samps's residence - and
all of three of us ~~returned~~ ^{went} including D. R. E. Reddick return
to the Doughtie place: I resumed my work -

Ques:

Did you sign any papers, that day (D. Reddick, Doughtie,
& yourself being present?)

Ans:

I think that I did not

Ques:

Did not J. L. Douglass & Dr. R. E. Reddick go there, that day for the express purpose of witnessing you as -
knowledgeable to a bill of Sale executed to A. J. Rely?

Ans:

Mr. Rely wishes Dr. Reddick to go there & witness papers between Rely & Douglass & Mrs. Douglass.

Ques:

Did not Reddick & Douglass, that day, witness a Bill of Sale made by you to Rely.

Ans:

~~He says~~ I don't remember whether he witnessed any bill of Sale that day or not.

Ques:

About how many days was this when you met Reddick & Rely in the road, after the time, when Reddick & Douglass had previously witnessed the bill of Sale for \$87.⁹⁶

Ans:

I executed a ^{Bill of Sale} ~~note~~ for \$87.⁹⁶ & they witnessed the same, ~~before~~ ~~at~~ a few days afterwards, we met them in the road as above stated.

Ques:

On the day you met them in the road, did all of you, not return to J. L. Douglass's & when there, was not the following instrument (here read Ex. E. ¹¹ to Sherrin & not to witness) executed by you & witnessed by R. E. Reddick and J. L. Douglass?

Ans:

I have never signed such a paper for that amount, in my life.

~~I do not know that I signed one for that amount.~~

Ques:

Did not Mr. Rely employ you to collect from the patch the residue of the Cotton which had not already been gathered?

Ans:

At the night before the Sale at J. L. Douglass's, Mr. Rely came there & asked me what would I charge him to pick the Cotton out. I told him, that I would pick out said

residue for \$15⁰⁰ he said that he gave \$1. for 100 lbs
to help it out - I picked out the cotton I delivered
it to him -

Ques: When you delivered the said cotton to Mr. Raf, was there
not a deficiency in your part, which would amount to about
to about \$10⁰⁰ worth of Cotton?

Ans: There was not.

Ques: This note of \$89⁷⁶ is dated 16th Oct: 1874 - when did
you make the last payment on it?

Ans: on the 13th day of ^{January} ~~January~~ 1876

Ques: What amount did you then pay on the note?

Ans: I paid \$9⁷⁶ (the bal) I took it in.

Ques: Did you not, in March, 1876, sell to Mr. Raf, one
cattle, and of, with the understanding, that if the Of
sented him, he was to give you credit for \$30?

Ans: ~~Mr. Bryant (E.D.) and Mr. Raf, at Mr. Mr. Raf~~ Mr. Raf &
Mr. Hilary Sping came to my house sometime in the
spring of 1876 - Mr. Raf told me that Mr. Bryant told
him that I had an ox to sell - I had one for
which I asked \$30 - cash - at which he could
take him - I never worked the Of - He said he
would take him, if he sent, and pay for him on
Court day - He took him - Kept him 15 days,
I returned him - sending out to take him.

Re-examination of P. L. Y. S. Attor.

Ques: Can you read or write -?

Ans: No. Sir

Ques: Did you acknowledge the Bill of Sale above referred to for \$89⁹⁶ in the presence of S. N. E. Reddick and Mrs. J. L. Goughlin, when you signed it - or, afterwards in their presence?

Ans: I executed the said Bill of Sale - I afterwards acknowledged it in presence of said witnesses - at the only time they were present to witness a Bill of Sale from me to Mrs. Ralph.

Ques: Did said witnesses, witness the Bill of Sale for \$89⁹⁶ or some other?

Ans: They read one for that amount before me - they witnessed the one for \$89⁹⁶ & no other, in my presence.

Ques: Were you ever affected in mind, previously to the executing of said Bill of Sale?

Ans: No! Sir.

Ques: If your mind were disturbed, after said Bill of Sale was given, state how long afterwards it caused it (the disturbance)

Ans: I heard talk of a Bill of Sale being recorded against me in the Clerk's Office for \$189⁹⁶, of which I knew nothing - & it caused uneasiness of mind for some time - knowing that I never had executed one for that amount.

And further this deponent saith not
(Signed)

W. H. Hays

P. B. Bents

David ^{his} R. Wharton
mark

Humphrey W. Savage, being duly sworn on the Holy Evangelists of God, according to law, deposes and saith as follows:

Ques: What is your age, where do you reside & do you know the parties to this suit?

Ans: I am 27 years of age - I reside in Haverhill County, about 1 mile from the Plaintiffs' residence & I know the parties to this suit

Ques: State all you may know of an interview between A. J. Rely & David R. Wharton, on or about the 13th - Jan'y. 1876?

Ans: At that time I went with Mr. Wharton to Mr. Rely's House - Wharton told Rely that he had come to pay his rent - he handed his ^{rent} look a receipt therefor (Exhibit "O" filed here with is here presented to the court) it says that ^{it} is the receipt which was given by Rely to Wharton & that he introduced to Wharton then asked Rely for the note & bill of sale Rely gave him the note & marked it "paid" - then Wharton requests of Rely the Bill of Sale - Rely said, "David", I pledge you my Honor as a gentleman, that I tore up the bill of Sale and burned it ~~on the day~~ on the day the first payment was made on the note. Then he asked Rely for a receipt against the ~~note~~ Bill of Sale - Rely said "David" I will give you a receipt: but it won't do any good: for I pledge you my Honor as a gentleman, that the Bill of Sale is de-

strong, & I had no other claim in the world
against you, until the rent becomes due again -
it is true, "David" you owe me \$5.⁰⁰ but I have
nothing to show for it as he said "David", Humphrey
is as good as a receipt - meaning myself -
the Ref. then called on me to bear witness,
that I ~~(the witness)~~ (the witness) had heard him say, that
the Bill of Sale was destroyed & he held no other
claim in the world, until the rent became due
again, & I, Ref. hold the place - I said to
Mr. Ref. that there is no doubt but that ~~you~~
you will hold the place - he replied, that it was
in Judge Brown's hands, to settle.

(Exhibit A" is here presented to witness) who says, that
it is the note which Wharton paid I took in, as
above. because it is the anno: paid I was witness
by Oliver Hamell - Ref. said to Wharton, that he
had torn up & burned up the bill of Sale - I could
nothing about tearing off the name of the witnesses
or destroying the Bill of Sale in that way.

Cross-examined by Defts. Atto:

Ques:

Who else was present, when the conversation above
alluded to, took place?

Ans:

No one but us, three.

Ques:

~~that~~ Were not the wife & children of Mr.
Ref. present during this entire settlement?

Ans:

I think not - Mrs. Ref. came in after we finished.

Ques: Did any one else see the money pass when the receipt was given for the rent?

Ans: I think not.

Ques: Do you know any thing about the nature of the Bill of Sale, which Mr. Roly said that he had cancelled that day?

Ans: Mr. Roly said that it was the Bill of Sale that was given to Leuen the note which was then paid.

And further this deponent saith not.

(Signed)

Humphrey W. Savage

Edward D. Bryant being duly sworn on the Holy Evangelists of Almighty God, deposes and saith as follows:

Ques: What is your age, where do you reside, and do you know the parties to this suit?

Ans: I am 28 years of age - I reside in Hantsman County & I know the parties to this suit.

Ques: State what you may know about a Bill of Sale or note having been given by D. R. Wharton to Asa Roly - or about ~~it~~ the payment of the same & what any subscribing witness thereto may have said to you, about the same?

(The latter portion of the question excepted to)

Ans: The note for \$89⁹⁶ (Exhibit "A") I saw Mr. Roly write I did not see Mr. Wharton sign it - but did

See Mr. Oliver Hamell witness it - the ~~same~~ note was written at J. L. Doughtie's house, the evening of the day of Sale - the day after the Sale, Mr. Oliver Hamell witnessed it - I heard Mr. Roly read & explain a Bill of Sale to Mr. O. Hamell whether it is the one Wharton signed, I know not, the amount of which, I think was \$89.²⁶

Mr. J. L. Doughtie told me, on our way from Suffolk, on Aug. Court day, 1877, that he witnessed a Bill of Sale given by Mr. Wharton to Mr. Roly for \$89.²⁶

And further this deponent saith not.

(Signed)

E. J. Bryant

John J. Voight and William Lilly being duly sworn say that they were present when E. J. Bryant gave his deposition as above, & that they concur & agree with

him therein, so far as relates to what he heard the witness Doughtie say, and said Voight says, that he also heard said Doughtie say that he had witnessed the bill of sale which the man gave for a note of \$89.²⁶ he has seen so to day.

(Signed)

Witness

P. B. Puck.

John J. Voight
William Lilly

James J. Doughtie being duly sworn on the Holy Evangelists of Almighty God, deposes and saith as follows:

Ques: What is your age, where do you now reside, & do you know the parties to this deed?

Ans: I am 33 years of age, I reside in Haverhill

Ques:

county & I know the parties to this suit.
State all you may know of a conversation between
Mr. Raby & Mr. Wharton at any time, with reference
to ^{the} ~~the~~ Bill of Sale for \$89 ⁹⁶? or of any indebtedness of Wharton
to Mr. Raby.

Ans:

I was, at Mr. Wharton's, about the fall of 1876,
in presence of Mr. Raby & Mr. Wharton - When the
subject of money matters was mentioned - during the conver-
sation Mr. Raby asked Mr. Wharton for a small amount
of money he owed him - Mr. Wharton replied that
he did not have the money then, but would pay
him in a few days - & after an interval Mr.
Wharton went off, when I asked Mr. Raby how
much more he owed Mr. Wharton - he said
that Mr. Wharton did not owe him but \$5⁰⁰ at
that time, & that was for a Bureau that was
bought after the sale - & said that was ~~all~~
all that Mr. Wharton owed him ~~nothing~~ ~~nothing~~
nothing was said about a Bill of Sale.

and further this deponent saith not.

(Signed)

James V. Doughtice

A. J. Raby being duly sworn on the Holy Evangelists of
Almighty God, being duly deposited and sworn as follows:

Ques. by Dep. Atty. What is your age, where do you reside, and are you
a defendant in this suit?

