

A. F. Whitman for copy  
J. L. Water for Ampts

A. J. Drake et al

vs Transcript

EX 7848

1981W

J. M. Mayo et al

Filed January 9th 1878

W. N. Cowden clk  
By H. R. Estee N. C.

89

Davidson

66-71  
16+



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State of Tennessee  
Davidson County } } In Chancery at Nashville.  
At the October Term 1877 of  
the Chancery Court at Nashville, the following pro-  
ceedings were had in the cause wherein A. J. Drake vs  
are Complainant and J. M. Mays et al are Defendants

Original Dec. Filed Feb'y 9<sup>th</sup> 1877

M. N. Powell sold all his  
in and in this cause to W. H. Houston  
Sycamore, Chapman Co. Tenn; June 2, 1874

To the Honorable W. F. Cooper Chancellor &c  
The bill of Complainant of A. J. Drake in his  
own right and as Trustee for his minor  
children Valeria A. Thos A and Gustavus  
Drake and wife Madorce Drake of the County  
of Davidson State of Tennessee complainants  
&

J. M. Mays and W. H. Hance of Davidson County  
Tennessee and W. Houston Powell and John Davis  
also of said county & state of Tennessee defendants  
Humbly complaining Orator represents to your  
Honor That about the 25<sup>th</sup> of November 1874  
he purchased of Defts J. M. Mays and W. H.

Powell a certain steam saw <sup>+</sup>grist mills upon the representations and terms herein after set forth Crator went to Deft Mays to buy a mill of him when said Mays referred him to Deft Powell who Mays said had a good mill to sell in which he (Mays) had some interest Crator then went to Deft Powell to see said mill Crator knew nothing about such mills and so told Powell and asked him to tell him (Crator) about the mill Powell represented to Crator that the mill was first class and in good running order with the exception of some piping which would cost ten or twelve dollars He represented it to be complete in every other respect a number one mill and represented that it cut from six to seven thousand feet of lumber per day Deft Mays also represented the mill to Crator as a very good mill Relying on these representations repeatedly made Crator agreed to purchase said mill Crator have no means of knowing the value or capacity of said mill except the statement of Deft and relies wholly on the truth of them said representations and statement



made with every show of candor & fairness  
And thus relying as before stated on the honest  
ty and <sup>firmness</sup> of the same Orator did contract  
for said mill at the price of \$1250 which he was  
willing to pay for such a mill as he <sup>thought</sup> represented  
this one to be For said mill Orator executed to  
Deft Mayo his two notes for the amount of \$314  
each of the date of November 25<sup>th</sup> 1874 due respec-  
tively Dec 12 1875 and Dec 12<sup>th</sup> 1876 bearing  
interest from date with W. M. Drake and Mrs  
Lucy A. Hobbs as security and to further  
secure the same <sup>the</sup> said Mrs Lucy A. Hobbs  
conveyed in trust to Deft Elmore a certain  
tract of land with power to sell the same for  
the purpose of the trust the deed of which con-  
veyance will be filed as Exhibit A to this Bill  
but not to be copied

And to Deft Powell Orator executed notes  
of the date of said November 25<sup>th</sup> 1874 for  
the remainder of the amount agreed to be given  
\$622 but the number of said notes the respec-  
tive amounts or when due Orator does not now  
remember but a trust deed of the mill



executed to secure them will be filed as an exhibit to this bill and will show these facts

AM Drake is security on said notes and as additional security Crator conveyed in trust to John Davis the mill in question with power to sell for the purposes of the trust Said trust deed will be filed as Exhibit B to this Bill but not to be copied

One of the notes given to Deft Powell for about \$220 has been transferred to Deft Mayo and to secure the payment of this note upon the assurance of Deft Powell that the mill would work as represented and that he would assist Crator to see it and see that it did work Mrs L A Hobbs on the 10<sup>th</sup> day of February 1876 executed to Deft Vance in trust conveyance of forty Acres of land with said deed will be filed as Exhibit C to this bill but not to be copied Deft Powell holds the other notes executed to him and Mayo holds those made to him and the \$220 note transferred to him as stated by Powell said Powell is wholly insolvent and nothing can be made off of him by an execution

The mill where it stood used as it was when



he traded for it except that he supplied the necessary piping and employed Deft Powell with a full set of hands to run the same but said Powell failed to cut with it on an average of any six days but little more if any more than five hundred feet per day Crator kept Powell employed for the greater part of three months immediately after he got the mill but he failed to make the mill cut any one day half what he represented it would do Crator then employed other skillful millmen to run said mill but with like result After fully testing the mill and finding it was not at all what Defts had represented it and finding that it not only would not pay to run it but that it would not pay the expenses of running it Crator appealed to Defts to take the mill off his hands and deliver up to him his notes and securities In the mean time Crator had removed the mill on his land and employed good workmen to put it up and undertake to run it but it could not be made to run successfully At the time Mrs Hobbs executed the trust deed to Deft Vance Powell again undertook



to make it run but without success Crator also  
 went after Deft Mayo who came and tried to  
 run the mill but likewise failed Crator has  
 expended in repairs in said mill over two  
 hundred dollars and has paid to Deft Powell  
 on the notes given for the same about \$100.

Whenever Crator would go to Deft to rescind the  
 contract which he has repeatedly done they would  
 repeat the assurance that it was a good mill  
 and insist on Crator giving it further trial  
 Being extremely anxious to have the mill work  
 he did try it longer and often than was wise  
 and always <sup>at an</sup> expence until he is financially  
 ruined and bankrupt. Defts refuse to take the  
 mill and have utterly failed to make good the  
 representations by which Crator was misled into  
 by buying the same <sup>same</sup> Saw mill is defective without  
 and almost intirely worthless It cannot be oper-  
 ated profitably Crator has given it a fair  
 and full trial as directed and requested by  
 Defts and lost money all the time Defts there  
 after to sell the property conveyed in trust to secure  
 the payment of the notes given for the mill

# Crator states to your Honor that Mrs Lucy A Hobbs by last will and testimony a copy of which will be filed as exhibit D to this bill but not to be copied conveyed to the complainant SA Thos A and G Drake the said herein before mentioned as having been by her carrying over in court to Deft W Mance to record the notes to Mayo and appointed Crator Trustee without bond for their honorance claim and said will is in the office of the Clerk of the county court for probate

The mill is now in better condition than when Crator got it he having expended over \$200 as stated in repairs on it

Crator has been greatly damaged both in expenditures for repairs on said mill and in the expences of trying to operate it at the request of Defts Mayo & Powell

Had the mill been what it was represented Crator would long since have paid the notes given for it or if it even had cost half what Defts represented it would he could have paid for it before this and made a profit besides #

Crator therefore prays that subpoenas be issued to Defts according to law but answer an oath is waived He prays for the writ of Injunction to issue if at any time Deft Mance and Davis under sold to execute the trust deed herein set forth and made Exhibits to this Bill and whenever called for by Complainant by owning them for so doing He offers said mill to Defts Mayo and Powell and prays that his notes be delivered up and cancelled or that their collection be perpetually enjoined



He prays that the title to the 40 acres of  
 land conveyed in trust to nance be diverted out  
 of said Nance and vested in Orator Children  
 and he prays that the title to the other tract  
 of land conveyed by Mrs Hobbs to Deft be also  
 be also diverted out of said Nance and vested  
 in his Children according to the will of Mrs  
 Hobbs If found necessary he prays that the  
 cause be referred to the Clerk & Master to take proof  
 and report what damage he has sustained by  
 the fraud and imposition and the false <sup>and</sup>  
 fraudulent representations of Defts Mays and  
 Powell and for judgment against them for what  
 ever amount of damages he may be found to have  
 sustained <sup>and</sup> ~~and~~ Complainant having been  
 misled <sup>and</sup> ~~and~~ induced to make said <sup>Contract</sup> ~~Contract~~  
 by the false and fraudulent representations of Defts  
 he prays that the same be rescinded and the parties  
 placed in statu quo and for all other relief  
 to which the nature of his cause may entitle him  
 Jas L Watts Solicitor

State of Tennessee  
Davidson County

Case A J Drake and made oath  
that the matters and things stated in the foregoing bill  
are true to the best of his knowledge information  
and belief

A J Drake

Subscribed & sworn to

before me this 6<sup>th</sup> day  
of Feby 1877 R Waring C M

State of Tennessee

Davidson County

I A J Drake do solemnly  
swear that owing to my poverty I am not able to bear  
the expences of the suit which I am about to com-  
mence in the Chancery Court at Nashville against  
J M Mayo and others and that I am justly entitled  
to the redress sought by said suit to the best of my belief

Subscribed & sworn to before

A J Drake

me this 9<sup>th</sup> day of Feby 1877

R Waring C M



The only injunction asked for by this bill I am expressly forbidden to grant by the act of this 28<sup>th</sup> of Feby 1873 ch 10 except upon 20 days notice. The party interested of the application and must therefore be refused Feby 6 1877


W F Cooper  
Chancellor

Upon re-examination and it appearing that the trust deed the execution of which is sought to be enjoined were not made for borrowed money and that the application is set within the act of 1873 the Clerk Master will issue injunction as prayed upon the Complainant giving bond with good security as required by law in injunction cases before judgment or taking the oath prescribed for poor persons Feby 7 1877 W F Cooper

Chancellor

Exhibit A to Bill

For the purpose of securing J M Mayo of Davidson County & State of Tennessee in the payment of two notes drawn the 25<sup>th</sup> of Nov 1874 each for the sum of \$314.00 made on the 12<sup>th</sup>

of Dec 1875 the other Due Dec 12<sup>th</sup> 1876 by  
A J Drake A M Drake and myself Lucy  
A Hobbs I Lucy A. Hobbs of said County  
& state Hereby Convey in trust to Wm Vance of said  
County & State a certain tract or parcel of land  
in District No 24. Beginning at a Black Oak  
Corner being the S.E. Corner of my Tract thence  
East with the York line to my East Boundary line  
to the line of J Teague Dec thence with the  
line of said Teague being my East Boundary line  
a sufficient distance to embrace one hundred &  
fifty Acs to a Stake thence west parallel to  
the York line to the Spring field & Washwell Road  
to Painbridges line thence South or a Southwardly  
Direction with Painbridges line to the beginning  
Now if the said notes shall not be paid at their  
maturity either the first Due note or the second  
then or at any time thereafter the said Wm Vance  
Trustee at the discretion of the said Mayo shall  
after giving notice of Sale in some public way pro-  
ceed to sell the same for cash pay to the said  
Mayo the amount of his notes and hold the  
remainder Subject to my order if any given under  
my hand 12<sup>th</sup> of Dec 1874 Lucy A Hobbs 

11  
witness  
A J Drake  
Frederick Ehrhart



State of Tennessee

Davidson County Personally appeared before me James F Bell Clerk of the County Court of said county A J Drake & F Ehrhart subscribed witnesses to the attached Mortgage who being first duly sworn depose and say that they are personally acquainted with the within named Lacey A Hobbs the bargainor and that she acknowledged the same in their presence to be her and deed for the purpose therein contained Witness my hand at office this 27<sup>th</sup> day of March 1875

James F Bell

State of Tennessee Davidson County

Registers Office Nashville Tenn March 27/75

I B F Buckley Register for said county do certify that the foregoing deed of trust and certificate were filed for record March 27 1875 at 1.15 o'clock P.M. entered on page 90 of note book No. 6 and registered to day in book No 52 page 527 of registry Office

B F Buckley  
County Register

Exhibit B to Bill

For the purpose of securing W. N. Powell in the payment of two notes one due June 1<sup>st</sup> 1875 for \$400<sup>00</sup> the other due June 1<sup>st</sup> 1876 for \$222<sup>00</sup> Two hundred and twenty two dollars Both drawn on the 25<sup>th</sup> of November 1874 J. A. J. Drake of Davidson County & state of Tennessee hereby convey in trust to John Davis of Chatham County my Steam Saw and Grist mill now situated Little Narrows Creek Chatham County Tenn. if the said A. J. Drake shall well and truly pay the above notes then this obligation to be void but by failing to do so then or at any time thereafter at the discretion of the said Powell the said Davis after giving three days notice in some public ways proceed to sell the same for cash pay the the said Powell the amount of the above notes and hold the balance subject to my order if any

Given under my hand This 12<sup>th</sup> of Dec 1874

A. J. Drake



State of Tennessee  
 Cheatham County Personally appeared before  
 G W M Quary Clerk of the County Court of said  
 County the above named W J Drake the bargainer  
 with whom I am personally acquainted and  
 who acknowledged that he executed the annexed  
 Instrument for purposes therein contained  
 Witness my hand at Office this 11<sup>th</sup> day of May 1875  
 G W M Quary Clk