Answer I am 40 years of age, reside in Hanseman County -
I am ^{one of} the defendants in this suit?

Ques. State what you know about the first bill of Sale amounting
to \$89.⁷⁶ made by David R. Wharton for your benefit
I also the 2nd Bill of Sale, amounting to \$189.⁷⁶ made
by him, also for your benefit?

Ans. I had a public sale upon the 16th day of Octo: 1874, at
the Douglass place, ~~herein~~ before alluded to: at
which the Plaintiff herein, bought property to the amount
of \$88.¹¹. The terms of said sale were cash for all sums
of \$10.⁰⁰ or under - over that sum a credit of 60 days
was allowed, by purchase money given ^{received} note with sale,
fully endorsed ~~at~~ Farmers Bank of Hanseman
in Suffolk, Va: - the Plaintiff was unable to
comply with the terms, for the sum: which he bought
thereat: but to enable him to hold the property thus
bought, he proposed at first to make a deed of trust -
I declined to accept a deed of trust, on account of the
treacherous attorney: thereupon but, he intimated at
the same time, that his purchase had better be secured by
a Bill of Sale - including sufficient property to cover his
purchase there made - he ~~being~~ expressing a willingness
to do anything which I might require of him, in regard to
securing the sum: of his purchase - Whereupon, Exhibit "B"

was consummated - Agreeing, in consideration, with
Exhibit Marked "A". In a short while after this much
was effected, the Plaintiff entered some objection, from the
fact that he had ascertained, that by virtue of the Bill
of Sale, he was restrained from the use of the property
mentioned therein or sell, in a way, which did not suit
him - for the reason that it prevented him from making
such a disposition of the property described therein
as he might desire - & therefore impeded his money-
making operations - therefore he wished some other
arrangement, that would be ample security for me
& thus afford him to use said property more to his
satisfaction. I then proposed to accede to his wishes -
provided, that he would allow us to have a
rekening to consolidate & include all of his li-
abilities to me, then existing, ~~then existing~~ and give
a Bill of Sale, which should supplant the former bill
of Sale, including that consolidated liability - also
waiving the benefit of his Homestead, that in case the
property included therein, should be destroyed & go
beyond my reach, & he owning Real Estate, I could have
a chance at that so as to make it available for my debt
ⁱⁿ ~~for~~ all of which he acquiesced. Accordingly, in a few
days, I prepared the required writing & procured
to him for its execution, which was executed & acknowledged
in the presence of the subscribing witnesses to said paper
or writing - when the acknowledgment & execution of
said paper took place, Exhibit "A" was cancelled, & the

names of the -
subscribing witnesses, ^{being} the maker of Exhibit "D", were
cancelled & supplanted (as far as all business purposes
were concerned) by the writing; Exhibit "E", ^{among} ~~with~~
these substitutions - With regard to Exhibit "A"
(heretofore alluded to) was immediately tendered the plain-
tiff, so would have been Exhibit "D", if it had not con-
tained in its back, significant memoranda,
which I wished to retain, for a while - Therefore
to leave no hazard upon the plaintiff, the aforesaid
cancellations took place, & I retained Exhibit "D"

Some time in January, 1877, I discovered that I should have some
difficulty about maintaining the interest which I held by virtue of
Exhibit "E", therefore to place ^{the matter} ~~myself~~ in a position for its
better security, as said Exhibit had been admitted to -
record, I proceeded at once to have it recorded, would
have had the same ^{acknowledged} ~~forwards~~ by the maker thereof, but he
had told me, most positively, that he had been advised by
Mr. Kelly not to pay me any thing further, that if I should
undertake to collect any thing out of him, to let him
(Kelly) know, & that he would stand between him & all dangers
in relation to any thing that I might undertake to collect
from him, and therefore he would not pay me another cent
on any thing which we might owe me. After such decla-
rations on the part of the plaintiff, I considered it very
impolitic to make further expectations of him; just then,
therefore, to be as safe in the matter as circumstances
would allow, I proceeded, at once, to cause the subscri-
bing witnesses to Exhibit "E" to appear at the Clerk's

Office & from the said writing: said writing would have
either been proved & shut, or not had it not
been by a special request of the plaintiff, that it should
be withheld from the record, because he did not want it
known that I had a claim upon his property: he
remarking to me, at the time, that his Brother Whipple
Wharton & others, were making considerable to do about
the extensive purchases which he had made at
said sale - stating that ~~his~~ his said brother had
given him a severe rebuke - but he would have his brother
and all others to understand that he was not dependent
upon them for his living; and therefore to prevent being
harassed in that way, he desired the matter to be as
private between him & me, as possible. Therefore the
request was made, above alluded to.

2^d Ques:

Before having the said Bill of Sale of \$189⁷⁶ recorded, did
you show the original ("Exhibit E") to Dr. N. E. Riddick
one of the subscribing witnesses thereto, at Meadowsville
N.C. & did he acknowledge his own signature & that
it was executed by said Wharton, in his presence?

(Excluded to by 20th: 11th)

Answer

He did - after fully inspecting the same.

Ques:

Did you request him to go before the Clerk of
the Court & prove it, & that it might be recorded?

Ans:

I did

Ques:

Did he do, as you requested?

Answer

He did.

Ques:

Did you also request, J. L. Daugherty the other

1
subscribing witness thereto, to go before the Clerk of
the Court & do the same thing

Ans: I did.

Ques: Did he do, as requested of you

Ans: He did.

Ques: How long did the paper "Exhibit E" remain in
the office before it was proven of said witnesses?

Ans: It was in the Clerk's Office several days
before it was fully proven & recorded.

Ques: After the introduction of this suit & after the
Plaintiff had denied his having executed said Note
of Sale, did you have a conversation with Dr.
R. E. Riddick, in which he stated that he was
prepared to fully prove the instrument in
question?

Ans: Yes, I had such a conversation - he having heard
of many doubts, came expressly to remove any un-
easiness that I might feel in relation thereto.

~~Ques: What conversation took place between yourself &
the Plaintiff, in the presence of William Humphrey
Savage, when you referred to it~~

Ques: What conversation took place between yourself
& the Plaintiff, in the presence of William Humphrey
Savage, in regard to the matter in question?

Ans: After some settlement of suit, it appeared, I recollect
that the Plaintiff, asked me for "Exhibit 10", I remarked
to him, that, that was a useless paper to him, as it had
been destroyed, long ago - but, if he desired it, I would

look it up or give him a certificate, showing the
such paper was of no force, notwithstanding the signature
had been torn off, as before stated, but still the
body had been retained by me for reasons, before
stated also, after this, I wrote said to Mr. Wharton
he did not make any further demand for the paper
or certificate, and as he did not, I requested Mr.
Humphrey Savage to bear in mind that said
paper, Exhibit 10, "was destroyed, ~~and should~~ should
never make its appearance again, against him.

2d ex

After this, but not until I discovered that Mr. Wharton
was about to resist my claim upon him (Exhibit
"E") I went to see him again, in relation to it. He
examined my receipts given him, to request him to
make arrangements concerning this matter, he brought
up the subject of the bill of Sale for \$89⁹⁶ - I
demanded it of me - not having it along with me
I could not comply with his demand - but gave him
a certificate, which I had then before put upon
him against the Land.

2d ex.

Has the Plaintiff, ever, in any manner
paid you the sum of \$189⁹⁶ secured by
said Bill of Sale, or any part thereof?

Ans:

He certainly has not paid the whole nor any part
of it, that I know of.

Cross Examined by
Plaintiff's Counsel

Quest:

In whose hand-writing is Exhibit "D"?

Ans:

It is in my hand-writing.

Quest:

Was it signed & executed by O.R. Wharton?

Ans:

Yes, Sir.

Quest:

Who were the subscribing witnesses?

Ans:

I ~~think~~ think there was only one subscribing witness — who was either Oliver Hannell, Geo. W. Skinner or Wm. Brothers — for the reason, that there were several persons, were ~~named in the bill of exchange~~ called upon, more frequently than others, to do a like favor, upon that occasion.

Quest:

You allege that O.R. Wharton owes you \$189 ⁹⁶ — state for what he owes you, that part of ~~the~~ said sum of \$189 ⁹⁶, outside of the \$89 ⁹⁶, mentioned in Exhibit "A" & "D", being the Consolidation, as you say, of other indebtedness of said Wharton — giving item, date, and evidences thereof, whether by note, bond, account or other writing?

Ans:

There were several ~~unsettled~~ unsettled contracts between the Plaintiff & myself which had not been considered, in adjusting his liabilities to me, by reason of the said Sale, & as before stated, a request, by the Plaintiff, was made of me to change the nature of the Bill of Sale, which had been made to secure \$89 ⁹⁶ — so as to allow him the privilege of trading, charging or managing, according to his own option, the property specified in said Bill of Sale, as the nature of it then prohibited such management of said

property - Therefore to arrange to suit him, I proposed
or offered that if he would execute another Bill of Sale,
including not only the \$89⁹⁶ for which he was liable
~~for~~ his purchase on said Sale, but also his
entire indebtedness to me, otherwise, I waive the
benefit of his Homestead Exemption, that the said
Bill of Sale should invest him with power to
manage the ~~property~~ property incumbered by the
other Bill of Sale, or he seemed to desire, to
which he agreed. Whereupon, ~~we~~ we entered into
a reckoning ~~of~~ of our financial matters - we then
brought to our notice all unsettled money matters as
far as we could recollect, consisting of the amount
arising from the property bought at the Sale, as
is shown by Exhibit "B." ~~therein~~: a balance on
Cotton Contract, the exact amount of which, I
am not prepared to say - it may be not to exceed
\$20⁰⁰ - Money loaned upon sundry occasions, amounting
to \$25⁰⁰ or \$30⁰⁰, & services rendered which we put,
not above \$50⁰⁰ - interest on the whole at
Bank rates for 12 months, in future, & possibly
other items of indebtedness ~~which he owes me~~ as
did appear, due by him to me; all of which
taken in consideration along with what it may have
appeared ~~that~~ I owe him, the proper deductions
were made in his favor, while finally footed up
a balance, in favor of me, of \$100⁰⁰ which we
both accepted as a final account between us

I accordingly, said balance then shown & thus
agreed to, were incorporated with the said \$89.⁹⁶
I therefore, constituted the consideration upon ^{which} the
latter or second Bill of Sale was based, & supplanted
all other money liabilities of the said David R.
Wharton to me, to that date, so far as we then knew.

Quest.

State what service you had rendered, the Plaintiff
which justified the charge of \$30.⁰⁰!

Ans.

~~The~~ The Services rendered were of various natures -
all of which I may not so well recollect, but I will
cite you to one, ^{or more} ~~of~~ services of more importance,
considered by the Plaintiff, than any of the rest - first
a difficulty in which he ^{was} placed, in relation to the Real
Estate which he owned; the ownership he considered to be
in jeopardy & I was privately employed by him, to
thwart any proceedings which might be instituted to
destroy or impair the said ownership of the said Real
Estate to rise my exertions to do the same, he promised
me no specific price, but in the reckoning above
alluded to, as to our own matters, he put in satisfactory
remuneration, which I believe constituted the largest
money item for any service which he did ^{agree to} pay me for,
Secondly - In an understanding which grew out of a
rental agreement & which was not included into the
written rental agreement, he agreed in the above said
reckoning to compensate me, for devising ~~any~~ means, by
which he would be enabled to enjoy the use of the property
contained in the said rental agreement, in a manner

in which we both, ~~at~~ ^{at} first thought he would not be able to enjoy, owing to surrounding circumstances - the matter was amicably adjusted, as far as all parties were concerned, after which he felt indebted to me, to a greater extent than the said rental agreement claimed. Therefore he agreed & promised & included in the aforesaid recd. a remuneration to me, according to his own feelings, the exact amount, of which my collection does not serve me.

Quest:

I have file a paper & mark it Exhibit "F" - examine it & say, who wrote it & whose signature is thereto attached.

Ans:

I wrote it and ~~that~~ it is my signature thereto attached,

And further this deponent saith not
(Signed)

A. J. Rabey

Wm. H. Brothers, being duly sworn in the Holy Evangelists - of Almighty God, deposes and saith

Quest:

What is your age, where do you reside and do you know the parties to this suit?

Ans:

I am 38 years ^{old} - I reside in Hancock Co. Vt. and I know the parties to this suit.

Quest:

State whether or not you were present at the said hearing before mentioned, (at Mr. Doughty's), & whether the Plaintiff made purchases thereat, & what you know, about his trying to comply with the terms of said Sale.

Ans:

I was at said Sale - I think he made the largest

purchasers of any one who bought at said Sale -
at the close of the sale, when purchasers came up to
settle, the ~~defendant~~ Plaintiff, ^{asked me} ~~asked me~~ to endorse for him
for the amount of his purchases, which I refused
to do - & I saw that he was bothered to procure
an Endorser - I refused him, because I had just endorsed
for another purchaser - I did not hope to endorse for
any other purchaser, ^{there} ~~there~~ - Mr. Wharton (the Plaintiff) then
turned to Mr. Roby (the doct) & said, that if he could get
no endorser, that there was one thing we would do,
& that was, that he had enough property to secure him of
said of Robt & that he would do that - Mr.
Roby said, "all right", & we can arrange
the matter.

Ques: State whether Mr. Roby, assigned to you, Exhibit E
& if so, whether ^{he} did so, for a valuable consideration.

Ans: He did assign said paper to me, for value
received -

Cross examined by Plaintiff's Att.

Ques: What relation are you to the defendant?

Ans: I am his half brother.

Ques: Do you know the amount of the Plaintiff's
purchases, at the sale above alluded to, (at Douglas?)

Ans: I believe, it was somewhere about \$86.

Ques: Do you know who introduced "Exhibit E"?

Ans: I do not know.

And further this defendant said that

(Signed) Wm. H. Brothers -

Edward K. Rabey being duly sworn on the Holy
Evangelists of Almighty God, deposes & saith

Ques: What is your age, where do you reside, and do you
know the parties to this suit?

Ans: I am 18 years of age, reside in Hantsman County, ^{Pa} and
know the parties to this suit.

Ques: Will you state, whether or not, on a certain occasion,
when the Pltff. in company with Humphrey Savage came
to the depts. residence ~~to pay~~ ^{the} rent, did you
hear the Pltff. make any statements, in regard to a
certain Bill of Sale? all three being present together.

Ans: Mr. Wharton (the Pltff.) in company with said Savage,
came to the Depts. House - to pay him some rent - he
paid the rent (the amo. of which I know not) Mr. Wharton
asked about the first Bill of Sale - I think that
Mr. Rabey told him that it was of no force -
for the names were torn off, & if he observed it,
he would give him a receipt against it, so that
in case of death or if it should be lost, it would
be of no effect, & called on Mr. Savage to bear
in mind the fact.

Ques: State, whether, at that time any thing was said in
regard to a second Bill of Sale?

Ans: I do not recollect any thing about it, at that time.
I am the Son of the Depts. A. J. Rabey.

And ~~further~~ ~~thus deposes~~ & saith not.

(Signed)

E. K. Rabey

John Wilkins, being duly sworn, on the Holy Evangelists
of Almighty God, deposes & saith:

Quest: What is your age, where do you reside, & do you know
the parties to this suit?

Ans: I am 28 years of age - reside in Hantsman County, & I
know the parties to this suit.

Quest: Will you state whether, about 12 months after the bill
of sale which was given by Wharton to Rely for
\$897⁶ had been arranged between them & cancelled.
the Plff. made a payment consisting of a work-steer
to the Dft. on ^{his} ~~the~~ indebtedness to the said Dft.

Ans: I know nothing of the Bill of Sale - & know nothing
of any arrangement or cancellation of it - about two
years ago, about or work, I saw Mr. Wharton keep the
road with a steer or of the he had previously sold
to Mr. Rely. I ~~said~~ ^{asked} him what he was going to
do with that steer? he replied, That this was the
steer that Jack Rely killed & sent back to him -
I said to Wharton, I would not have taken him
then: Wharton then said, I am owing Mr. Rely & if
I had not taken the steer back, I should have given
no pay for it.

Cross Examined by Rely's Counsel.

Quest: Whom did Wharton mean, by "Jack Rely"?

Ans: He alluded to the Defendant, J. Rely.

Quest: What did Wharton mean, when he said
"this is the steer that Jack Rely had killed" -

Ans: I do not know, unless, that he was, in such a bad

Continue, as to whether to walk back.

Quest: Had Wharton, previously, sold said Steer -
to the defendant?

Ans: I do not know ^{live}, but Mr. Wharton said
that he had sold him to Rely.

Quest: Do you know whether or not, said Steer
was taken back by Wharton, because, the said Rely
had not paid for him?

Answer: Mr. Wharton told me, that he was owing Mr.
Rely, & if ^{he had} not ^{had} not taken the Steer, back, I
would have gotten nothing for him.

Quest: Do you know any thing of the Bills of Sale
referred to, in these depositions, or of any
instruments by which there is said Rely &
said Wharton or of any purchases made as
mentioned in these depositions by said Wharton
or of any transactions of said Wharton & Rely
in regard to money matters, & state about
the Steer of yours and

Ans: I know nothing at all.

Re-examined by Deft. & Atty.

Quest: Did Wharton in said conversation, acknowledge
that he was indebted to Rely?

Ans: He did.

And further this Dependent said not
(Signed)

Witness
P. B. Pringle

John X. Wilkins
mark

Quest

David R. Watson, the Plff: re-examined
After the execution of Exhibit "D", did you go to the
Defendant Lotjeet to it, or restraining you from the
use of the property named therein.

Ans:

No Sir. I never have. I had no cause to
object to it whatever. I used ~~my~~ the property as
I pleased, & disposed of the horse named therein
within a month after ~~the~~ ^{my} purchase.

Quest:

Who were the subscribing witnesses to Exhibit "D"?

Ans:

Dr. No: E. Riddick & Joshua L. Longtree.

Quest:

Did you tell Raly. that you desired to dispose
of the property in Exhibit "D", after your purchase
of it, & that the said Exhibit impeded you
from making other sales?

Ans:

No Sir. I never did.

Quest:

Did you purchase said property for your
own use or to make money?

Ans:

I purchased for my own family use. I
used it, or I would not have bought it.

Quest:

Did you desire or offer to make any arrangement
to secure any alleged ~~indebted~~ indebtedness other
than Exhibit "A" to said Raly?

Ans:

I never have.

Quest:

Was Exhibit "D" sold before to you?

Ans:

Yes. of course, it was.

Quest:

Did you ever owe Raly any money other
than as named in said Exhibit "A" & then
^{of \$5 for a barn} referred to in these Depositions?

Answer.

I never did.

Quest:

Did he ever call on you to have a reckoning to consolidate with said Exhibit "A." any other alleg. indebtedness of yourself, to him, or to give any bill of Sale, other than Exhibit "D."?

Answer.

~~Answer being~~ He never did.

Quest:

Did you ever acknowledge, in the presence of R. E. Riddick & J. L. Douglass any Bill of Sale, other than Exhibit "D."?

Ans.

I never did.

Quest:

Were Exhibits "A" & "D" cancelled in a few days after they were executed, or some time after they were paid when I paid by first year, rent - say about 14 months after the same Exhibits were executed.

Ans:

Quest:

When you paid Exhibit "A" in full, was it handed to you by Mr. Raby?

Ans.

Yes. it was handed to me, by Mr. Raby.

Quest:

Was Exhibit "D" at the same time given to you by Mr. Raby, Cancelled.

Ans:

No Sir - he said he had destroyed it, then it up I burned it up, when I left the store in.

Quest:

Did Raby say he would Cancel Exhibit "D" & return it because it had on it "Significant memoranda" a very such thing?

Ans.

There were no such words heard.

Quest: When did you first see Exhibit "D." after you had given it to Raly

Ans: At Oliver Randall's house, when these depositions were first commenced.

Quest: Did you cease to demand it of Raly until Raly had assured you, in the presence of Humphrey Savage, that it had been destroyed

Ans: No.