State of Tennessee  
 Cheatham County Register Office Feby 8<sup>th</sup> 1877  
 I W H Hooper Register of  
 said County do hereby certify that the fore  
 going Instrument is all full true and cor  
 rect copy of a Deed of trust made by W J  
 Drake to John Davis as appear of Record  
 in my Office in Book 5 page 416  
 Witness my hand at Office this 8<sup>th</sup> day of Feby  
 1877

W H Hooper  
 Register Cheatham Co  
 Tennessee

Exhibit C to Bill

For the purpose of securing J. M. Mayo on a debt by note due June 1<sup>st</sup> 1876 for two hundred and twenty two dollars and drawing out from Dec 13<sup>th</sup> 1874 drawn by A. J. Drake & M. W. Drake & Lucy A. Hobbs and by them made payable to W. H. Powell and by him endorsed to the said J. M. Mayo I Lucy A. Hobbs hereby convey in trust to O. W. Nance a certain tract or parcel of land situated in District No. <sup>24</sup> 33 of Davidson County and State of Tennessee to wit beginning at Reaves South West Corner thence in a westerly direction to Sunders line thence Northwily with Sunders line to a corner of Painbridges Sunders & Madora & Drake thence with Madora & Drakes line in an Easterly direction to Reaves corner thence with Reaves line in a Southwardly direction to the beginning containing 49 acres more or less I do covenant and agree with the said O. W. Nance that I am seized and lawfully possessed of said land and have a good right to convey it and that the same is unencumbered and I hereby warrant and for



ever defund the title to the said O.W. Vance his  
 heirs and assigns forever against the claim of  
 all persons whomsoever Now this conveyance is  
 made for the above named purpose and no other  
 and if said note shall be paid at maturity  
 within 12 M from the date of this instrument  
 then this deed to be void but if not paid the said  
 O.W. Vance shall when required so to do by the  
 said J.M. Mayo after giving twenty days notice  
 proceed to sell the same for Cash at the Court  
 House door in Nashville paying himself all  
 necessary cost the above debt to J.M. Mayo  
 and hand the remainder to me if any Said  
 land to be sold free from redemption.  
 Signed this 16<sup>th</sup> of Feb 1876

Lucy A. Hobbs

Samuel Raly.  
 Wm H Snyder  
 A J Drake

State of Tennessee  
Davidson County Personally appeared before me  
James T Bell Clerk of the County Court of said  
County W<sup>m</sup> H Snyder & Samuel Raly  
subscribed Witnesses attached Deed Trust who  
<sup>being</sup> first duly sworn depose and say that they are  
personally acquainted with the within named  
Lucy W Hobbs the bargainer and that she  
acknowledged the same in their presence to be her  
act and deed for the purpose therein contained  
Witness my hand at Office this 25<sup>th</sup> day of Feby 1876  
James T Bell Clerk

State of Tennessee Davidson County  
Register's Office Nashville Tenn Feby 24<sup>th</sup> 1876  
J B F Buckley Register for said county do certify  
that the foregoing trust with certificate of Probate  
was filed for record Feby 15 1876 at 1 O'clock P M  
entered on Page 167 of note Book No 6 and  
registered to day in Book No 55 page 135  
of my Office

J B F Buckley  
County Register



Exhibit D to Bill & Exhibit "2" to J.M. Mayo's debt.

For the purpose of Securing J.M. Mayo in a debt of two hundred and twenty dollars by note drawn by myself & A. M. Drake and make payable to W.H. Powell and due June 1<sup>st</sup> 1876 also to secure J.M. Mayo in two debts of three hundred and fourteen dollars each due the 12<sup>th</sup> of Dec 1875 and the other the 12<sup>th</sup> of Dec 1876 drawn by myself A.M. Drake and Lucy A. Hobbs Shurby convey in trust to Clarence My Steam Saw & Grist Mill Now Situated on the Ridge Near Forest Grove Church an under rent to a certain W<sup>m</sup> Smith Now if I - A. J. Drake shall pay or Cause to be paid to the said J.M. Mayo within 12 months from the date of this instrument then this deed of Trust to be void but if I fail to do so then the said Clarence may at any time when requested to do so by the said Mayo after giving ten days notice in some public way proceed to sell the same for Cash and pay the above and debts with the interest thereon and hand the remainder if any to me given under my hand this 29 of January 1876

A. J. Drake

State of Tennessee  
Davidson County Personally appeared  
before me James T. Bell Clerk of the County Court  
of said county the within named A. J. Drake  
the bargainer with whom I am personally ac-  
quainted and who acknowledged that he  
executed and annexed instrument for the purpose  
therein contained. Witness my hand at  
Office this 29<sup>th</sup> day of January 1876  
James T. Bell Clerk

State of Tennessee Davidson County  
Registers Office Nashville Ten Jan 31 1876  
J. B. F. Buckley Register of said County do  
certify that the foregoing trust with Certificate  
of Probate was filed for record January 29  
1876 at 1.45 O'clock P.M. entered on page  
162 of note Book N<sup>o</sup> 6 and registered to day in  
Book N<sup>o</sup> 53 page 217 of my Office  
J. B. F. Buckley  
County Register



Deposition

State of Tennessee

Issues

To J. M. Mayo O. W. Nance W. H. Powell &amp; John Davis

Feb 9, 1877.

and to their Counsellors Attorneys, Solicitors and

Agents and each and every one of them Granting

Whereas in a certain suit this day instituted  
in our Court of Chancery at Nashville by

A. J. Drake & others Complainants  
against J. M. Mayo & others Defendants the  
Complainant having obtained from Hon  
Wm F. Cooper Chancellor & c a let for a writ  
of Injunction to issue to enjoin the said  
O. W. Nance from selling a certain tract of land  
conveyed to him in trust to Mrs Lucy A Hobbs  
to secure the payment of two notes dated November  
25<sup>th</sup> 1874 each for the sum of \$314.<sup>00</sup> executed by  
A. J. Drake to one J. M. Mayo and due respectively Dec  
12<sup>th</sup> 1875 and Dec 12, 1876 and further to enjoin  
said Nance from selling a tract of forty (40) acres  
of land conveyed to him by Mrs Lucy A Hobbs on  
the 10<sup>th</sup> of Feb'y 1876 to secure the payment of  
about \$622.<sup>00</sup> to W. H. Powell from said A. J. Drake  
and also to enjoin said John Davis from  
selling a Mill conveyed to him in trust to secure

the payment of about 622 \$ due from said A J  
Drake to said W H Powell and further to enjoin  
the said Mayo and Powell from collecting the notes  
executed by A J Drake to said Mayo and Powell  
for the purpose of a mill situated in Davidson  
County Tenn and the Complainants <sup>having taken the oath prescribed for</sup> required  
<sup>proper persons and</sup> by said fiat We therefore in consideration of  
the premises aforesaid do strictly enjoin and com-  
mand you the said M Mayo M Wance W H  
Powell and John Davis and all and every  
persons before mentioned under the penalty prescrib-  
ed by law of your and every of your goods lands  
and tenements to be levied to our use that you  
and every of you do absolutely desist from doing  
any of the act herein forbidden Until hear-  
ing of this cause in our said Court of Chancery  
Witness Robt Tearing Clerk Master of our said  
Court at Office the first Monday in Oct in the  
year of our Lord one thousand eight hundred  
and seventy six and in the 101 year of our  
Independence

Robert Tearing  
Clerk Master



Sheriff return on Injunction

Came to hand the same day  
issued and executed by reading to J M  
Mayo and O W Vance Trustee W Houston  
Powell & John Davis are not to be found  
in my county Feb 16 1877

A H Melkison

R S

J S W att Sol

Subpoena to Answer Issued Feb 26 1877

Issued Feb 26 1877 to 1<sup>st</sup> Monday in April 77  
for all the Defendants to wit J M Mayo  
O W Vance Trustee W Houston Powell and  
John Davis Trustee and returned Met  
28<sup>th</sup> 1877 executed on J M Mayo and  
O W Vance and not found as to W H  
Powell and John Davis Trustee by

A H Melkison - D. Sher

28  
Answer of J. M. Mayo et al Filed April 17 1877

The joint and separate answer of J. M. Mayo  
W. H. Powell, W. Mance<sup>jr</sup> and John Davis  
to the Bill of Complainant of A. J. Drake et al  
being No. 8750 on the Rule docket of the  
Chancery Court at Nashville Tennessee  
Filed Feb'y 9<sup>th</sup> 1877

Respondents saving and reserving to them-  
selves all right of exception to the many errors  
and insufficiencies of Complainants Bill for  
answer thereto or to so much of said Bill  
as they are advised it is necessary for them  
to answer say that it is true that Complai-  
nant A. J. Drake purchased of Respondent  
Powell a certain steam saw & grist mill and  
not of Respondents Mayo & Powell as alleged  
in the Bill the said Mayo only had a lien  
or mortgage on the mill as herein after ex-  
plained the Exhibits to bill will show the  
correct date of sale Your Respondent  
Mayo admits that Compt A. J. Drake did come  
to him to buy a mill early in Sept 1874 or



about that time when Respt Mayo told him he did not desire to sell his mill he again came to Respt Mayo sometime in Oct of same year to buy his mill when your Respt Mayo again told him that he still did not desire to sell but that a certain Mr Powell had a mill that perhaps could be bought that it was a Mill Respt Mayo bought for his son and himself early in the year 1872 that his son run it a little more than one year and until his death in June 1873 that after his sons death he Mayo finished sawing the logs on the yard and soon thereafter sold the Mill to Respt Powell and one Carney at the price of \$1200 - that said Powell & Carney executed to your Respt Mayo a Mortgage on the Mill to secure the purchase money that about half the purchase money had been paid and that Respt Mayo had a lien on the Mill for the balance of the purchase money that he Mayo regarded the mill of Powell sufficient to do good work and so regards it now if the boiler was cleaned out and

put in good fix which he considers has been greatly neglected since it has been in the possession of said Drake

Your Respt Mayo also said to Compt the day he came to purchase his mill that Powell's mill was a mill of more power than his Mayo's that the                      was longer &c

Your Respt Mayo further denies that he said or represented to Compt Drake anything concerning the mill in question other than what was true and fair he does not remember of having used the words to Compt A J Drake that Respt Powell had a good mill to sell nor that it was a very good mill Your Respt Mayo never considered the mill first class and said nothing to Complainant A J Drake from which he had a right to infer that it was a first class mill. Your Respt Powell admits that Compt A J Drake came to see the mill in question as stated in his bill but denies that Compt told him at the time that he knew nothing about such mill nor did he ask Your Respt to tell him about the mill except as is herein after



stated

Compt AJ Drake came to where Respt was at work at the saw and asked him if he would sell the mill Respt answered he would Compt then asked Respt what he would take for it Respt told him \$1250 and nothing less the mill was running at the time and there was very little said Compt walked around to the engine and watched a few minutes and then came back to the saw where your Respt Powell was still attending to the saw and asked Respt if the saw would cut from bur to bur or something to that effect. Respt told him it would with a good head of steam Respt did not represent to Compt that the mill was in first class condition and in good running order but told Compt that the mill was needing some repairs such as piping and belbit metal did not say anything about costs of repairs nor did your Respt Powell represent to Compt that the mill was complete in every other respect and a member one mill as charged in Compt's Bill Nor did your

Respt Powell represent to Compt A J Drake that the Mill would cut from six to seven thousand feet of lumber per day

Respt did not at one time for two successive days only cut 6000 or 7000 feet each day and so told Compt but that such was not the usual capacity of the mill

Your Respt Powell was sawing at the time he delivered the mill to Compt about three or four thousand feet of lumber a day and this amount he told Compt was the usual capacity of the mill if he stated any particular amount. Your Respt Powell is not positive that he represented any amount as the capacity of the mill but is sure he did not represent its capacity at 6000 or 7000 feet per day and only mentioned these amounts as above stated

Respt Powell is not aware of Complainants means of knowing the value and capacity of the mill except the fact that Compt had been handling logs for a certain other mill and was around the same aqueduct before the purchase of the mill from Respt



Your Respts Mayo & Powell admit that Compt  
 W J Drake did contract for the mill at the  
 price of \$1250 that he executed to Respt Mayo  
 his two notes for the amt \$314<sup>00</sup> each of the date  
 of November 25<sup>th</sup> 1874 due respectively Dec  
 13<sup>th</sup> 1875 and Dec 12<sup>th</sup> 1876 bearing interest  
 from date with W J Drake and Mrs Lucy A  
 Hobbs as security and that to further secure  
 the same the said Mrs Lucy A Hobbs conveyed  
 in trust to Respt Elman a certain tract  
 of land with power of sale &c for the further  
 facts Respts refer to the deed of conveyance in  
 trust made Ex A to bill and require that  
 said Ex be filed with the papers in this cause

Respt Powell admits that Compt W J Drake  
 executed notes of the date of Nov 25 1874 for the  
 remainder of the amt agreed to be given for said  
 mill but has not the notes before him and can  
 not speak more particularly of said notes at  
 this time however a trust deed of the mill  
 is made Ex B to bill and to this Ex B

Respt refers for a correct statement of the  
 facts which said trust conveyance was made

to secure the said notes executed to Respt  
Powell Respt further admits that A M  
Drake is security on said notes executed to  
Respt Powell and as additional security  
Compt A J Drake conveyed in trust of  
John Davis the mill in question as before  
stated Respts Mayo and Powell admit  
that one of the notes executed to Respt  
Powell for about \$220 had been transferred to  
Respt Mayo and that to secure this note to  
him Mrs Lucy A Hobbs on or about the 10<sup>th</sup>  
day of Feby 1876 executed to Respt Vance a  
trust conveyance of forty acres of land

Your Respts Mayo & Powell would show  
that the transfer of this note came about in  
this way and not as compt alleges to wit  
Sometime in the latter part of the summer  
or early in the fall of 1875 Compt A J Drake  
rented or leased the mill to one W<sup>m</sup> Smith as  
Respts are informed for about \$200 per year  
and said Smith went to remove the mill some  
15 miles and put it up again at his own expense  
about which time your Respt Powell brought



suit before a magistrate against Compt  
 A J Drake or his \$400 note given for part  
 purchase money of the mill and recovered a  
 judgement against him said Compt Drake  
 made no defence to said suit on said note  
 but stayed the judgement by Mrs Hobbs  
 and the said W<sup>m</sup> Smith the lessee of the  
 mill with the understanding with Smith  
 that he might apply the rent for the mill  
 of \$300 in part payment of the said judgement  
 Said Smith had rented the mill for one year and  
 was unwilling that the 222 dollar note still held  
 by Powell should remain a lien on the mill  
 Consequently he and Compt A J Drake pressed your  
 Respt Mayo to secure the transfer of said note  
 from Powell to him Mayo which he finally and  
 reluctantly did giving in return to Respt Powell  
 a note that he and one Barney had executed to  
 Respt Mayo for near the same amount the balance  
 in money and to further secure this \$222 note  
 to Respt Mayo Compt A J Drake proposed to give  
 his mother in law Mrs Hobbs as security and a  
 mortgage on 40 acres of land which was done

Your Respt Powell would now further show that Compt A J Drake before said eight months stay was out desired to have his mill back from said Smith who was unwilling to give the mill up unless your Respt Powell would release him as stayor as before shown upon the \$400 judgement this your Respt Powell finally agreed to do upon the repeated assurance from Compt A J Drake that if Respt would agree to release said Smith and thereby let him get the mill back that he Drake could and would make the money with the mill and pay your Respt Powell his judgement before the stay was out but which judgement has not been paid Your Respt Powell denies that the transfer of the \$220 note was made upon any further assurance of his that the mill would work as Compt allege was represented to him by Respt nor did he represent to Compt that he would assist him to run it and see that it did work the transfer was made as before stated and secured for the reason herein before given Your Respt Powell admits that Compt did get him after he had been running



the mill sometime to come and help him run the mill which Respt found already out of order from bad management Respt does not remember to have help run the mill for Compt longer than 2 days in succession did not run it six days at a time for Compt Your Respt Powell is satisfied that while he was there the mill cut more than 500 feet per day but is not able to state how much does not think that he worked at the mill more than ten or twelve days in all for Compt and at the time told him that Respt & G. W. Carney were inexperienced mill men and that to do work with the mill out of order he should get men who knew more about running a mill than any one he had employed

After Compt had moved the mill your Respt Powell was at the mill for the purpose of collecting money of Compt and remained with him until the next day evening during the time your Respt did attempt to assist all he could in running the mill Respt found the great mill at the time running backwards and

it changed did not undertake to make a days  
work all got up late and had a late beginning  
Respts are not informed that Compt ever had skill-  
ful millmen to run said mill if he ever had  
them your Respt never knew it

Your Respts Powell and Mayo deny that  
Compt W<sup>m</sup> Drake or any one in his behalf  
ever before the bringing of this suit appealed  
to them directly or indirectly to take the  
said Mill off his hands and deliver to him  
his notes and securities, no such conversation  
was ever had. After Compt had taken the mill  
back from W<sup>m</sup> Smith about May 1876 it  
seems he got along with the mill very well  
Your Respt Mayo about this time occasionally  
met him on the road and in town and heard  
not a word of Complainant he still wanted  
time to pay the purchase money and until the  
coming fall which was last fall finally Compt  
requested and urged Your Respt Mayo to come  
out and give him some assistance with his mill  
which he at last consented to do and took  
with him his engineer Alex Carney who had been



the mill before Respt Mayo bought it and who knew much more about it than your Respt said Carney examined the mill and found crank loose on the engine shaft piston rod bent Rings of piston broken and valves all ruined and he was unwilling to try to run it until repaired. After some repairs were made Your Respt and said Carney again want to try the mill attempted to get up steam for several hours but were unable to produce but a little more than half enough steam to do any good on account of the dirty & filthy condition of the boiler and its flues. About this time two men Davidson and Straughan from Indiana came to the neighborhood who knew a great deal about machinery they took the mill to run did some repairs

Respts are informed that these men cut from three to four thousand feet per day with the mill

Respt are not informed what amount Compt has expended in repairs on said mill but demand strict proof of the amount

Respt deny that Compt has come to them

to have the contract of sale rescinded nor did they insist on Compt giving it further trial as charged.

Respt deny that they had an opportunity to refuse to take the mill back they were not requested so to do by Compt as before stated and they say they represented nothing to Compt as a fact in regard to the mill but that which was true they deny that they or either of them has been guilty of any fraud in the sale of said mill to Compt. Respts do not know whether the mill is now in better condition than when bought by Compt nor do they know whether Compt has been greatly damaged in trying to run or operate said mill proof is required of Compt on these points.

Your Respt deny that Compt has been greatly damaged in trying to run or operate said mill proof is required of Compt operating said mill at their request as charged.

Respts suppose Compt's state correctly that Mrs. Lucy A. Hobbs conveyed to Compt W. J. Drake by last will and testament the land conveyed to Respt W. H. Hancock to secure the notes to Respt.



Mayo but desires a true copy of said will to be filed to show how the facts are

Your Respts. W. Vance and John Davis admit that the <sup>copy</sup> copies were made to them respectively as charged in the Bill as to the other facts charged in the Bill these Respts are not informed but require proof

Respts Mayo & Powell for further answer says they admit that Compt A J Drake is bankrupt as stated in his Bill and such is their information and belief that Compt A J Drake is entirely insolvent that nothing can be made out of him and that such was his condition at the time of the purchase of the Mill in question Respts having fully answered pray that the injunction heretofore granted in this cause be dissolved or that a receiver be appointed to take charge of the mill pending this litigation to collect the rents and profits and hold subject to the order of this court &c Whitman & Overall Sols  
Affiants make oath for the fact

and statement made in the foregoing answer of his own knowledge are true and these upon information he believes to be true

sworn & subscribed before me apt 14 / 77

R Living Creek

By T. W. Vance & J. D. Davis

J M Mayo  
W H Powell

Alias Sp. to answer Issued April 14<sup>th</sup> 1877

Issued April 14 1877 for John Davis  
Trotter to 1<sup>st</sup> Monday in May 1877 and  
retained April 28 1877 not found by

Tim Johnson & Staff

Depositions of A J Drake et als Recd & filed Sept 15/77

A J Drake

J M Mayo et als

Deposition of A J Drake W W  
Smith, W H Davidson John Reason and  
Freeman Swanson for plaintiff in the above  
cause taken upon notice at Rodney A Hart  
shop in the 24<sup>th</sup> District Sept 24<sup>th</sup> 1877  
in the presence of Complainants and Defen-  
dant Mayo and

And counsel on each side Caption  
and certificate being waived A J Drake being  
sworn stated

Question State your relation to this suit and if  
you ever purchased or contracted to purchase  
a mill from Defts Mayo and Powell state



the transaction?

Answer I am the Complainant in this suit  
I went to Mr Mayo to buy his mill when he  
told me he would sell his mill but that he  
had bought some timber and wanted to saw  
that up first I wanted a mill right away and  
told him so when he told me he could tell  
me where there was a mill to sell and a  
very good mill in fact a better mill than  
his little mill with a good deal more power  
and would cut he supposed two thousand feet  
more in a day than his mill would and that  
he had cut five thousand feet with his mill  
by pushing his He then asked me if I had  
ever had any experience with a mill or had ever  
run one I told him I had not but I expected  
to get men who understood the business to run  
it for me I told him also that I thought he  
would tell me about the mill that I thought  
he would not <sup>mis-</sup>represent it that I looked on him  
as a man who would represent it truly He told  
me he would advise me to go and get Deft  
Powell's mill if I wanted one I went down

to Powell's late in the evening they were not doing much with the mill but told me they had let steam go down I then asked Mr Powell if the mill belonged to him and if he wished to sell it and he said he did I asked him the price and he said he did he would take \$1250 I asked him if it was a good mill and if it was in good running order he said it was a good mill and in good order except that there was some piping to supply and a throttle valve which would cost about \$10 He then told me it would cut from six to seven thousand feet a day and had been known to cut ten thousand

I then told him I would come another day and that I wanted to buy a mill

On another day I went back with O A M Drake and made the trade for the mill on his telling me that it was a good mill and the boiler perfectly sound and all the machinery sound and in good running order At that time Dept Powell told me that half the mill belonged to Dept M Mayo and



and that separate notes to him and Deft Mayo would have to be executed for their respective shares or interest. At first I understood the Mill was his (Powell's) and that a lien on it would be the only security asked for purchased money except the personal security of Dr A M Drake.

Ques Did you say to Deft Mayo and Powell that you knew nothing about mills and what did you say in that connection about relying on representations of Defts

Ans I told them I had never worked a day in a saw mill in my life and that I would rely on what they said.

Ques What mill did Deft Mayo say it was that was better and would cut more than his?

Ans Mr Powell the mill I afterwards traded for.

Ques Did he speak of any interest he had in the mill?

Ans I do not now recollect that he did at that time.

Ques State now what kind of mill it was you got & good or bad?

Ans A bad mill such a one as I never saw before.

Ques State the circumstances of trial you have given the mill?

Ans I took possession of the mill about two days before Christmas and undertook to saw some logs then in the yard belonging to the neighbors I asked Mr Powell if he would saw for me having no experience in the business myself He said he would but he was not a first class Sawyer I said to him did he not run it successfully for himself and could he not run it for me? He said he did ~~and~~ would run it for me

I then employed him at \$1.25 a day to run it At his direction I got plenty of dry wood and we pumped the boiler full of water by hand which we usually have to do with this mill We then started the mill but when we would get up steam our water would all be gone <sup>would</sup> we then have to stop the saw and pump water when in supplying the boiler we would loose steam <sup>and</sup> thus it was nearly all day I do not think we sawed five hundred feet that day Powell worked for me some time ten days perhaps and do not think we averaged 500 feet per



day I asked him what was the matter  
 He said the mill was not set right that is  
 was to low and did not have draft enough  
 but that if it was removed and reset it would  
 be all right After Christmas I tried to hire  
 Powell to try again but he said he could not  
 but said I could get General Kearney who could  
 run the mill I employed said Kearney He  
 did cut one day 1600 feet I offered him  
 extra pay to increase it to 3000 He did increase  
~~some~~ but never any day to 3000 The mill  
 remained where it was when I bought it and I  
 tried to run it until March when I found I  
 was doing no good and left it <sup>and</sup> came home

Ques

Did you then have any conversation with  
 Defts Mayo and Powell about the failure  
 of the mill or about returning it? If so state  
 the facts

Ans

I met Mr Mayo in town one day and told  
 him the mill would not run or that I was  
 not doing any good down there He said  
 perhaps hard winter had something to do with it  
 I told him at the time Kearney cut 1600 that

I thought it could run successfully I afterwards moved the mill up to my house where it was put up as good as it could be. It would not yet run and I went after Mayo. He came up with his fireman. He said it needed new fire grates and rings then I got them he came back with his fireman they cut one line through a log that day I believe but not more. I told him the first day he was up there that the mill would not work and that if they would take it back I would be willing to lose some money on it. After I got the new grates and rings and he had tried it he said he was sorry for me but he did not know what to do for me.