Quest: Did Raly ever give you or offer to give you a certificate showing that he had destroyed Exhibit "D."?

Ans: No.

Quest: At the time Raly says that he went to see you, as he says ("to examine his receipts given you, & to request you to make arrangements concerning this matter") did you demand of him Exhibit "D."?

Ans: I did.

Quest: Did he then give you a certificate against Exhibit "D." or offer to do so.

Ans: He did not.

Quest: Who was present, & heard the conversation between you & Raly, on the time of this last ^{visit} ~~visit~~?

Ans: Richard E. Wharton ~~and~~

Quest: Did you ever request Raly not to record the Bill of Sale (Exhibit "E.") & if so, why?

Ans: I did request him not to record it, when it was

first written, because, I expected to pay him in a few days thereafter, which I did pay him, as to him.

Quest.

Did you ever tell Raf, that your Brother - Wright Wharton had rebuked you or objected to your purchases, or said such & that you had told your brother, that you were not dependant upon him for a living, or give Raf any such reason for your desire, that he, Raf, would not have Exhibit "D" recorded?

Ans.

I never have to him or any other man, living.

Quest.

Did Mr. Raf ever lend you money on sundry occasions, amounting to \$25 or \$50. or render any service to you as Counselor, or in any other capacity, for which you were to pay him?

Ans.

No. he never loaned me a dollar in my life, nor rendered me any such services.

Quest.

Did you ever have any reckoning with said Raf or promise to pay him any such sum of money or agree upon any indebtedness between you?

Answer.

No Sir.

Quest.

Did you ever have any difficulty, about any land of yours, & privately employ Mr. Raf to settle the difficulty, or to pay him for any such thing?

Ans.

I never did - I never knew him to have any thing to do with a piece of land belonging to me, in his life time or any other man,

1
Quest: Did you ever have any rental agreement with Robt, in which you omitted to account for any rent due to him?

Ans: I never have.

Quest: Did you, after paying all rent you may have owed Mr. Robt, agree to pay him any additional rent or rent previously omitted or for any services in the settlement of any rental agreement whatever?

Ans: I never did.

Quest: When did you first hear of Exhibit "E"?

Ans: Mr. Robt wrote me a letter concerning it, April 2nd 1877, which gave me my first information about it.

Quest: Did you have any knowledge of Exhibit "E" in Jan'y: 1877 or previously thereto?

Ans: No.

Quest: Did you ever hear of it until after it had been recorded?

Ans: I never did.

Quest: Did Mrs. Kelly (sister of Robt) in Jan'y: 1877 or before, advise ~~you~~ you not to pay to Robt the money mentioned in Exhibit "E" or any part thereof or did you tell Robt that Mrs. Kelly had given you any such advice?

Ans: No. & Mrs. Kelly gave me no such advice & I told Robt no such thing.

Quest: Explain then, the matter as to which Mrs. Kelly in January 1877 or thereabouts gave you advice, in connection with Robt, if any.

Ans: When Mrs. Daughtrie redeemed her farm. Mrs. Kelly

wrote me a letter to pay the rent to him (Rahy) ~~or~~ or
Mrs. Dougherty, that it was not due to Mrs. Rahy,
who claimed it. This was the advice which, in a con-
versation with Rahy afterwards, I told him (Rahy)
that Mrs. Rahy had given me. & the
conversation was about the rent.

And further this deponent saith not.
Witness,
P.B. Prentiss.
David R. ^{his} Wharton
mark

Richard E. Wharton being duly sworn in the
Holy Evangelists of Almighty God depose & saith

Question: What is your age, where do you reside, & do you
know the parties to this suit.

Ans: I am 18 years of age - I reside in Housenon
Co. Vt. with the plaintiff (D.R. Wharton) who is my
father, & I know both parties to this suit - and
I am most of the time at my father's house.

Quest: Were you present when Mrs. Rahy called at
your father's house, as he (Rahy) says, "to examine
his receipts given to your father & to request your
father to make arrangements concerning this matter"
& if so, did ~~you~~ ~~father~~ Mrs. Rahy give or offer
to give a certificate against any Bill of Sale?

Ans: I was present - He did not give a certificate
that day - nor do I recollect that he offered to give one

~~Now do I recollect any thing about it, but I recollect~~
~~nothing at all~~

Quest: Did your father ask Mr. Raly for a Bill of Sale?

Ans: Yes, he did - and Mr. Raly said that he could not do it for he had torn it up & burned it up on the first of June.

Cross examined by Defts: Atty:

Quest: At the time Mr. Raly called at your father's house, were you present all the time said Raly was there, did you hear the whole of the conversation that took place between them that day & will you state every thing that was said, in regard to receipts?

(So much of said question, as regards to receipts, is rejected, as being irrelevant)

Ans: I was there all the time & heard all the conversation - ~~I was~~ I was at the road gate, where my father lives & Mr. Raly rode up, & said "Well Mr. Horton I suppose you have paid your rent" - Mr. Wharton said he had & he sued his receipt thereupon - Raly says to Wharton "have you that rent receipt which I gave you when we had a settlement of so, let me see it" - Raly looked at it & returned to Wharton -

Quest: Did not Mr. Raly ask your father to show him all the receipts, for all the money which he had ~~paid to your father~~ ^{which he had given him} paid him, & did not your father bring out several receipts, refusing, at

first, to shew Rely the note and bill of Sale in question
Did he what did Rely say to him, when he so refused?
Ans: He did not

And further this defendant saith not
(Signed)

Witness
P. B. Prender

Richard E. Wharton
mark

D. Wright Wharton, being duly sworn on the -
Holy Evangelists of Almighty God, deposes and
saith, as follows

Quest

Did you ever object to the purchases of your brother
David R. Wharton, at the said Sale & did ~~you~~
your brother tell you, that he was not dependent on
you for a living

Ans:

No. he never did

Quest:

Do you know of all many transactions between your
brother & Rely?

Ans:

I reckon I ~~do~~ do - as he never did any business or
many transactions ~~with a sister Rely as I know of~~ of
those of which I have knowledge - & I never heard
of any others.

Quest:

What transactions to the best of your knowledge has your
brother had with said Rely, & explain the
circumstances thereof?

Answer All the transactions, that I know of, concern the
rent of the land, the bill of Sale and the Steer,
I was present at the said Sale when he made the
purchase, - I did ^{not} see him execute the note -

Quest. Explain the transaction between your brother in
regard to the Steer, if you know the facts thereof.

Ans: I went over to my brother's the day after he sold
the Steer to Raf I asked him whether Raf gave
him any thing to show for it or not - He said Raf
had not given him any thing to show for it: but,
✓ that it was to go towards the bill of Sale.

Mr. Raf sent the Steer back - but my brother
said, that if he had Raf's note for him or if
he had paid him for him, he would not have
received him.

and further this deponent saith not.

(Signed)

Witness

P. B. Prouty

his
O. Wright ~~W. H. Taylor~~
mark

The further taking of the Depositions, is, by Consent,
adjourned till the 23rd Sept: 1878.

Peter B. Prouty, Comm. Clk

Sept: 23rd 1878

Clerk's Office, Supp. V^o. Sept: 23rd: 1878

Present. William J. Kelly, att: for Plaintiff

" Richard H. Rawley, att: for Defendant

Sarah Rebecca Drake, being duly sworn in the Holy Evangelists &
almighty God, deposes etc. & saith,

Ques: What is your age, where do you reside, & do you know
the parties to this Suit?

Ans: I am 25 years of age & reside in Macon County
& I know the parties to this Suit.

Ques: State whether D. R. Wharton, the Plaintiff, purchased ^{article} at the
said Sale or not?

Ans: I heard Mr. Wharton, in the presence of Mr. Raly, at Mr.
Raly's house say so.

Ques: State whether said Wharton came over to said Raly
a few days after the said sale & proposed to give
a Local Bill of Sale for secure the payment of the article,
he purchased there?

Ans: Mr. Wharton came to Mr. Raly's house, some 3 or 4 days
after the sale, before breakfast - I went into the Room
& found said Wharton & Raly, talking about the Bill
of Sale between them - Wharton said, that "pointing to a
Bill of Sale in Raly's hand" calls for a certain horse,
which I cannot ~~sell~~ get clear of, without your
knowledge. Wharton said, I want you to fix this
Bill of Sale, in some way, so that I may load & traffic
on it, in order to buy you (Raly) the said horse
not buy to keep himself, but to trade on - he said
not have any use for all the cattle & things -
that he was off looking for a living, while his family were at work at home.
Mr. Raly then said - "Dad, I do not know how we
shall fix it, unless I do away with the "pointing to said
horse which he had in his right hand" & commence

1
I answer, and with another Bill of Sale. Raby said,
"there is a ~~heap~~ heap of trouble" - but said, I will try
I fight for you - There was all about the Bill
& Sale, that I heard - Mr. Wharton asked Mr. Raby
if he had sold his (Raby's) Cotton - He said that he
had engaged to sell it at Buckdam - Price was not
stated - Mr. Wharton stated that he also had Cotton
to sell - & he wished his (Wharton's) to go on such his
(Raby's) - About a day or two afterwards, Mr. Raby
got the same papers to look over them. And in a day
or two I saw him writing another paper, but do not know
what it was.

Cross-examined by Pltffs. Counsel.

Ques: What other persons were present beside yourself ~~Mr. Wharton~~ & Raby, at the time of the above conversation, which you
say took place at Raby's House?

Ans: No other person, that I know of.

Ques: Did Humphrey Savage & Mr. Wharton come to Mr.
Raby's House, a short time after the above Sale, to
see Mr. Raby?

Ans: Mr. Wharton & another man (whose name I do not know)
came to Mr. Raby's House, a short after said Sale.

Ques: Were you ever present at Mr. Raby's house, when a conversa-
tion (if any) took place between Mr. Raby & Mr. Wharton, in the
presence of Humphrey Savage, with reference to a Bill of Sale?

Ans: No, Sir -

Ques: How many times, to your personal knowledge, did Mr. Wharton

go to Mr. Raby's house, to see him (Raby) about said Bill of Sale, or any transactions, between them, about the purchases of Wharton at said Sale, or Mr. Dougherty's.

Ans: Then (3) times.

Quest: Were you present (each time)?

Ans: Yes, I was.

Quest: Do you know the ^{anno} value of the articles purchased of said Wharton, at said Sale - were you present at said Sale, do you know any thing about the Bill of Sale or the giving of said Wharton to said Raby or afterwards, or how much he was to pay for them, or whether he has ever paid for them, or whether he ever came to Mr. Raby's House to pay for them?

Ans: I do not know the ^{anno} value of his purchases at said Sale - I was not present at the Sale - I do not know any thing about a Bill of Sale or Note, except what I have ^{before} stated - do not know how much he was to pay for them - do not know that he ever paid for them or that he came to Mr. Raby's to pay for them.

Quest: At the time of the visit of Wharton to Mr. Raby's when, you say, you were there (at Raby's) were you present, continuously, for any length of time, or in some of the room, at different times, during said conversation between Raby & Wharton, which you have related?

Ans: I was present, long enough to hear the above conversation, which I have related, which was about the last part of the conversation, as Wharton left soon afterwards, with the impression on his Whartons

1
min that Naby would fix the Bill of Sale & let
him hear from him, soon.

Ques: Do you recollect of meeting Mrs. Wharton ^{or about} at the time
specified above, in company with another gentleman,
in the road, not far from Mrs. Naby's, on their way
to Mrs. Naby's (you going ~~from~~ from Naby's)?

Ans: No Sir - I do not remember.

Re-examination of Defts. Atto:

Ques: At the time of the conversation, above alluded to,
between Wharton & Naby, did Wharton come to Naby's
alone, & did he come with Humphry Savage?

Ans: Mrs. Humphry Savage did not come with him; that
morning - a little boy came with him in a cart, but
he did not get off the cart, that I know of?

Ques: State whether it was, or a different time, from the
time above alluded to, when Mrs. Wharton came to Mrs.
Naby's in company with a young gentleman, whom
you did not know?

Ans: It was on a different time & at night when he
came to bring the furniture.

and further ~~deposition~~ deposition doth not

(Signed)

Sarah B. Duke

James G. Smith being duly sworn on the Holy Evangelists
of Almighty God, deposes & saith:

Quest: What is your age, where do you reside & do you know
the parties to this Suit?

Ans: I am 42 years of age, I reside in Wausean
County, Wis; & I know the parties to this Suit.

Quest: Do you know of any treaty or domestic arrangement
between David R. Wharton & his Mother? If so, state it.

(Excluded to as wholly irrelevant)

Ans: I know nothing more than that Wharton's Mother
lived with me, up to the time of her death - having
lived out off & on for 10 years, - she however lived with
me a few years before her death - I know nothing more
than that she wished me to see Mr: Rely to see Mr:
David Wharton whether he or her son (Orville Wharton)
would help her any - I saw Mr: Rely for her, & he, (Rely),
went to see her - Mr: Rely wrote a few lines for her -
which I heard him read to her - Mr: Rely then,
asked "how did that Suit" - her, reply was, that would
do, she reckoned - then she asked Mr: Rely, would he hand
what he had written to Mr. Wharton - he said that he would
do so - I do not know, whether he did hand it to
her or not - To my knowledge, there was no difficulty between
them, only, ^{said she} she thought David ought to help to take
care of her, as he had what she had - she had not seen
David to tell him any thing about it herself

Quest: You state that Mr: Rely, at her request, wrote a
letter to the Peoff, which was read in your presence.

1
what was the contents of that letter

(Refer to)

Ans: I do not recollect its contents. only she said
"Daniel must do something for her"

(Copy examined)

Quest: What relation are you to Wharton, the 11thth?

Ans: I married Wharton's Sister.

Quest: Has your wife received her share of her mother's Estate?
Real & Personal

Ans: She has received her share of the land, along with her
~~and~~ brothers.

Quest: With whom did your wife's mother live, at different
times, previously to her death?

Ans: After she came from Mr. Winifred Peck's, she lived with Mr.
Wm. My (of Mr): then she lived with Mamma's sister Ellis, who
married one of her daughters - then she stayed with her son
Wright Wharton, some months. ~~then~~ She lived with her
son David R. Wharton, a while, & then she came & lived
with me up to her death - & when she died she requested
her son David Wharton to put her away - & provided
for her grave dug & her coffin made & sent it up to
my house - Mr. Winifred Peck's mentioned above was
my wife's uncle

Re-examined
your wife's mother

Quest: You have stated that ~~her~~ ^{your wife's mother} ~~only~~ got ~~you to see~~
Mr. Rely & to get him to write a letter to David Wharton
stating to David Wharton in said letter that he must help

to take care of her. If there was no family trouble between them, state why Mr. Rely was sent for to write said letter to said Wharton;

Ans: I do not know - only she did see David herself, & he did not come to see her.

Quest: In the said letter what did the old lady propose to do, if David Wharton, did not comply with her requests?
(Replied to)

Ans: I do not know what was in the letter, but the old lady said, that if he did not comply with her requests, that she would see him.

and further thus dependent saith not.

Witness
P. B. Bontis, Curator

James G. Smith
mark

David R. Wharton re called

Quest: How many times did you go to Mr. Rely's House between the time of the sale, at Daughters', and the time when you went to pay \$40⁰⁰, as you have already testified, on your note & Bill of Sale, held by Mr. Rely, & for what purposes?

Ans: I went three (3) times, as near as I can recollect. The first time, I went, I carried a load of the property which he had at Daughters' - The second time, I went, I carried two (2) cattle which he also had at said Daughters'; and the third time, I went, I carried him \$40⁰⁰ to be used on the note

1
further property, which I had bought at said sale (as I
have before testified) It was nine (9) days, before the
note matured, that I carried him the \$60⁰⁰

Quest: At the time of these three visits, did you
stop, socially, to converse with Mr. Rely or any of
his family, or enter his house, in the same way (socially)

Ans: I did. At one visit I eat breakfast - at another
time it was in the night, I went & talked awhile.
It was during one of these visits, that I asked Mr.
Rely, if he had sold his Cotton, as Mrs. Baker
has stated, in her deposition; Humphrey Savage
was with me, at one time, & W. Starrings or
Starns, at another, I think - and either Tom Douglass
or his son in law, was with me, during one of said
visits, & helped carry the furniture.

Quest: Did you have any conversation about the note
or Bill of Sale, held by Mr. Rely, at the time of
any one of these visits, except the one when you
went to pay the \$60⁰⁰.

Ans: ~~There was no conversation~~, I did not.

Quest: Was it ^{or not} at the time of your visit, to pay the \$60⁰⁰ that
you had the conversation about the Bill of Sale?

Ans: No, it was not then - I never had any conversation
about the Bill of Sale, until I paid the note &
took the note in. I said nothing about the Bill of
Sale, when I paid the \$60⁰⁰ because the \$60⁰⁰ did not
pay the note in full. I do not recollect whether my lady
was with me, when I paid the \$60⁰⁰ or not.

Question

How long after the payment of the ~~pho~~^{pho} was it before
you went to pay the debt in full in Company with
Mr. Humphrey Savage & was Miss Sarah R. Dike
present at that time?

Ans.

About 8 months - She was not present but I met
her in the road, going away from Naby's & I was
going to Naby's.

Quest

Did you take care of your mother & do as much
for her, as ~~any other~~ ^{any} one of her sons or daughters,
or relations?

Ans.

I did more for her than ^{any} other 3 of her children -
I commenced to keep house at 13 years of age &
look care ^{of her} ~~care~~ until my 21st year, when I
was married - I do ^{not} remember of ever having seen
such a letter as that referred to, in the deposition of
James T. Smith, Senior.

and further this deponent Sarah W.

(Signed)

Witness

P. B. Prentiss, Comptroller

David R. ^{his} Wadsworth
mark

My Consent, the further taking of these depositions
is adjourned till the 8th day of October 1878

Peter B. Prentiss, Comptroller in Charge

Clerk's Office, Suffolk V^t October the 8th 1878

Present: Wilbur J. Kelly, atty for P. B.

Richard A. Rawls atty for Deft

J. L. Doughtie being duly sworn on
the holy Evangelists of Almighty God depose
and say as follows - for the ~~Plaintiff~~ ^{Defendant}
1st Q. Please examine Exhibit E. (which is here shown
to the witness) and say whether your signature
is affixed to it - as one of the subscribing
witnesses?

Ans. That looks very much like my hand-write
I think it is my signature

2nd Q. State whether you remember being called
upon to witness such a paper.

Ans. Yes Sir. I was coming down to Mr Raby's
with Mr. Norton to bring some cattle in
October, some time after the sale and we
met Mr Raby in the road and he told us to
turn the cattle in the field, as he had
strayed down to my place anyway, and we
would go on back, and while standing
there Dr. Ridelick drove up, and Mr Raby
said to him he would like him to go
back with him to witness a bill of sale
which was being fixed between Mr Nor-
ton & himself. Dr. Ridelick turned
back with us and we went in the
house and Dr. R. read the papers over
and so did Mr. Raby and after ~~the~~
the paper was read over Mr Norton
acknowledged the paper and I signed

it and so did Dr. Ridelick he signing first-

3. 2. Do you remember the amount of money mentioned in the Bill of Sale which you signed as witness?

Ans. One hundred and eighty nine dollars & Ninety-Six cents (\$189⁹⁶/₁₀₀) securing a note for Eighty-nine dollars & Ninety-six cents (\$89⁹⁶/₁₀₀) that Mr Raly was holding against him

4. 2. State whether you remember that the \$189⁹⁶/₁₀₀ was agreed between them to be the consolidated indebtedness of Horton to Raly at that time

Ans. I suppose it was ~~indebtedness~~ the full indebtedness.

5. 2. If you know, state whether or not Horton asked that this change be made taking in the old bill of sale and giving the new one so as to grant him certain privileges?

Ans. It seems to me that I heard something about it but I do not recollect exactly about it.

6. 2. State all you may know about a cotton transaction between Raly and Horton?