Ques Is the mill what it was represented to you to be by Defts Mayo and Powell?

Ans It is not

Ques Can it be run profitable at all?

Ans I do not think it can by any man without new machinery

Ques ( Have you ever offered to return the mill to Defts and asked a rescission of the contract



Ans. I have to Mr Mayo. I did at the time he came out there with his foreman about Nov 1876

Ques Did you keep the mill at the request of Defts? State the facts

Ans I did they several times told me this thought I would get it to run and Mr Mayo told me he would not be hard with me

Ques What repairs if any have you made in the mill State the value same

Ans I have expended now \$300 in repairs on the mill and Mr Smith to whom I rented it had some made also Mr Davidson to whom by understanding with Deft Mayo I let the mill 90 days without rent to see if he could run it had others repairs made

Ques What profit have you derived from the mill

Ans I have not derived any but have sustained considerable loss I lost the making of two crops and all the means I could get up in trying to run it I never made expenses of running it The above questions are answered excepted to by Defts Council

Ques What do you regard said mill as worth?

Ans the saws are all I consider valuable as it is I do not think it is worth \$300

Ques State how you happened to induce Mrs Lucy A Hobbs to execute trusts deeds to secure payment for the mill

Ans I understand from Powell that the mill will be sufficient security and so thought Mr Mayo asked for additional security? I asked him if a mortgage on the mill was not sufficient He said it was but in case of fire or <sup>careless</sup> destruction on my part he wanted other security He Mayo said he thought the mill was <sup>worth</sup> what I was to give for it I made no objection to additional security on Mr Mayo's reasoning

Ques State how the mortgage of ~~100~~<sup>(+2)</sup> acres of land came to be executed by Mrs Hobbs

Ans } Some one was pushing Powell whom he owed the same party we found owed Mayo Powell was pushing me to settle the matter I agreed for this mortgage to be made



Ques Was any assurance given at this time by Defts that the mill should run as represented

Ans they both said they thought it would run and incour a gun me to keep trying

Ques Was any said note executed in this time

Ans There was not A J Drake

W W Smith next sworn stated

Ques Mr Smith state what you know of the mill Complainant Drake got of Mayo and Powell

Ans During the fall of 1875 I rented this mill of Mr Drake upon the strength of his representations I was to give him \$400 <sup>per</sup> with the privilege of two The mill was represented that with certain repairs not exca<sup>t</sup> \$5 or 6 to cut 500 feet a day the mill was at that time on Marvin town chuk I moved it from there the where is now it I had it repard & directed and attempted to run it from some time in Nov<sup>1875</sup> to Mar 1876 the most I could cut with it was about \$2000 feet I do not think it averaged while I had it 500 feet a day It could not be run to any profit

Ques What was said Mullworth?

Ans I do not know hardly what it is worth  
I would not think it worth what Drake agreed  
to give for it I do not <sup>know</sup> what use any one could  
put it to be worth anything with the exception of  
(old iron)  
one or two

Ques Did you keep the mill a year?

Ans I did not I required Drake to take it back  
and send me ten thousand feet of lumber as  
charges <sup>damages</sup> which I had sustained by my connec-  
tion with it. I only kept from Nov. 1895 to Mar 1896

Ques When Drake rented it to you did he say it had  
been traded to him recommendations such as he  
stated or were the representations he made to you  
such as he said at the time were made to him  
by Defts?

Ans He referred to Defts Mayo <sup>and</sup> Powell I do not remem-  
ber that he said anything at the time about the  
representations made to him by Defts and he  
did afterwards

Cross examination by defendant  
Mayo by counsel

Mr Smith are you an experience Engineer



or know anything steam engines?

I do not but had a good Engineer and sawyer  
 a could be found south of the Ohio River and  
 seem to be thoughtly conversant with every point  
 in he he examined the Mill after I moved  
 it and before we put it up

What seemed to be the matter with the mill  
 when you got it

Worn out I honestly think it was worn out  
 and I presume it is still in that fix

Ques Did you not know of the defects in the mill  
 before you rented it?

Ans No sir I did not I went down to see it before  
 I moved and before I rented I knew of some  
 repairs needed upon it before

Ques What was the greatest number of feet cut by  
 you in one day

Ans I think the most that I cut with it was about  
 2000 feet in a day

Ques Had not the boiler been greatly neglected  
 when you secured the Mill?

Ans I don't know about that

Ques Did you examine it?

Ans I did not but the defects in the boiler showed themselves afterwards

Ques What were the defects which existed in the boiler alluded to?

Ans She would not generate steam and would leak steam and when we stopped the leaks I could not tell why we could not run but I know we could not hold the steam

Ques How often did you blow at the boiler?

Ans I don't remember - a time or two while we had it there was not a great many scabs when I did so ever the first time we never took off the Dome to clean the boiler the bolts were so rusted that we thought it not advisable to do so the rest of them which we took off were re examined so

Ques What was the value or cost of repairs you made in the mill?

Ans I mit about \$50

Ques You stated in your original examination that Drake referred you to Defts concerning the mill If any statement were made by <sup>either</sup> within of these concerning in mill state what they said



Ans

At the time I went down to see Mr Powell I told him it had been represented to me that the mill would cut 5000 feet a day and asked him if it would do it He said with certain repairs which I made except a new carriage it would. A new carriage would not add to in cutting capacity.

Defendants except to both of the above questions as very incompetent

W W Smith

WH Davidson being next sworn States  
 ques State what you may know about the mill which Drake got of Defts and what you opportunities have been for knowing it?

Ans

I came here the 22<sup>nd</sup> of Nov last I went to the mill when I found Messrs Mayo and Drake trying to get up steam they proposed to give me the mill three months if I would put it in running order I refused to bind myself to put it in order but told them I would if it could be but that I did not think it could be run successfully. the first thing I did was to make

preparations to clean the boiler I blew it out once or twice a week for a month but found that made no difference in the accumulation of steam I found in the first place the flues were too small and the fire box was too large for the size of the boiler consequently had not sufficient steam room to supply the engine I kept the mill from the 24<sup>th</sup> of November 1876 to the first March 1877 Some days we run one time some days we cut six hundred feet and sometimes we cut 1500 but seldom cut as much as 2000 feet

I think the mill is worth no more than it will sell for as old iron He can not take to Nashville and get more the saw and saw frames is good

It would cost as much to repair the boiler to make it run successfully as it would to get a new one It would cost half as much to repair the engine as it would to get a new one I put it in better condition than it was when I got it

Ques

Are you a skilful mechanic?

Ans

Yes Sir I am an engineer and machinist I served an apprenticeship for three years in running an engine under instruction and twelve months



in a railroad machineworkshop and have followed the combined business of running engine and repairing machinery since first of March 1866

Ques Could the defects in this machinery and boiler have resulted from improper usage by Drake the time he attempted to run it?

Ans It was newly repaired when I took it the defects could have resulted from neglect but had been caused by crowding fire to make steam where there is small water and steam space the boiler is burned out in generating steam there are places in the side of the fire box where it is impossible for it to get dry which are evidently not more than of an inch thick I consider it dangerous to put on a full pressure steam even if it were possible

Ques Did you make any repairs in said mill?

Ans I did I could not tell exactly without referring to my books My Cash expences in repairing the mill was not less than \$100 I got part of a new bolt put in new blowas had a part of the pump made new and got some new pipes these are all with the mill with other things I

cannot now think of

Ques Did you examine the flaws and if so what condition were they? It is necessary to take off ~~down~~ to examine them?

Ans I did examine them they were in good condition better condition than any part of the boiler

It is not necessary to take off <sup>down</sup> to examine the flaws There are parts made in the boiler for the purpose of examining the condition of the boiler

W H Davidson

Defendant except to the entire deposition of the witness as incompetent

John Reason being next sworn stated

Ques State your knowledge of the mill in controversy

Ans I worked for Drake at the mill for a month or two in 1876 after Drake took back from Smith the saw was good enough but the trouble was with the engine and boiler could not make steam sufficient

Ques Were proper means employed to run the mill

Ans He had good hands who worked well

Ques Have you any experience in running mills?



Ans Yes Sir I have worked altogether 8 or 10 years about them I served <sup>worked</sup> for Mr Drake

Ques What is said mill worth?

Ans \$500 including all of it would be a good price for it I think

Ques How many hands did it take to run the mill

Ans Five

Ques What wages were paid or was necessary to be paid

Ans Sawyer \$2.00 per day the others each 75 cts per day being \$5.00 for all The great difficulty was the want of steam when the steam would get the water would be down the reason the water would go down was because the pump would not work or the valves were out of order or something of the kind I know that they would get dry

Geo + <sup>this</sup> Reasner  
<sub>marks</sub>

Defendants excepts to the entire deposition of the witness as incompetent

Ques Freeman Stevenson being next sworn stated Did you go down with Mr Drake when he first brought the mill in controversy to

assist in running State the condition of the boiler at the time

Ans I did the boiler leaked when we first went down to run it It leaked around the stay bolts The leaks were in the fire box the fire box is that part of the boiler that is directly over the fire

Ques Did Mr Powell the Defts agent turn the mill and how long

Ans He did about a week

Ques Was that immediately after Drake got it and before it was moved?

Ans Yes Sir when we first went down there

Ques Did the mill do good work?

Ans No Sir I felt like going off and leaving it because it would not run well no matter how hard we worked we could not keep steam in it

### Cross Examination

Ques How were you paid to work at the mill?

Ans I was paid 75<sup>cts</sup> a day

Ques What do you say was the matter with the Mill?

Ans It leaked in the fire box down into the fire and we could not keep steam



What else was the matter?

Ans That was all I could see?

Ques Did you not work there for some time?

Ans Yes Sir I work for some time but do not remember how long I did stay there

Ques And you say the fire box leaked do you know nothing else that was the matter?

Ans No Sir I believe that was about all that I know was the matter

Ques Did you see the leak in the fire Box

Ans Yes Sir I saw the water coming down into the fire and it would put out the fire every night

Ques Was Mr Powell present and helping at the Mill while you were there

Ans Yes Sir

Ques How many days did you see the hole you speak of

Ans It was in there all the time I was there I do not remember how long I was there

Ques Was not the hole stopped while you were there?

Ans No Sir it was not stopped while I was there

Ques How large was the hole?

I reckon you could put the tittle <sup>point</sup> of your knife through it by the way the water come out

Freeman <sup>the</sup> Stevenson  
wrote

The foregoing named parties A J Drake  
W. W. Smith W. H. Darden John Reason  
and Truman Stearns were all sworn by me  
and subscribed their names to the respective  
deposition in my presence all regularities  
except as to Compelling of testimony being waived  
by the parties Sept 14<sup>th</sup> 1877 W. L. Eastman J. R.

deposition of A. J. Drake and G. W. Blanchard,

A J Drake

v  
J. M. Mayo et al

Deposition of A. J. Drake and  
G. W. Blanchard

Taken at the Office of Jas L. Watts No 2 Porter  
Block Hadwell Tenn Sept 24 1877 by  
consent and in the presence of parties  
Complainants and defendants J. M. Mayo and  
counsel on both sides

A. J. Drake first sworn stated

Ques

If you were present at any time when  
A. J. Drake contracted for a mill with  
J. M. Mayo and Powell state the facts &  
circumstances



Ans

The Comptroller and Drake is a brother of mine. He asked me to go with him to Defts Mayos to buy a mill. I went with him to Mayos. Mr Mayos said he could sell him his mill but he could not part with possession until a certain time which did not suit my brother as he wanted a mill right away. Mr Mayos said he <sup>erated</sup> tell him of a mill that he could buy and get possession at once. Mr Mayos told him a man by the name of Powell owned the mill down at Morrow but my brother asked him what kind of a mill it was if he knew any thing about it. Mr Mayos told him he did know the mill that it was a good mill nearly a new one. I think he said Powell owned and would sell it. He said the mill would cut <sup>two</sup> ten thousand feet more in a day than his (Mayos) mill would that he would cut 5 thousand feet. I think he said Mayos said my brother could depend on what Powell said that he knew him well and could recommend him. I think he said Powell had lived with him or that he Mayos

had raised him (Powell) He also told him that he (Mayo) was somewhat concerned in the mill as guardian or Executor that his son was dead who had owned the mill and sold it to Powell I am not positive that he said his son was dead but he said his son was dead but he said the management of the mill had fallen into his hands He said there was a balance unpaid in the mill by Powell, Mayo said that any contract that my brother and Mr Powell would make would be agreeable with him and satisfy him, I then went home and agreed to return and go with my brother to look at the mill, I did return in a short time and went with my brother at his request to see the mill My brother had never been to see the mill in the mean time, It was late in the day when we got there, the mill was not running, we stayed all night with Mr Powell recommended it as highly as any good mill ought to be they then spoke of the price \$1250 I think Powell said the mill would cut 6 or 7 thousands fat per day one day



with another and I think said it had cut 10,000  
 feet in a day I then asked Powell myself  
 if it was easy to keep up steam