Ans. I do not know much about it. There was a cotton patch ^{on} the farm where I was living that Mr Horton was to pick out the cotton for a certain share, how much

I do not know

7th Q. Did you come to the Clerk's Office as one of the subscribing witnesses to exhibit 'E' and prove said exhibit - before the clerk by your oath?

Ans. I did —

8th Q. ~~Cross examination by Plffs. Counsel~~
What is your name, age - where do you reside and do you know the parties to this suit?

Ans. I am named J. L. Dougherty 29 yrs of age reside in Hanseman Co. Va and know the parties to this suit.

9th Q. ~~Cross Examination by Plffs. Atty~~
Where you present on the day of the sale mentioned in these depositions and if so was the Plff. there and do you know whether he made any purchases there and the amount thereof?

Ans. I was present on that day and so was the Plaintiff and he made purchases to the amount of \$89.96.

2nd Q. Now did the Plaintiff pay for said articles or propose to pay for them?

Ans. By giving a note and securing that with his property by a bill of sale.

3rd Q. Examine Exhibit 'D.' and state whether or not that that is the original bill of sale or not.

given to secure said purchase?

Ans

I could not tell exactly whether it is the original bill of sale or not as I did not sign the first bill of Sale, I only signed one.

4th Q

Do you know that there was a first bill of sale of your own knowledge?

Ans

Well from signing the bill of Sale I was called on to sign, I supposed there was a first bill of sale.

5th Q

Was there anything in the bill of Sale you signed indicating to you that there had been a first one?

Ans.

Yes, by the way the note was given in the bill of Sale which I signed.

6th Q

Examine Exhibit "A" and state whether or not ~~that~~ it was cancelled at the time you signed the ^{second} bill of Sale? and also examine Exhibit "D" and state whether it was cancelled at the same time.

Ans

This is the note that was put in the bill of Sale I signed (Exhibit "A") - Exhibit "D" was cancelled at the same time.

7th Q

Did you notice these two exhibits at the time they were cancelled?

Ans

I did.

8th Q

Who were the subscribing witnesses at the time to Exhibit "D" which you say you noticed?

Ans

I cannot tell you as I never noticed the

names of the witnesses.

9th Q.

Did you ever witness with Dr R. E. Riedelich as he has testified a bill of sale for \$89 $\frac{96}{100}$ from the Plaintiff to the Defendant?

Ans.

I never witnessed a bill of Sale of that kind. I never witnessed but one bill of Sale and that was given to secure the property bought at the sale.

10th Q.

Do you know of any indebtedness of the Plffs to the Defs: other than for the articles purchased at said sale?

Ans.

No. Sir, only about the rents I do not know how they made that, I mean the amount he was to give for the place.

11th Q.

Re-examined by the Defendants Atty.
Was the bill of sale you witnessed, the one for \$189 $\frac{96}{100}$, simply to secure the property bought at the sale or did it embody both that amount and any other indebtedness from Wharton to Ratz?

Ans.

I suppose that all of the indebtedness was included in the bill of sale which I signed.

12th Q.

Re-cross examined by Plffs Atty.
At the time the bill of sale was given which you signed did the Plffs execute

Ans.

any bond or note for the One hundred dollar
part of the amount for \$189 $\frac{96}{100}$ or simply for
\$89 $\frac{96}{100}$ or for the whole sum of \$189 $\frac{96}{100}$
and give the bill of sale to secure the same
I do not know how much more he owed than
the amount for the article bought at the sale,
I only saw the note for \$89 $\frac{96}{100}$, the balance
was between them.

And further this deponent deeth not
Joseph L. Daughton

State of Virginia - Nausamond County, to wit:
I, Peter B. Prentiss, a Commissioner in Chancery, of the Circuit
Court of Nausamond County, Va. do hereby certify that the fore-
going Depositions were duly taken, sworn to and subscribed before
me, at the times and places mentioned therein.

Given under my hand, this 8th day of October, 1878.

See #15th

Peter B. Prentiss. Comm^r in Chy

Chancery
vs } Depositions
Raby &

1878. Octo. 8th: Filed
JLH

To A. J. Rabey

Take notice that I shall on the 28th day of March 1878, next, at the residence of Oliver Hancee in Han-
sennd County, Va. between the hours of 8 a. m. and 6 p. m. of that day, proceed to
take the Depositions of Dr. R. E. Riddick, Humphry Savage and
Oliver Hancee and others, to be read as evidence in my behalf, in a certain cause
in Chancery, depending in the Circuit Court of Hanssund
County, wherein I am

are plaintiff, and

you

are defendant; and if from any cause the taking of the said Depositions be
not commenced on that day, or if commenced be not concluded on that day, the taking of the same will
be adjourned and continued from day to day or from time to time, at the same place and between the
same hours, until the same shall be completed.

1 March 1878

To the Sheriff of
County to execute.

}

Respectfully,
David R. Wharton
By attorneys.

~~We~~ We hereby acknowledge receipt for the
plaintiff's fee.

March 27, 1878.

Wright & Hunt
attys.

The Commonwealth of Virginia,

To the SHERIFF OF NANSEMOND COUNTY, Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON Mr. R. E. Riddick, Joshua Doughtie, John J. Vaught, Edward Savage (of Sinner), Ephesus Savage, Wm. Lilly, Thomas Doughtie, Edw. J. Bryant, Humphrey Savage, Geo. W. Skinner and Oliver Hannell

Peter B. Prentis, a Commissioner in Chancery
to appear before ~~the Judge~~ of the Circuit Court of Nansemond County,
^{residence of Oliver Hannell, in} at the ~~Court House~~ of said County, on the 28th day of March, 1878 (thirtieth) next, to
testify and the truth to say on behalf of David R. Wharton,

in a certain matter of controversy in our said Court, depending and undetermined between said

David R. Wharton

Plaintiff
and

Andrew J. Rabby

Defendant

And this the witnesses shall in no wise omit, under the penalty of \$100 each: and have then and there this summons.

Witness, PETER B. PRENTIS, Clerk of our said Court, at his office, this 2nd day of March, 1878, in the 102nd year of the Commonwealth.

Peter B. Prentis Clerk.

Entered in full

J. L. Fulgham Shiff

David R. Wharton

~~vs~~ { ~~Spa~~

Andrew J. Rabey

On the 28th day of March, 1878,
at 11 O'clock, A.M., at the residence
of Oliver Russell, in House-
man County.

David R. Wharton

vs.

A. J. Rabey and Wm H. Brothers

This cause came on this day to be heard on the Bill of the Complain-
^{David R. Wharton}ant, and the separate answers of the defendants, A. J. Rabey and Wm H. Brothers and the exhibits filed with said Bill and answers, and on the examinations of witnesses and the exhibits filed therewith, with general replication to said answers, and was argued by counsel.

On consideration whereof the Court is of opinion and doth adjudge and decide that the writing (of which a copy is filed with the Bill in this cause and marked exhibit "C"), dated the 16th day of October A. D. 1874 and purporting to be signed by said A. J. Rabey and David R. Wharton and which was admitted to record in the Clerk's office of the County Court of Hansemond County, Virginia on the 9th day of February A. D. 1877, pur-
porting to be a sale from said David R. Wharton to said A. J. Rabey of the Chatter estate therein named for and in consideration of the sum of \$189.⁹⁶, and a loan of the

same from said A. J. Rabey to said David R. Wharton and having an alleged assignment thereof from said A. J. Rabey to W^m H. Brothers endorsed upon it, ~~and~~ dated the 20th. day of November A. D. 1874, is a fraudulent writing based upon no consideration whatever and, therefore, void, and that no such sale or loan ~~as the~~ ~~as that of the~~ of said property as that mentioned in said writing was ever made, and that said A. J. Rabey and W^m H. Brothers have neither jointly nor separately any claim or demand by virtue of said writing upon ~~said~~ ^{their} property therein mentioned, or against said David R. Wharton personally. And the Court ~~doth~~ being of opinion that said writing is fraudulent and void, doth adjudge, order and decree that it be and the same is hereby cancelled, annulled and set aside, and ~~the~~ doth decree the property therein named to be the property of said David R. Wharton.

And the Court doth further adjudge order and decree that said David R. Wharton, Complainant, recover

of said A. J. Rabey and Wm H.
Brothers his costs in this behalf
in the prosecution of this suit
expended and that execution
issue for the same.

Wharton } In Chy,
vs. }
Rabey & al

Nausemond County
Circuit Court
Octo 11th 1881

Decree
To be entered

Geo. B. Bland

Entered O.B. page 543

Nausemond County Va.
Octo: 16th 1870.

Know all men by these presents. that I
David R. Wharton of the above County and
State ~~do sell~~ ^{hath sold} and by these presents doth sell
unto A. J. Rabey of the same County and State
for and in consideration of the sum of Eighty
nine Dollars and ninety six cents. the receipt
of which I ~~have~~ ^{acknowledge} ~~the~~ Chestnut colored horse. five
heads of Cattle ~~and~~ ^{and} twenty Barrels of long Corn and
one thousand ~~and~~ ^{and} pounds of blade fodder.
Which property I promise and bind myself heirs
assigns &c. to keep in good condition for the use
and service of said horse whilst allowed by the
Said A. J. Rabey to remain in ^{my} possession - and
furthermore I promise and bind myself my heirs
assigns &c. to deliver unto the said A. J. Rabey
to his order or representative (legal representative) each
and every part of the above said property when
called for - And I moreover agree for the said
property to be at all times subject to the orders of
the said A. J. Rabey. his heirs. or assigns &c. and
the right and title thus bargained and sold unto
the said A. J. Rabey. his heirs &c. I will forever war-
rant and defend - In witness whereof I hereunto
set my hand and Seal. day and date first
above written.

Witness

his
R. Wharton Seal

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Oak log 12" diam - 7 ft long - 2 1/4" thick
 2 1/4 x 4
 2 1/4 x 2 1/4

Acct of Sales exhibits all settlements to be having been
 made in accordance with terms of sales. And
 W.H. C. R. and J. Doughty (as J. Doughty) (before this to be done to account for
 is around 10) I think + 4.00, etc.

W.H. Brothers 16 Oct 77
 In view of unsatisfactory purchase, account of sales
 left over (by Private account) of 4.00 + 2.00 = 6.00

Rev. C. R. Ralston 16 Oct 77
 In view of unsatisfactory purchase, account of sales

(W.H. + J.D.) = 1.50 + 3.50 = 5.00
 Proposed to make the required note, but did not, but made note
 for 15.17 - discount of 7.25 added - enclosed by 1.12.13

(Private account) - account to
 1 Of the Chem. purchase by firm account to remain for my
 Commission temporarily.
 And J. Doughty allowed to move 1 lb 5 oz in 25¢ and 1 water Potatoes
 40¢ by purchase of J. Doughty - note to be made with
 him - 13.00 of the above to be made note of with note.

Sum of 10.00 to be paid
 2.00 + 2.00 + 2.00 + 2.00 + 2.00 = 10.00

The Answer of W. H. Brothers to a
bill of Complaint exhibited against
him and others in the Circuit Court of
Hancock County by B. R. Wharton.

This defendant for answer to said
bill says, that the obligation of the said
B. R. Wharton to A. J. Ruby, for \$ in
the bill mentioned, was made and his
signature thereto acknowledged by the
said plaintiff, with full knowledge
of its contents, and all that he says
in his said bill that he did not duly
execute the same is not true - and
that the said plaintiff did duly ~~and~~ execute
and acknowledge the said debt of Mat.
gage in the bill ~~of~~ mentioned, to secure
the payment of his said bond - and all
he says in his said bill about his not having
understood, and ^{not} having executed the said debt,
is not true - That A. J. Ruby assigns
the said bond to this respondent for
valuable consideration, and this respondent
took the said assignment in good faith -
and with no intent to hinder, delay or
defraud him the said plaintiff - and this
respondent is the holder and owner of
said bond, and is entitled to all the

the rights given by said deed to secure
the payment of said bond.

And this defendant asks that his rights
under said deed may be enforced - and
that the said D. H. Whorton may be re-
quired to surrender as account for
all the property conveyed by said deed -
and that the same may be sold - and the
proceeds applied to the payment of the said
bond - and that the said D. H. Whorton may be
required to pay the said bond - and that
your respondent may have all other
and further relief to which he may be
entitled. & he will ever pay & ~~do~~

Wm H. Brothers.

Virginia

Norfolk County Court:

D. R. H. Rawls, a notary
Public for the County and State of Vir-
ginia do certify that W. H. Whorton
has this day personally appeared
before me and made oath
that the facts stated in this
my answer are true to the
best of his knowledge and belief.
Given under my hand this
3rd day of ~~January~~ ^{May} 1879

D. R. H. Rawls

[Signature]

Wharton
vs. } In chy.
A. J. Raby & Co

Answer of
Wm H. Brothers

To the Honorable Geo. Blow, Judge of the
Circuit Court of Nonsemond County;

The answer of Andrew J. Raby the de-
fendant to the bill of complaint exhibited
against him and others in the Circuit ^{Court} of
Nonsemond County by David R. Whorton
Complainant. This defendant now and
at all times hereafter saving and reserving
unto himself all benefit and advantage of
exception which can or may be had or
Taken to the many errors, uncertainties
and other imperfections in the said complain-
ant's bill of complaint contained for
answer thereto or unto so much and
such parts thereof as this defendant is
advised is or are material for him
to make answer unto this defendant
answering said;

It is True that on or about the 16th day of
October 1874 the Complainant attended a
sale at the residence of Joshua L. Doughtie
near Somerset in Nonsemond County Va. made
by this defendant of certain chattels which
this defendant was the owner of, and to which
this defendant had a perfect title; that at
said sale the Complainant purchased
articles to the amount of ~~\$89.96~~ \$88.11

the terms of the said sale were cash for all sums under \$10 and for all sums above that amount a negotiable note ^{with good security} payable sixty days after date at the Farmers Bank of Wausau without discount, with the discount added at the Bank rate of interest. The complainant's purchases amounted to \$88.11 and the discount \$1.84 making \$89.95 which the complainant owed ~~the~~ defendant in said article. After several vain and futile endeavors, the complainant reported to this defendant that he was utterly unable to give the good endorser on the said note, such as were required by the said Bank before they would discount, or none of complainant's friends seemed willing to endorse for him, but ~~wrote~~ ~~to this defendant~~ or said complainant was very anxious to take charge of and remove said article purchased at the sale, he said to this defendant that he thought some arrangement could be made by which he, the complainant, could secure to the defendant the amount of the purchase money; that he was willing to give a deed of trust on his property or to give a Bill of

sale on the articles, in order to secure to
the Defendant the purchase money; and
as the complainant was very unfortunate
and as the Defendant was willing to
aid and assist him all in his power
he, the Defendant agreed to let him, the
complainant take the said articles, purchased
at the said sale and give his note for
them, and also give ~~to~~ this Defendant
a bill of sale on certain property to secure
to this Defendant the payment of the said
note; whereupon the ~~took charge~~ complainant
took charge of the said articles, purchased
at said sale and executed to the Defend-
ant his negotiable note for \$89.96
which note is filed in this suit by the
complainant & marked "A" and also
executed to this Defendant a bill of sale
for certain property, to secure to this de-
fendant the payment of the said note
as the credit of the complainant was
such that he could not give endorsers
on the said note, which bill of sale is
first given is herewith filed marked
"B" and proposed to be taken as a part of
this answer, though it has been cancelled
or your Defendant promised it should
be, by having the names thereof torn off.

And this defendant further saith that in a few days after the said note and bill of sale was given him, the complainant approached him and stated that he the complainant wished this defendant to grant him other favors which this defendant readily agreed to do provided the complainant would give sufficient security. This defendant further saith that at the time of the said sale and before the said note was given, the complainant owed him the defendant \$25 or \$30 for money which the defendant had loaned the complainant from time to time and which the complainant had never paid him which amount was not included in the note for \$89.96. And this defendant further saith that at the said sale he owned a lot of cotton which was exposed to auction, with other goods, and which cotton was bid in by the defendant and that after the said sale and also after the said note and bill of sale had been given by the complainant, the complainant approached the defendant and purchased of him ~~the said~~ some cotton and otherwise became further

indebted to the said defendant, the complainant promising to give additional security for the additional indebtedness. And this defendant further says that at that time when arranging for the additional purchase it was solemnly agreed between the complainant and the defendant, that the complainant's full indebtedness to the defendant should be ascertained, including the note of \$89.96 the \$25 or \$30 loaned and the amount due for cotton and other ⁱⁿ articles, and that all the evidence of indebtedness which already existed should be destroyed and cancelled including the said note of \$89.96, and the said Bill of sale and that a new Bill of sale for the entire amount of the indebtedness of the complainant to the defendant, should be given by the complainant, whereupon the entire said indebtedness was then and there by both the complainant and defendant ascertained to be \$189⁹⁶/₁₀₀ for which amount the complainant then willing and with a full knowledge of the facts and transactions, executed this Bill of sale, it being a second bill of sale, for certain property to this defendant

which second Bill of Sale is filed in
this suit by the complainant, marked
'C' and proposed to be taken as a
part of this ~~last~~ answer. After the
entire indebtedness had thus been
consolidated and a new Bill of Sale
executed for the whole amount, this
defendant - gave to the complainant -
the note for \$89.⁷⁵/₁₀₀ the amount of that
having been merged into the other
evidence of the whole consolidated
indebtedness, and the defendant also
promised the complainant that the
first bill of sale should be cancelled.
which has been done by tearing off
the names thereon, which will appear
by the said old bill of sale herewith filed
marked "D" and proposed to be taken
as a part of this answer. This defendant
says it is true he promised the complainant
the said New Bill of Sale should not
be recorded, until or unless ~~the~~ this
defendant found it necessary to do so
in order to protect his interest, the com-
plainant stating that if it was recorded
it would still further impair his credit;
and this defendant not wishing to
wontonly injure or destroy the credit

of the complainant secretly kept his
promise and for nearly two years kept
the said Bill of Sale from record, but
after that time the defendant finding
that the complainant was not dis-
posed to close up the matter but dis-
posed to annoy, and trespass on the
rights of the defendant, found that
it was absolutely necessary to have the
said Bill of Sale recorded in order
to protect his interest and accordingly
it was recorded. And this defendant
said that the said note for \$89.96
has never been paid to him or to any one
in any other manner than by the
complainant's giving the said Bill of
Sale marked "C", to him for it. And
the defendant further said that for all
monies which the complainant has paid
the defendant, the complainant has receipts
specifying that instead of having been given
in payment of the said note, they were given
in payment of other matters. And this
defendant further said that at the ^{time} alluded
to by the complainant in his bill, when
he called on this defendant for the bill of
sale in the presence of Mr. Humphrey
Pavage and this defendant gave his word

and hence that it had been destroyed,
that particular allusion was made to
the first bill of sale which the Com-
plainant had given and which had
then been merged into the second
bill of sale. That this Defendant-
did give his word and honor
that the said first bill had been
destroyed & as it had been by having
the names torn from it - as afore said
and this Defendant further saith that
at a later time the Complainant called
on the Defendant to know if the first-
bill had been destroyed and this
Defendant informed him it had
and then said there gave to the
Complainant a ^{certificate} ~~receipt~~ specifying
that the first bill of sale had been
destroyed and had been supplanted
by an other bill of sale which other
bill of sale is the identical bill
now filed and marked "C" as above
alluded to. And the Defendant further
saith that the said bill of sale or even
was duly assigned by him to the said Wm.
H. Brothers, with the full knowledge of
the complainant, as the record shows,
And now having fully answered the

Complainant's bill, this defendant
prays hence to be dismissed with his
reasonable costs in this behalf expended
and he will ever pray &c.

A. J. Rabey

Virginia

Norfolk County Court:

This day personally appeared before me
A. H. Hawley, a Notary Public in the
County of Norfolk Andrew J. Rabey
whose answer is above written and
made oath that the statements
contained in the said answer as
far as to so much of his own knowl-
edge are true; and such as are
made from the knowledge or in-
formation of others he believes to
be true.