He said it was We looked at the mill next  
 morning It looked to be good I could see nothing  
 the matter with it The boiler looked to be  
 too low though I was in machinist I proposed  
 raising before the trade was made I wanted to  
 see it work because I was to go on the notes for  
 the mill as security Powell made the excuse  
 that the hands were all gone and that we could  
 not run the mill without them I said to him  
 that he had said it was easy to get up steam  
 and if that if he would stand out the said  
 with my brother the Complainant I would  
 fire and we would cut in few lines He then  
 made the excuse that the wood was wet I  
 then proposed with some old dry lumber on  
 the gun that we could cut a few lines He  
 Powell then said that it was a long way to  
 Dept Mayo's and that we all had to go there and  
 that we did not have time to run it my brother  
 W. J. Drake then said that he had <sup>such</sup> much confe-

dence in what Mayo would tell him about the mill & Powell that he would rely on his (Mayo) and Powell Statements about the mill without trying it as it did not seem to be convenient. There he said to me not in the hearing of Powell. The trade was then made with Powell at the price named with the understanding that a lien would be retained on the mill for purchase money and I was to go on the notes as security. This was all the security asked by Powell. Mr Powell said he could not draw the notes until we went to see Mayo and they had a settlement. We then went to see Mayo.

When we got there, Mayo was not satisfied with the security my brother asked him if the lien on the mill was not sufficient. He (Mayo) said it was unless some accident occurred such as fire or a blow up my brother then agreed to give real estate as security.

Ques If your brother A J Drake said anything about relying on the Statement of Deft Mayo and Powell to them state what it was

Ans I think he did at Mayo's when they came to write the notes but I am not positive

See Powell & the two Allen's testimony contradicting the fact that the trade was made at this time



Ques What kind of a mill did each of the Defts Mayo and Powell represent this one to be?

State such representations as they separately made

Ans Mr. Mayo said it was a good mill I understood him to say nearly a new one that it would cut more than his, that his would cut 5000 feet a day I think it was 5000, and this one 2000 feet more He (Mayo) referred my brother to Powell and told him that he could rely on what Powell said Mr Powell recommended the mill as high as any good mill ought to be recommended

The best of my recollection he said it would cut 7000 feet of lumber a day & had cut 10000 I should not have gone on the note if this had not satisfied in it was a good mill

Ques What do you know of the mill since?

Ans Nothing I have not seen it since

#### Cross Examination

Ques When you went to see the deft Mayo what was said as to the difference as to the power of the mill which he owned individually and the one Powell was interested

Ans I don't know whether he said any thing as to the power of the engine except that it would cut more

Ques Do you not remember that he told you the size of the cylinder of the mill sold you was larger than his?

Ans No Sir I don't remember

Ques Did he tell you how much he was cutting on his mill at that time

Ans I don't think he did at that time

Ques Did he at any time before this trade was made tell you what he was cutting then on his mill?

Ans No not at that time not the day before but what it would cut one day with another

Ques You say in answer to a question in chief that Powell said it. This Powell mill, would cut from 6 to 7000 ft Now did not Powell say or state that it had cut from his successive days 6 to 7000 ft

Ans No Sir I did not understand it that way

Ques Do you know anything as to the treatment this Mill has secured at the hands of the parties since



Ans No Sir

Q Are you positive or not that Mayo said his mill would cut 5000 ft per day

Ans No I am not positive that he did but I think he did

Q You are not positive then that he said that the Powell Mill would cut 2000 ft more than his

Ans No I am not I am with that like I am with the other

Q Then Mr Mayo did not tell you the number of feet in so many words & figures

Ans No he did not come out direct & say how many feet it would cut in so many words but my recollection is that he said that his mill would cut 5000 feet per day & the Powell Mill would cut 2000 feet more than his

Sworn to & Subscribed to before me Wm Drake  
 this 24 Sept 1877 Hearing (C.W.)  
 Deane & Co. Sept 24. 1877.

G. W. Blanchard next sworn stated  
Ques Captain State your experience with mill <sup>and</sup>  
your acquaintance with the one in question

Ans I have worked in Mills more or less since I  
was 12 years old 18 years as head Sawyer after  
I learned my trade which took 3 or 4 years I  
set the mill in question when it was rented to  
Smith and moved up near Drake's

Ques State what kind of a mill it was

Ans When I first looked at it I found it was in  
bad condition It was badly worn out  
It leaked <sup>in</sup> the boiler & would have cost \$100  
to put it in repair I do not think then it would  
be worth any more than it would be worth  
as old Iron

Ques State if you objected to putting it up?

Ans I did I told Smith he would lose money on it  
every day he under took to run it after it was  
put up

Exception to by Deft

Ques What was said Mill worth?

Ans The Mill was worn out there was one saw that  
was of some value but it was small The other



were burned by over heating buckled up we call it

Ques Did you under take to run it if so State with what success

Ans I believe I run it a part of a day I could not do much with it I was afraid to put steam higher than 40 pounds The pump was out of order and the boiler leaked <sup>away</sup> but out the fire the could not keep up steam There was danger of the boiler bursting There was no part of the mill that was in good condition It could have been put in condition but it would have cost about as much it would have been worth to have repairs of the boiler was very thin?

Ques Would the Mill have been worth repairing?

Ans Not any more It would have to be made nearly all new

Ques What time was it you first knew the mill and speak of

Ans The latter part of December 1875

Defendants except to the entire deposition of G W Blanchard and without waving the same examines

Ques You say that you first knew the above saw mill in Dec 1875 and that at that time there was a hole in the boiler. Where was that hole?

Ans It was in the fire box and would leak & the water would run in the fire and put out the fire.

Ques Had there been no patch or mending of the boiler at this place

Ans No I don't think there had

Ques From what you say about the capacity of the boiler what was the highest pressure you were willing to put on

Ans 40 pounds was the highest that I put on was afraid the boiler would burst

Ques It is not every man that can run an engine of this kind successfully

Ans No sir a portable engine is more apt to get out of order than a stationary engine this was a portable engine

Ques Why is that so?

Ans Because they are attached to the boiler and they contract and expand and this creates an irregularity upon the engine & then they get out of line and keeps the boxes hot & they should be cold. G. W. Blanchard

Subscribed & sworn to before me

this 24 Sept 1877 R. H. Young

C. H. U.

Date of this Sept 24 1877



Depositions of J T Stranghan and Elias Simpkins  
Taken & Filed Oct 8<sup>th</sup> 1877

Drake et al

Vs

J W Mayo et al

Depositions of Alex Carney J T Stranghan Elias Simpkins G W Carney James Simpkins and Jefferson Allen taken at the Office of A F Whiteman Nashville Tennessee in the presence of Compt and Defendants and their counsel on Monday Oct 8<sup>th</sup> 1877 to be read in evidence in behalf of the Defendants in the above cause all formally being waived

Alexander Carney being first duly sworn deposes and says

Ques What is your age and residence

Ans my age is 31 years my residence now is in Cheatham County

Ques Please tell us what you know concerning the steers with in question in this suit?

Ans I worked for Simpkins and A J Carney when they owned the mill. this was in the latter part of 68 the whole of 69 and the first part of the year 1870 in all about two years can't say the exact number of months The Mill was on Heaton's Creek in this County This was before Mr May bought it

Ques What was the saving capacity of the mill per day at the time you speak of?

Ans Our regular work was from four to six thousands feet per day we never measured it for any particular day but that was the amount estimated Sometime we would saw more one day than another this depended upon the timber - time we commenced sawing and the quantity of lumber or plank sawed

Ques If you could saw more of one kind of lumber per day than another with the same labor explain how this is

Ans We can saw more plank two inch than one inch because we have it run two lines with the saw in the one inch when with the two inch we would run but one and in running



one and a half inch plank we can saw more than one inch per day

ques How if you could saw four thousand feet of one inch plank in a day from the log how much could you saw of two inch from the log with the same labor

Ans We could cut 8000 feet with the same labor of the machinery but it would be much harder upon the hands conveying away the lumber with this same hands we could cut six thousand feet of two inch lumber

ques About what time did Mr Mayo or Mayo's son buy the Mill of Sempkins and Carrey

Ans It was as near as I can recollect early in 1872

ques Did they remove said Mill if so where & when

Ans They moved the mill a few days after they bought it about one mile to a little branch called Dry Fork

ques About what time did they commence sawing on Dry Fork

Ans I don't recollect exactly but don't suppose it was over two months

ques Did you work there at the Mill after the purchase

and removal?

Ans I did occasionally

ques Who worked with you there?

Ans Mr Mayo's son - William Henry But Scott

ques Where are the parties

Ans The first and last are dead the other is on Marsou

ques About what amount of saving per day did you do

Ans The first thing I will say there is that Mr Mayo's son did not understand the saw as well as a man who was experience with it and the first day after I worked with Mayo's son after we took charge of the there was but three of us <sup>and</sup> we estimated our days work at not less than 3500 feet I would suppose that the average cutting while I worked with him was about 3500 feet per day he was a new beginner and would sometimes have the saw in bad order

ques State whether the mill was in fact as good when you were working with it with Mayo & son as when you worked with it with Simpkins & Carney

Ans I could not tell that the Machinery was damaged any our greatest trouble with it when worked with Simpkins & Carney was the pump we were



pumping hot water through the valves when  
 Simpkins owned it and after Mayo owned it he  
 pumped cold water through the valves and we  
 had but little trouble with it then

ques About what time did (Mayo's son (A.S. Mayo) die?)

ans In June 1873 he died with cholera

ques How long after this before Mayo sold to Powell  
 and Carney?

ans I don't think it exceeded 2 months

ques Did you have any thing more to do with the mill  
 after this

ans No Sir I did not

ques Did A.J. Drake ever have a conversation with you  
 prior to his purchase of the mill if so state what  
 it was?

ans He did He asked me what kind of a mill  
 it was and I told him as near as I could I  
 also told him that unless he got some body  
 who could keep this engine in order he had better  
 let it alone I told him that some attention  
 that it would be to keep Mr Mayo's sta-  
 tionary engine in order would tear this one  
 all to pieces the reason was I told him that this

engine set upon the boiler and I always found it harder to keep in order

Ques Is a portable engine harder to keep in order than a Stationary Engine

Ans I always found it so with that one—that is the only portable engine that I ever worked around

Ques What reply did A J Drake make when you had the above conversation with him

Ans He said that he expected to get some body who would keep it in order

Ques Did he ask you the running capacity of the mill

Ans I told him that when I worked with the Mill that we could saw from 4000 to 6000 feet per day but I had not seen the mill since Mayo had sold it Lowell <sup>and</sup> Carnoy

Ques Was it not a good Mill as long as you knew it?

Ans It was I always considered the mill a good as long as I knew it

Ques Did you ever see the mill after Drake purchased it if so when and in what condition was it?

Ans Yes Sir I saw it in the fall of 76 I found the Mill in bad condition The piston rod was



but the grate bars were burnt out - this was all the examination I made that day - we had the piston rod straightened (brought it to Nashville for that purpose) and had new grates put in. We then found one of the cars broke of the force pump. We then put the engine together and put fire in the furnace about one o'clock in the afternoon and fired from that time till good sundown and got only to 26 or 27 lbs of steam.

Ques What was the matter?

Ans The boiler was dirty maddy inside and the flues also leaked a great deal around the tubes. The engine was in bad order worse than I ever saw it.

### Cross Examined

Ques Is not the amount you mentioned as having cut with said mill nearly your estimate or guess of the amount you really did cut?

Ans It was our estimate. We estimated what we cut in a day.

Ques Are you a Machinist?

Ans I am no professed Machinist but I know enough about a saw mill to know what

I am doing with me though  
Ques Where then and in what length of time did you  
acquire your experience and knowledge of  
Machinery and Mills?

ans My first experience with mills was with Dr Hampden  
in 1866 about 5 months in the capacity or work of  
carrying lumber from the saw

The next I worked for Mr Dozer in 1867 for  
7 months I think for most of the time a short  
portion of the time carrying lumber.

I next worked for Messrs Sumpkins and Karmy  
in the latter part of 1868 the whole of 1869 and  
up to February in 1870 for them I then  
commenced work for Mr Mayo and have been  
with him ever since have fixed for him and  
attended to his engine for him

Ques Did you ever work about machinery under direction  
of any machinist?

ans I have worked under men who said they were  
machinists and proved to be I mean I worked  
according to directions they gave me what they told  
me they were not present to direct or to teach  
me



Ques How do you know the boiler of the mill was dirty and muddy inside when you saw it in 1876

Ans the proof was very plain that it was by my not getting up steam because when I forced for Mr Sunpkins we kept the boiler clean and I had no trouble in getting up steam

Ques What did the mill cut at that time that is in '76

Ans I could not tell you we did not get steam high enough to try it

Ques You did not see the mill for about two years before it was sold to Drake did you?

Ans It was something over a year

Ques Can you tell what amount of lumber Powell cut with the mill

Ans I can not

Ques Has not Mr Mayo owned and run saw mills for a long time

Ans Yes sir ever since I have known him fifteen or sixteen years off and on

Ques Who assisted him to run them?

Ans I cannot state

Ques Did not H V Mayo his saw run them?

Ans He tried to run the mill that Mr Mays sold to Mr Powell before that time I never knew him to work around a saw mill a half dozen days

Ques You knew him to run the mill while Mays owned it?

Ans I did run it off and on

Ques How can you tell why your average of lumber cut was about 2000 feet less per day than when Sumpkins owned the mill

Ans Yes Sir because Mr Mays's saw did not understand keeping the saw in order

Ques But did you not?

Ans I did not I knew enough about the engine to keep it in order

Ques How do you know what the trouble was?

Ans It is a very easy matter to tell the saw was out of order was warm and would not run straight through a log

Re Examinand

When the saw gets warm what is the effect

The saw will spring and dish and will not run straight when it gets to warm and Young Mays would allow it to get that way

Cath. witness & Watts Solicitor

Alexander Carney



J. S. Stranghan being next sworn deposed  
and says

ques What is your Age & residence?

ans 29 years live in Wheatland County Tenn

ques Do you know the parties to this suit and  
the mill in question?

ans I know Mr Mayo & Mr Drake not very  
well acquainted with the rest I know a little  
about the mill

ques when did you first know or see the mill?

It was the 24<sup>th</sup> of last Nov that I first saw the  
Mill the way I came to know it we — Clark  
Davidson & myself three of us were were moving  
and we stopped and hearing of a mill being the  
of fix and we went to see and when we got there  
we found Messrs Mayo & Drake and Alexander  
Carny repairing the mill they worked white  
about noon and began to try to get up steam  
and worked hours but could not get up more  
than 25<sup>lb</sup> about 25<sup>lb</sup> as near as I can recollect

ques What was the matter?

ans I don't know hardly what was the matter  
the boiler was filled with mud — mamon

thing and another they had put in there to stop the leaks they had taken the paper out of the header and were running water in the boiler cold

Ques Did you have any other connection with the mill after this time?

Ans Mr Davidson and myself then leased the Mill of Mr Drake for 90 days he gave it to us for that period to repair it up we took the mill The first thing was to get steam up as high as we could and put on a lot of Catechu and Irish potatoes (Catechu is a drug used for cleaning steam boiler) and blowed the water out and put the pipes back in the heater we blowed it out the way two or three times before we got it clean This was all we did except to get some blow pipes for the purpose of making it draw better We lined up the saw and went to sawing It was bad weather the most of the time we had a snow and rain?

Ques How much did you saw



Some days we would saw a right smart and some days not so much not - when everything would run right we would saw about 4000 feet and I think we cut like a day or two - we rented for the three months for which we had leased it

ques Upon an average what would you saw in ordinary weather

ans From 1500 to 2500 in good weather

ques Did you rent the mill for any longer time after the lease expired

ans Yes Sir we rented for three months - me and Mr Drake together

ques At what price

The first agreed to give him 4000 ft of lumber and to saw him 6000 ft for two months rent the 4000 ft was worth about \$40<sup>00</sup> and the sawing of the 6000 worth about \$24.50 so that we were to give him about \$64<sup>50</sup> for two months

Then in a few days we made another contract by which 1000 ft was knocked off reducing the contract about \$10<sup>00</sup> Drake made a proposition to rent it to us for ten months before we rented for two months at the rate of \$55<sup>00</sup> per month or

\$550<sup>00</sup>/<sub>100</sub> for ten months we did not accept that but took it for two months as above

ques Did Drake say what he could sell it for about

ans Yes Sir. The that came about was this - when he told us that he would take \$550.<sup>00</sup> for the rent of the mill for ten months We told him that was about as much as the mill was worth and then he said Oh no it was not that he could cash it before tomorrow night for \$801<sup>00</sup>.

ques Did you examine the inside of the boiler or know of any one else examine it

ans No Sir

ques Could you tell whether the mill had been neglected

ans I think it had been some neglected? Was it damaged by reason of this neglect I guess it was they had neglected it in letting the water get too low in the boiler got the crown sheet too hot and caused the crown sheet to crack and cause a leak of the steam and would blow the fire out

Cross Examination



Ques If you did not see in the boiler How do you know what was in it?

Ans Could tell by blowing it out what was in it

Ques What did you in fact pay pay for the rent of the mill

Ans We paid him about 3000 ft of lumber worth \$30

Ques Are you a Machinist?

Ans No Sir not very much?

Ques As Mr Davidson who was your partner?

Ans Yes Sir he was a machinist

Ques Then he would know more about the mill than you would would he not?

ans He would know more about the engine but I would know more about the saw works

Ques How long have you known Davidson?

ans About twelve months

Ques Could what he would say about the mill be relied on Is he better qualified to speak of it than yourself and is he truthful?

He could about the engine he is better qualified to speak of it than I am he knows more about Machining than I do. He is truthful

Ques Would he not know about the boiler too?

Ans That is pretty much the same thing the boiler and engine are together.

Ques Could said mill be run profitably?

Ans It could not very well while we had it.

Ques You only estimated the amount you cut per day and did not measure it did you?

Ans We did not measure it.

J. S. Stranghan

Subscribed & sworn to  
before me this 8<sup>th</sup> Oct 1877

R. Ewing Com

Elias Lempius being next sworn deposes  
and says

Ques What is your age & residence

Ans 56 residence 25 District this County

Ques Did you ever own the mill in question

Ans Yes Sir A. J. Casney and I owned it before us we brought it in 1867 began running it in 1868

Ques State all you may know concerning the mill material to this issue

Ans We owned the mill about four years I rechar and run it laterably regular the whole time



The mill is a small portable mill I think 20 horse power - we had tolerable good luck with the mill while we had it - can't hardly tell what we did cut sometimes we would do a pretty good days work then not so much I suppose we unraigned from 3 to 5000 feet when the mill was in order. The most that bothered us was the fire pump

ques Did you work the water hot through the fire pump?

Yes sir we worked it hot?

Is it not better to work it cold?

I would suppose it was we never tried it I noticed one thing about it and that was that when the water was very hot it don't work so well we never changed the pump while we owned it to work cold water.

ques Did you not occasionally cut more than 5000 ft?

ans Yes sir we cut 7000 or 8000 some days thick lumber I mean by stick lumber joint and thick stuff anything about an inch would be running into thick lumber.

ques Was the mill a good mill when you owned it?

ans I called it a pretty good little mill.

ques What did you give for it?

Ans I think it was \$1445.<sup>00</sup> or somewhere along there

Ques Was it or not worth about as much when you sold it to Mayo & Son

Ans Yes Sir. I considered worth about as much when I sold it as when we bought

Ques Did you have any difficulty in keeping up steam when you owned it?

Ans Not when we had good wood

Ques Did you know of any defect in the construction of the boiler

Ans I don't know that there was any

### Cross Examination

Ques Did you buy the mill new and from the shop

Ans No Sir

Ques How long had it been run when you got it?

Ans I can not tell

Ques Had it not been run several years?

Ans Can't tell you

Ques How long had you known the mill before you bought?

Ans Not very long not more than six months

Ques Who owned it just previous to you?

Ans Mr. J. L. Carney



Ques Can you tell about how long he had owned?

Ans I suppose five or six months

Ques Do you not know as a fact that such mills do not last long?

Ans I suppose they wear out soon sooner than the old fashioned mill

Ques When you cut 7 or 8000 fat per day was it not by extra exertion?

Ans well I reckon of course we stuck at it closer than when we sawed one or two

Ques At that price did you sell the mill to Mayo?

Ans One thousand Dollars

Ques At what time?

Ans I reckon it was in 1872

Ques were you acquainted with the condition of the mill when Mayo & Powell sold it to Drake?

Ans I was not

Ques What would said mill be worth nearly three years after you sold it having been run for that time and a part of the time by inexperienced hands?

Ans I could not tell not knowing the condition of the mill and not having run it

ques What usual wear and tear there of ordinary usage what would you say it would be worth?

ans I could not say

ques I want you to state if you did not find it a hard matter to keep up steam in said mill boiler?

ans With good dry wood it was not but with green poplar stabs it a tolerable close job to keep up steam

ques Do not stabs generally used for that purpose?

ans Yes Sir of course

Re examination

ques You said that you sold the mill for about \$1000 was that the value of it?

ans I called it low down

ques If you had found a suitable location to have placed would you have sold for that

ans No Sir

ques Was not the reason for selling it

ans Yes Sir I reckon that was the reason we could not get a location to put us and we concluded to sell it

Elias Lemphers

Sworn to Oct 1877

Hoge DCM



G W Carney next sworn deposes and says

ques Are you acquainted with the parties to this suit?

ans I am not very well acquainted with Mr Drake  
have been with him some

ques What do you know concerning the Mill in  
question

ans I have known the mill since 1<sup>st</sup> May 67  
that was the first time I ever saw it Mr Powell  
and myself bought it from Mays in the  
year Aug 72 and ran it until after Christmas  
and I then sold my interest to Mr Powell

ques What was the capacity of the mill?

ans It was a very good mill was small we generally  
cut from 2500 to six thousand feet some days  
we would go to 6000 feet.

ques Did you work with Mr Drake after he  
purchased it of Mays & Powell

ans Yes Sir I worked for him - sawed for him  
with the mill dont know how long I worked  
with him both before & after Christmas

ques Did you hear any complaint about the Mill  
It was very cold weather and we could not  
do much part of the time we had tolerable

good wood and part of the time we had stobs

ques Did you hear Mr Drake complain at that time about any misrepresentations made to him in the purchase of the mill

ans No Sir I did not hear anything about it

ques Did you hear him say what he had agreed to give or had given for the mill

ans I heard him say that he had agreed to give \$1250

ques How long was this after he had bought it

ans Some six weeks or 2 months I can not tell exactly

ques When did you first hear him make any complaint

ans Last spring 1877

ques Did you propose to buy the mill from Drake if so when

ans Last Mar or Apr (think it was in April)

ques What was the reason you did not buy it

ans Mr Drake said he could not sell it that he was in a law suit or expected to go into a law suit I don't remember this was the time he made



Complaints of the Misrepresentation and the  
only time up to that time

ques How long was this after he had bought it  
ans From six weeks or two months I can not tell  
Quint } exactly

ques How did you find him in making any Complaint

ques How long had he owned the mill when the first  
Complaint was made

ans I reckon he bought it in the fall of 1874 and  
this was in the Spring of 1877

ques What did you think the Mill was worth last spring

ans I don't know what it was worth - don't remember  
what we offered thinks it somewhere in the  
neighborhood of \$800<sup>00</sup> don't know whether  
we would have given any more for it or not  
if he had sold or agreed to sell

ques I think I did the first sawing Mr Powell  
was sick or something of the sort or had to  
tend to the rowing of his team & Mr Drake  
sent after me

ques Was Drake careful to keep the machinery  
in running order or in good condition

ans No Sir he would not keep material on hand that was necessary to keep it up and it was allowed to run too with repair.

ques Was the mill injured by reason of this neglect in running

Not to no great extent - it was the cause of great delay and loss of time and we would have to stop the fore pump cause more trouble than anything else. It needed milled to run around the rollers and we did not have a hand

### Cross Examined

Ques When you speak of an amount you sawed with said mill do you mean that was your estimate of the amount without measurement?