Given under my hand this
5th of October 1877

A. H. Hawley
Notary

Daniel R. Whorton

25th } Chicgo

A. J. Raby et als

Answer of Defendant

A. J. Raby

3 Exhibits in
Wharton
v

Rubey &c.

Suffolk Va Oct. 16th 1874

\$89⁹⁶/₁₀₀

Sixty days after date we promise to pay unto
Andrew Cabey or order, negotiable and payable at the
office of the account and deposit of the Farmers
Bank of Farmington, in Suffolk, without effects.
Eighty nine dollars and ninety six cents, for
value received; and it is agreed upon by the parties
that the interest on this Note shall be at the rate of
five per centum per annum, payable in advance; and
we, principal and endorsers, hereby waive the benefit
of our Homestead Exemption as to this debt.
Credit the maker

David R. ^{his} X Wharton
mark

Witness

Olin Harrell

D. R. Wharton

To Bond

89.96

11

D. A. Harton
1871

To Andrew J. Rabey

Dr

Oct 16 th	1 pitch fork c 45 [¢]	✓	\$.45
"	1 axe c 61 [¢]	✓	1.00
"	5 Bbls c 3 [¢]	✓	15.00
"	5 " c 3 [¢]	✓	15.00
"	5 " c 2.95-	✓	14.75-
"	1 Lot Corn Shucks c 2.25-	✓	2.25-
"	5 cut blade fodder c 92 [¢]	✓	4.63
"	5 " " c 90 [¢]	✓	4.50
"	3 hogs 1st Choice c 3.77 ¹ / ₂ each	✓	11.33
"	3 " 2 nd " c 1.57 ¹ / ₂ "	✓	4.73
"	1 Spotted Cow c 3.30-	✓	3.30-
"	1 listed " c 4.13	✓	4.13
"	Potatoes for 3.65-	✓	3.65-
"	Pickings of field 2.30	✓	2.30
"	1 Lot of Knives & forks c 85 [¢]	✓	.85-
"	Box & Contents in cloth c 8 [¢]	✓	.08
"	1 Sugar Bucket c 11 [¢]	✓	.11
Total by Bond			88.11

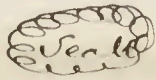
¹
B''

State of Virginia

Nansemond County, to wit:

Whereas I have this day purchased of David R. Wharton, of the above said State and County, for the sum of One Hundred and Eighty-nine dollars and ninety-six cents. \$189⁹⁶ which sum is found to be the consolidated indebtedness of said David R. Wharton to me, at the present time, and by reason of this purchase, the said indebtedness in its original form is now cancelled and satisfied, the following property, to wit: One Chestnut Colored horse, five head of fine cattle, consisting of grown Cows and Oxen, twenty barrels of ripened Corn (Long), and One thousand pounds of No: 1 blade fodder. And Whereas, ^{reason of} by the importuning of the said David R. Wharton, I am disposed to aid him as far as I can, without material injury to myself: Now be it known to all whom it may concern, that I have loaned the above described property to the said David R. Wharton, which is at all times to be subject to my order, and that, or its equivalent, to be delivered, as per my order, when required.

In Witness Whereof, I herewith set my hand and seal, this 16th day of Octo: 1874.

A. J. Rabey. 

16th Octo: 1874.

I this day acknowledge to have sold to, and then received on loan from A. J. Rabey, the property above enumerated and described, upon the terms and conditions above given, and which property or its equivalent, is ^{to be} at all times, subject to his order. And I bind myself, as per his order, to deliver, at any time when required, as per his order, the said property or its equivalent. And I further

agree to waive the benefit of the Homestead Exemption, as
to this obligation.

signed. David R. ^{his} Wharton
mark

Witness. R. E. Riddick {
J. L. Doughtie }

Nov: 20th: 1874. I this day transfer all the right, title, interest,
power and control vested in me, by virtue of the writing
within, unto W. H. Brothers, and promise to have the said
writing duly placed upon record, when required to do so,
and defray the expenses of the same.

A. J. Rabey.

In the Clerk's Office of Nauseland County Court, the 6th:
day of February, 1877.

This Deed of Loan together with the endorsement thereon
was acknowledged by A. J. Rabey: and the memorandum
appended thereto, executed by David R. Wharton, was proved
by the oath of J. L. Doughtie, one of the subscribing witnesses:

And, on the 9th: day of February, 1877, the said memorandum
was proved by the oath of R. E. Riddick, the other subscribing
witness thereto: Whereupon, said Deed of Loan, endorsement
and memorandum are admitted to record.

Teste,

Peter B. Pentis, Clerk

A Copy:

Teste,

Peter B. Pentis, Clerk

xm

A. J. Rabey
To { Copy Loan to
David R. Wharton.

"C"

J. R. K.
David R. Wharton

27 } Bill
A. J. Rabey &

To the Hon. Geo. Blow, Circuit Court Judge of
Hansmann County, Virginia

Complaining, shew unto the Court your Com-
plainant, ~~lands~~ R. Wharton of ^{County-} Nassau,
aforesaid.

Your complainant respectfully represents
to the Court and says:

That on or about the 16th day of October 1874
your Complainant attended a sale at the residence
of Joshua L. Slaughter near Sementon, in Nausumund
County Va. made by Andrew J. Rabey of certain
Chattels which he claimed to be the owner of & as
having purchased of said Slaughter: That at the
said sale your Complainant purchased ~~an~~ ~~horse~~
~~about horse, & a kind of fine cattle, consisting of~~
~~some corn & some~~ ^{fifteen} barrels of a putrid corn
(long) 1000 lb No 1. ^{some hop & some other small articles} ~~black~~ ^{white} ~~birds~~ are for the sum
of Eighty Nine Dollars and Ninety six cents, &
for which your Complainant executed a note to said
Rabey payable sixty days after date at the Farmer,
Bank of Nausumund, in Suffolk Va. without offset, &
which note was attested by Oliver Harrell Esq. —
which note was afterwards paid by your Com-
plainant; all of which will appear by said
Note now in your Complainant's possession, &
marked "paid" on its face, & is filed herewith
(and marked "A", and prays to be taken as a
part of this Bill —

That your Complainant is ignorant of

reading writing, and made his mark to said Bond — That an account of said purchase, at the said sale was given your Complainant by said Rabey in executing said note, "receipts by Bond" meaning "note", which account is for \$88.11. & Bank rate of Interest, as charges at said Bank added, to int. \$ 1.84, all making \$89.95 the amount of said Bond — which account is filed herewith as part of this Bill marked "B"

That on or about the day of said purchase your Complainant gave said Rabey a writing as a Lien on said property till the said \$89.95 should be paid, which he promised not to vend —

That as soon as your Complainant paid off to the said Rabey the said note of \$89.95, he called on the said Rabey for the said ~~note~~ writing in the presence of Mr. Humphrey Sarap, when said Rabey declared on his and thence that he had destroyed it, and your Complainant rested satisfied, knowing that he owed the said Rabey nothing — But so it is now it please the Court, on the 6th of February 1877. (nearly two years & 4 months) after the date of said note over two years after its payment & the assurance of the destruction by said Rabey of said note, he the said Rabey had received in the Clerk's office of Harrison County a paper purporting to be a sale from said Rabey to your Complainant, for said property, declaring on its face that "I (meaning ^{said Rabey} your Complainant)

"have this day purchased of David A. Wharton for the sum of one hundred and eighty nine dollars and seventy six" being just one hundred dollars more than the purchase of said property: That there is an endorsement in said writing purporting to have the signature of your Complainant by his mark thereon: and by an endorsement also in said paper made the 20th Nov. 1874, the said Rabey purports to assign the title in said property & his control thereof &c. to his Brother-in Law W. H. Butkus - all of which are appear by a copy of said writings, filed herewith as part of this Bill marked 'C'."

Your Complainant avers that he never owed the said Rabey but the \$89.96 growing out of said transaction, and never owed him the \$189.96, and the amo. owing by your Complainant to said Rabey, was \$89.96 and that was duly paid by your Complainant.

That your Complainant has demanded of said Rabey that he would release the said property, to your Complainant, which he refuses to do. That holding the claim to the said property as above stated, by said Rabey is a fraud on your Complainant's rights,

Your Complainant prays that the said Rabey be compelled to release & convey the said property to your Complainant -

That your Complainant has lost the said

property in his possession from the day of purchase
till now & has it now. That the pretended
assignment by said Rabey to his brother in
Law, Wm H. Brothers, was, fictitious & without valuable
consideration, intended to deceive & defraud your
Complainant.

In consideration whereof, I for as much
as this Court has jurisdiction & power to grant all
adequate Relief, In the End your Complainant prays,
that the said Andrew J. Rabey & Wm H. Brothers may
be made defendants hereto & answer the allegations
herein made: That the said Defendants may
be compelled to cancel & convey said property
to your Complainant, and that such other & further
relief may be granted your Complainant, con-
sistent with equity. And your Complainant
avels &c.

David R^{his} Wharton,
mark

John R. Kilby p. q.

Virginia { In the Clerk's Office of the
Hansmann Co. to wit { Circuit Court of Hansmann County

This day David R. Wharton came before
me & made oath that the facts & statements contained
in the foregoing bill are true to the best of his belief
Given under my hand Sep. 3^d 1873

Peter B. Prentiss. Clerk

David R. Wharton

25th of Chy Notes

Andrew J. Raby & W. H. Brothers

1877. Aug: 18th: Sum. in Chy: 3rd to Sept: Rule 9: 1877

" " 31st do do do do

" Sept: 3rd: Bill & Xth filed - Conditional Decree to depts: :

" Octo: 1st: Conditional decree confirmed & cause set for hearing.

" " 12th Leave given to file answer which was
accordingly done, & the cause called on.

1878. Apr: 15th: Continued

" Octo: 8th: Depositions filed

1879. Apr & Octo: Terming Continued

1880. " 13th Consent order for cause to be heard in vacation.

Chy: Notes

J. R. Kilby
1/29.

David R. Wharton

} Phy.

Anthony

Andrew J. Rabey &
1881.

1881

Oct 1881
October Term
Final Decree

Stam. Cir. Ct.