Ans Some days I measured and some I did not I measured three or four days. Sometimes we could count it by the logs.

Ques Do you not remember that Mr Powell helped Mr Drake start the mill when it was first run after he got it?

Ans He went off before we started the mill.

ques Do you know Powell had not helped Drake before that?



Ans That was the first time the mill was started after Drake bought it

ques Powell did help him run after he sold it did he not?

Ans Mr Powell helped him some after I quit

ques How much did you saw for Drake at first?

Ans I don't know Sir

ques Did Mr Drake employ you to take charge of the mill and run it?

just hired me by the day to saw it

ques You understand running a mill?

Ans I understand but little about it

ques Then you did not know what was wanted about the mill

Ans I knew what was needed to make it run

ques Could you cut enough with it to make it expenses and any profit?

Ans Not in that time of year it was to cold

ques when you went to buy the mill of Drake did you go at the suggestion or instance of any one if so, who?

Ans I went at no body's instance

ques Did you not go on recommendation after seeing Powell

Ans Yes Sir

Ques At his suggestion?

Ans No Sir Not at Mr Powell suggestion when we went the first time he (Drake) told us he would go to town and see his lawyer and let us know, but not hearing from him we went again, He then still told us he could not sell it as before

Ques Would you have given \$800 for it?

Ans Yes Sir we offered him \$800 or about that

Ques To be frank was there not some understanding with Powell that this offer was made to get some advantage of Drake in the law suit?

Ans No Sir Some money was coming to me from Mr Powell and I expected to settle in this way

Ques Did you have any security from Mr Powell for the money coming to you from him and was not given offer to get Drake released from what he was owing Powell and get the mill as payment to you?

Ans I had security I proposed to release him from what was going to Powell which the mill was bound for and gave him \$200



Ques. Was your debt against Powell and searches good?

Ans. I consider it very good

Ques. Would you now give \$500 for it

Ans. At this time I would not have it I have no use for it now I did have use for it then

Ques. Did Drake say what you could have it for if he could sell it?

Ans. He said we could have it for \$500 if he could sell it but he would not take that and we offered him more and he still would not sell it

G W Carney

or the witness Watts Solicitor

I Jas Lunpkins being next sworn says

Ques. What is your Age & residence

Ans. I live on line of Cheatham & Davidson Coats

Ques. What do you know of the mill in question

Ans. I know but little about it the mill was brought there & put close to my place by Powell & Carney over it a while

Ques. Do you remember when Drake bought it

Ans. Yes Sir I remember about the timing not the exact day

ques You remember what he was cutting per day just before it was sold to Drake

I dont remember what he was cutting particularly I rented from Powell for 3-1/2 days myself and had it run

ques When was this and what amount did you cut per day

ans Some of the time was before Drake bought it and some after and before Drake had taken possession I cut from 3500 to 5000 ft 3500 was the least that I cut and 5000 the most that I cut per day

ques What was the condition of the Mill?

ans Well I am not enough experience in Mill to tell you I did not know of any defect in it I was not around the mill much was hauling logs to the mill

ques Did Mr Drake run it at this Place

ans Yes Sir

ques How long after you did the work you speak of

ans I quit running on Saturday and he commenced on Tuesday or Wednesday of the next week



4 or 5, days after to the best of my recollection  
 ques Did you make any offer to sent it from Mr  
 Drake if so what did you offer

ans I proposed to give him the same I was giving  
 Powell \$5.00 a day to saw up what logs I had  
 hauled in - he said he wanted to run the  
 mill himself & would not do it

ques Did you hear Drake make any complain  
 about the mill while near your place.

ans Not to my recollection

ques When did you hear his first Complaint as  
 near as you remember

ans well I don't recollect when don't know whether  
 I have ever heard him say anything about it  
 Don't remember that I have seen him since he  
 moved the mill

ques How long have you know Powell and Mayo

ans I have know Powell about 6 years and  
 Mayo since a boy over 30 years would  
 say 37 years

ques Do you know the estimation in which they  
 are held in the Community in which they  
 live

Very good as far as I know  
Would you give them full faith and credit  
upon oath in a court of Justice  
Of course I would (Comp & Excp's)

### Cross Examination

Ques Are you not Mr Powell security to Mr Carney  
for some \$500 a debt contracted for a part of  
the mill

Ans Yes Sir

Ques What is Mr Powell financial condition since  
his experrance with mill?

Ans I do not know his business

Ques Do you regard him as good and do you ap-  
prehend so lowly reason of your being his security?

Ans I do not feel uneasy

Ques Are not the notes Drake gave Powell for the mill  
pledged to you as indemnity against loss?

Ans They were to stand good until this was paid  
a portion of it has been paid about \$283  
has been paid so that only \$217 was due

W. J. Whelan James <sup>by</sup> Simpkins  
Calk sworn <sub>mark</sub>

Watts Sol



Jefferson Allen being next sworn says  
 ques What is your age & residence

ans 47 live in Cheatham Co

ques Did you ever work at the mill in question  
 ans Yes I went to work in the Spring <sup>of 1874</sup> with  
 Powell and worked with him up to the time  
 he sold it to Drake and worked with  
 Drake as long as he run it there on the Creek  
 sometime in Dec<sup>r</sup> about the 1<sup>st</sup> Mar  
 I think

ques Did you ever hear Mr Drake make any  
 Complaints about the mill having been Misrep-  
 resented to him

ans I did not

ques Were you with him frequently

ans He was there with us all the time while we run it

ques Did he make any Complaint about the  
 Mill not cutting what it was represented to cut

ans He did not he made no Complaint while  
 running there

ques Do you know what he gave for it

ans He was to give \$1250

ques How did you learn that he was to give that

Ans } I was there when he came to the mill and  
traded for it and I heard him when he  
started away from the mill and heard him  
tell Mr Powell that he would take the Mill  
at that and that he might consider the  
Mill sold

ques Was this the first or second time that  
Drake came to the Mill

Ans It was the first time

ques Was any one with him at the time

Ans No Sir he was by himself when he came to the Mill

ques Was his brother A M Drake with him at  
the Mill at that time

Ans No Sir not the first time he was not.

ques Did A J Drake come again

Ans Yes Sir

ques Who did he bring with him?

Ans The second time he brought his brother A  
M Drake

ques Did you hear any of the conversation concerning  
the sale between A J Drake and Powell  
the first time



Ans I did not hear any thing said between him and Powell under the shed

ques Did Powell say what the Mill would cut

Ans I never heard <sup>any</sup> thing said about what the Mill would cut a day between them under the shed they were walking around under the shed and the engine was running and part of the conversation I could not hear but when they got off apart I heard him what he said back to Mr Powell I had walked out to where Mr Powell was standing Mr Drake had gone out to get on his mare

ques Was that the last conversation between them that evening

Ans That was the last that I heard for he said he was going home and I saw him no more that evening

ques Do you know how long before he and his brother came back

Ans I don't remember it might have been a month - it was but a short time before he and his brother came back

ques What conversation did you hear the second time

ans I did not hear any they staid all night with Mr Powell it was late when they got there they came up to the mill the next morning and Mr Powell wanted to raise steam and let his brother A W Drake see the saw run but A J Drake said he did not care anything about it that he had seen the saw run No more was said that I heard they turned and went off towards Mr Powell house left me at the Mill I live on the Mill yard right at the Mill

ques Did they build a fire and try to get up steam

ans No Sir there was no fire put in the engine that day nor for 4 or 5 days after Trechon it was 4 or 5 days before she ran any

ques Do you remember about what the mill was cutting about this time

ans The day before he took possession of it we cut about 5000 feet and the most of it was  $\frac{3}{4}$  inch stuff this was after he bought and the



day before he came and took hold

ques Do you know what care was used by Mr Drake  
in keeping the mill in repair

ans I don't think he took very good care of it  
no care agreeable to my judgement

ques Did he furnish the proper material to keep  
it in repairs while you were with him

ans He did not

ques Did his neglect to do this injure the mill if  
it should to continue

ans Well of course as long as the mill was run  
without babbet metal in the journal under  
the shaft it would get out of plumb & throw  
the saw out of plumb &c

### Cross Examination

ques How much did you cut the day after Drake  
took possession

ans Sir I don't recollect now

ques Was not the mill out of repair and worn  
the day Drake took possession

ans No Sir I reckon not

ques Do you not know that that you had it torn  
up when Drake came down to take possession?

Ans He took out the pump

ques How much did you cut any day for Drake

Ans No Sir I do not know

ques Did you ever cut 5000 feet?

Ans I don't know sir

ques Was the mill in bad fix every day after Drake took it?

Ans There was some days we run pretty good days about as good as any when Powell had it

ques You were a mill man employed to run it were you not?

Ans He hired me to run the engine

ques What was out of fix more than when Powell run it after Drake took it and how long did it so remain?

Ans The pipe that went in the beaks and remained for several days during which he took out and brought it to Nashville

ques Did you do many good days work for Drake

Ans There was some days we did very good work



q<sup>ues</sup> Did you hear all the conversation between the two Drakes and Powell the morning they were there?

a<sup>ns</sup> No Sir all that I heard them say was what they said about the steam and getting up steam that is all the conversation I heard between them

q<sup>ues</sup> How much did you cut on an average for Powell

a<sup>ns</sup> Sir I don't know I have no Idea

q<sup>ues</sup> Who ran the mill for Powell?

a<sup>ns</sup> Myself and Mr Powell most of the time <sup>and</sup> Mr Jackson did a heap of sawing for him

q<sup>ues</sup> Did you have any difficulty in keeping up the

a<sup>ns</sup> Not when every thing was right

attend

Jefferson <sup>his</sup> Allen  
mark

A. J. Whitman

Cash in hand

Watts Solicitor

Depos of Isaac <sup>Allen</sup> ~~Campbell~~ and W H Powell taken & filed Oct 13 77

A J Drake et al

vs

J M Mayo et al



Deposition of Isaac Allen & W H Powell

taken at the Office of A J Whitman  
Nashville Tenn in the presence of Complainant  
and Defendants and their Counsel on the  
13<sup>th</sup> Oct 1877 to be read in evidence in  
behalf of the defendants in the above cause  
all formalities being waived

Jas L Wall

A J Whitman for Def

Isaac Allen being sworn says

ques What is your age & residence?

ans 22 - live in Chatham County

ques Did you work at the saw mill of def Powell  
in the year 1874 if so how long?



Ans Yes Sir I worked at his mill up to the time he sold it dont know exactly how long it was

ques Do you know Mr A J Drake?

Ans Yes Sir the first time I ever saw him was at the mill of Mr Powell

ques Were you present the day Mr A J Drake came to purchase the mill of Powell?

Ans Yes Sir

ques What was you doing and who were present

Ans I was carrying up stobs Mr Powell Mr Drake Pa (Jefferson Allen) and myself were at the mill

ques State all you know said between Drake and Powell concerning the sale and purchase of the mill

Ans I heard none except what I heard as Mr Drake started off he said "you may consider it a trade"

ques Where were you when this remark was made by Drake and how far were you from the parties

ans I was at the "Lever" setting the log to the saw - I was about twenty feet from Drake and about five feet from Powell he was just across the log from me

ques How long did Drake remain at the mill that day

ans He came in the after noon and stayed three or four hours

ques Did Drake converse with Powell at this time

ans Yes Sir Mr Powell was at the saw sawing

ques Did you hear any more of the conversation between them

ans No Sir

Why was it that you did not hear was it from the noise of the mill or was it because you were not near enough to hear

ans It was the noise of the mill we were sawing all the time Mr Drake was there Mr Powell was one of the hands and I was one

ques What was Drake when he made the remark

ans He was going out toward his horse

ques Was any thing said after that by him?

ans Nothing else was said he went on home



ques What did Powell say in answer to this last remark

ans He said something but I could not understand

### Cross Examined

ques You say you are 22 years old what year were you born in?

ans I don't recollect

ques What year is this

ans I don't know Sir

ques Do you know what it is to be sworn?

ans No Sir

ques Where was it you heard the conversation you speak of?

ans I heard it when he came there I don't know what year and month it was

ques How old were you then?

ans I was about 19 I reckon

ques Then how many years ago has it been?

ans It has been 2 years I believe

ques What time in the day was Drake there?

ans About 1 O'clock in the afternoon

ques You heard him say "You may consider it a trade" What was he talking about?

ans I don't know He was talking about the trade  
I reckon the trade for the mill

ques Who was with Drake?

ans There was no one

ques How do you happen to remember that he said you may consider it a trade?

ans I just remembered it

ques Did you know that Drake was there to trade for the mill

ans Yes Sir

ques How did you know it

ans I heard say Pa say so

ques Was that before or after he said you may consider it a trade

ans It was before

ques Was Drake there at any other time?

ans He came then afterwards

ques Who was with him and what time in the day was he there this time?

ans There was no body with him I don't know exactly what time in the day it was it was in the evening I think



ques Don't you remember that Dr W M Drake his brother was with him and that they came in the evening and remained all night with Mr Powell

ans I don't remember it

ques Were you there all the time?

ans I was there but not about the mill all the time

ques Is not your memory very good can you remember occurrence that took place two years ago well?

ans It is good and I can remember such occurrences well

ques I want to know how you get your information that you are 22 years old?

ans I got it from my Parents

Re examination

ques What would I mean if I said that you had to make oath to what you say

ans Would mean that I should swear that it was so

ques Do you know Dr W M Drake?

ans In Ser

ques Who took charge of the mill and run it after Mr Powell

ans Mr Drake Isaac <sup>his</sup> Allen <sub>mark</sub>

Subscribed & sworn to before me

this 13 Oct 77 R Ewing C M

W H Powell next sworn says

qms Mr Powell are you one of the Defts in this  
Sut?

ans Yes Sir

qms When did you sell the mill in question to  
A J Drake

ans About Nov 1874 to the best of my knowledge

qms Where was the trade made - who were present &c  
tell all you know about it

ans At the mill on Little Maroon Bone Creek the Mill  
was in Cheatham Co at that time Isaac Allie  
his father Jefferson Allie were present I dont  
remember that any one else was present

We were sawing when Mr Drake came up  
he introduced himself as Mr Drake  
the next thing that I remember he asked  
me if I would sell the mill I told him  
that he had taken me on surprise I was not  
thinking about such a thing as selling though  
I would sell I believe he then asked me upon  
what condition I told him for cash He then  
looked around walked about a little and  
came back to me and said <sup>that</sup> he did not have



the cash for the mill (I had told him before these remarks were made what I would take for the mill) I told him that I would be most compelled to have the cash and he told me that he could not raise the cash I then told him that I was indebted to Mr Mayo & the debt was about \$600 or there near and that if he would clear me of that debt and the balance over of the \$1250 to me cash I would sell He told me that he could not do that - didn't have it but had it owing to him that he expected to get in a few days about \$400 though he would not promise the \$400 inside of 6 months and the balance he would have to have 12 months He then asked me if \$1250 was the least money that would buy it I told him that it was he did not say at this time whether he would take it or not he was passing back and forward and would speak to me only as we could both He asked me if I would take \$1250 if he would clear up the Mayo debt and pay me \$400 in 6 months and the balance in 12 and I told him that I would

Some where in the conversation about he  
asked me what the Mill would cut as near  
as I remember and I said to him from  
three to four thousands feet a day and that  
I had had a sawyer with me who had  
cut 7000 feet on two different days since I owned it  
What did you tell him about the mill  
cutting 10000 feet

If I told him any thing about I did not tell  
him that I cut that Mr Carny told me that  
he had cut 10000 feet and I may have told  
Drake that Carny had done told me that  
Carny had so

gus What other representations did you make  
to Drake?

To the best of my recollection I told him  
nothing else except that it would need  
some little repairs to do extra good work  
I called extra <sup>good</sup> work to cut from 4 to 5000 ft  
a day

Did Drake clear the trade that day if  
so state any further conversation had  
between you



Yes Sir he clear the trade that day he did not give any note that day but he had accepted my offer. He told me that he would come back another day and fix up the notes. Do you remember what the terms of the Contract were

He agree to pay \$400 from the time he took possession due six months after date and 222 due June 1<sup>st</sup> 1876 he also agreed to clear me of Mr Mayo debt which was about \$600 and the balance was to come to me. Was this the agreement when he left your Mill the first time he came

Yes Sir

Was anything said about security then Not a word except that I was to hold a lien upon the mill for what was coming to me

Ques When were you to give possession?

He was to come down and fix up the notes between him and me and I was to hold the Mill 20 days from the time the notes were executed

ques When did Drake return if ever?

ans It was something about 2 weeks to the best of my recollection

ques Who was with him?

ans His brother - said to be

ques What passed between you and them  
They got there after sundown staid all night with me I don't recollect any conversation about the mill that night The next morning Mr Drake wanted to give his brother as security upon the mill instead of a lien upon the mill

I told him that I was not acquainted with either one of them and that I wanted to send satisfied that I had some assurance that I would get my money and if I did not get a lien upon the mill I did not consider it a trade This conversation was on the way down to the mill and at the mill

Was any thing said about firing up and starting the saw

I don't recollect a word about starting the <sup>saw at all</sup>



Ques What was next done?

Went back to the house - and then to Mr Mayo's house at least to his mill. I am not sure that we went by the house.

Ques Did you ascertain what you owed Mayo if so what was it?

Ans Yes Sir. It was \$628.

Ques What was next done?

Ans I think the notes were written there.

Ques Was that in accordance with the contract made with Drake the first time you saw him?

Ans Yes Sir.

Ques How much did you cut with your mill the day before you gave it up to Drake?

Ans I cut 5000 feet on it.

Ques Was the mill in good order when you gave it over to her?

Ans It was about the order, it was when we traded and if there was any difference I could not discover it.

Ques If there had been any difference being around the mill could you not have discovered it?

Ans Yes Sir.

ques What did Drake say about who was going to run the Mill for him?

ans He told me that he was going to get an experience man to run it

ques When did Drake employ you to assist or to run the mill for him

ans I think it was about <sup>July</sup> or <sup>March</sup> following in fact he never did employ me as regular sawyer I knew that I was not in fact any sawyer myself and would only help when I could spare a day He would have me a day then he would have Jim Carney a day just as he could get us

ques How long after he took possession was it before you helped in the mill

ans It was as long as two months I suppose

ques How had the mill been used by the Compt<sup>rs</sup> Drake

ans I considered that the mill had been used very roughly

ques Was the mill up and in running capacity if so how much



Ans Some of the pipes were bunted having been allowed to freeze and he worked cold water upon the boiler instead of hot water I think we cut about \$2000 to 2500 feet

ques Did you work with him prior to Feb'y or Mar' as above stated at the mill?

ans Not a day

ques Did you work at all at the mill before Christmas

ans I did not have anything at all to do with it before

ques Were all the representations made to Drake concerning the mill true or not true

ans They were true, all made by me

ques Do you remember when the acknowledgement to the deed of trust was made by Drake

ans Yes Sir it was on the 11 day of May 75, better than 5 months

ques What was said by Drake about the fraudulent representation concerning the Mill at that time

ans I never heard any at that time at all

ques Was any thing said about the mill then  
ans Will I went to see him about it & he said  
it was time it was fixed up and went with  
me in the buggy to Ashland and acknowl  
edged it & he came back with me

ques Did you see Drake on the first note &  
obtain judgement if so when

ans To the best of my recollection it was Sept 175

ques What was said then if any thing by Drake  
Complaining about the Mill

ans Nothing in my presence or that I heard

ques When was it that you first heard any  
complaint from him that the mill had  
been misrepresented to him by you or  
Mayo's

ans It was last spring - it must have been in Mar.  
any how I went to Drake after money and  
told him that I was bound to have some  
money or I would have to wind up my  
deed of trust about the mill He told me  
to go back home next Thursday he would  
send me \$160 by mail I left him  
He did not send the money but he wrote me a



note - and this was the first intimation I had about the misrepresentation I think he filed the bill the same day or very soon after

Ques Did Drake ever make any proposition to you to deliver up the mill if you would surrender the notes and receive the contract

Ans Never Did

Ques Did Drake ever tell you <sup>that</sup> he had an offer from any one for the mill?

Ans He told me ~~that~~ he went to see a man who wanted to buy the mill

Ques When was that - what was the offer + what was said about this

Ans It must have been in <sup>the</sup> fall \$75 he had owned the mill about a year Drake said that he asked the man \$1500 and asked me if I don't think it was worth it I told him if it was I had sold it for ~~less than~~ <sup>less than</sup> its value.

### Cross Examined

Ques Did Drake ever say to you before the time you speak of in Mar 1877 that the mill would not do what it was represented to him

Ans Never did not intend such a thing

ques Did he ever say to you the mill would not work?

Ans He never did

ques Did you not know the mill was not running well after you sold to Drake?

Ans I knew that it did not do us well as I did with it

ques Did you and Drake have no conversation about this fact?

Ans I don't think we did Mr Drake was continually after me to come down and saw for him He said he was not getting along well and wanted to do better that he was not making any good runs

ques How long after the sale to him was this begun?

Ans I suppose it was about a month before he told me he was not making any good runs

ques What did you say to him when he would tell you he was not getting along well with the mill?

Ans I referred him to Mr Jackson who sawed for me and told him if he would get him or some man who understood running machinery he would get along better

ques Who helped Mr Drake run the mill when he first took possession of it

Ans Mr W Carney Mr Allen and a darkey



ques Were you or not on the ground the first day re run it?

Ans I was not

ques When the Complainant Drake and his brother W M Drake came down to your house did you go to the mill next morning

Ans Yes Sir

ques Now what way said getting up steam and by whom

Ans There was nothing said about getting up steam that I remember

ques Do you not remember that Dr W M Drake said he would like to see the mill run and that you said the hands were gone and the and the wood out?

Ans No Sir My fireman was at the mill that morning

ques I believe you say you did not disclose to me Drake the condition of the mill at the time of the trade Is that the case

Ans I did not tell him what was the matter with the mill

ques Was it out of repairs

Ans It was somewhat but no big thing out of repair

ques You say the trade was closed the first time Drake came to see you now could you close a trade for the sale of the mill without seeing May?

Ans Mr Mayo did not have anything to do with it?

Ques Did he not hold a license in it and could you sell it in that condition without his consent?

Ans He held a license but I considered I could sell it

Ques You did not get to see Mayo the first time  
Drake was down to see you

Ans No Sir I did not

Ques Please state whether you operated said mill the  
times you had it at a profit or a loss?

Ans Well I did not lose anything and I gained  
but little

Ques Was not said mill difficult to operate?

Ans It did not seem very difficult when I had Mr  
Jackson or some one who understood it to run it

Ques That was when you were looking on but when you  
undertook to run it yourself was it not difficult?

Ans Well after Mr Jackson was gone awhile perhaps  
a week and it would get out of trim I could  
not run it well

Ques Was it not very hard to keep up steam?

Ans Not when I had good dry wood

Ques Did you not learn after you got it that it was not  
a good mill and were you not anxious to get rid of it?



Ans I did not learn that fact and I was not anxious to get rid of it?

ques You say you gained but little in operating it would that little justify you in running it?

Ans Well I suppose it would.

ques Did you not get broken up financially by this mill? Did you not spend the money you had and more besides?

Ans No Sir no more so than when I went into it. I had but little money when I went into it what I spent was what I gained by the mill.

ques If the mill were off your hands now at the price you paid for it would you not be worsted by the transaction?

Ans No Sir

ques With the mill in your hands at the price you paid for it would you not be badly worsted?

Ans Well I did not consider I was worsted then considering the trades I have since made I would not feel worsted I mean I am in debt for land and could not run it?

ques What is said mill worth?

Ans I do not know what it is worth

Ques You say you never had an opportunity to take it back and rescind the trade how much will you allow for it and take it back now?

Ans My Situation don't call for a mill I have gone into debt for land and fixed myself for farming and have no use for it now?

Ques At what time did Mr Drake execute to you or to Mr John Davis to secure you the trust debt of the mill?

Ans He did it the day the notes were executed I think

Ques Do you know how much you cut on said mill before you sold it or were the amounts you speak of you estimate

Ans I measured it

Ques What was the average cut you cut?

Ans From 6 to 4000 feet

### Re Examination

Mr Powell - the counsel asks you this question I believe you say you did not disclose to Mr Drake the condition of the Mill at the time of the trade Is that so" to which you answer "I did not tell him what was the matter with the mill" please explain that answer or



answer the question the way you desire to  
 I did not understand the meaning of the word  
disclose for I did tell Mr Drake that some  
 repairs were needed upon the mill at the time of  
 of the trade as I stated before in answer to a  
 question asked me before

M. H. Powell

Subscribed & Sworn to before

me this 13th Oct 1877

R. Emery C. M.

Depts of J. M. Mayo taken & filed Oct 20 1877

A. J. Drake et al

vs

J. M. Mayo et al

Deposition of J. M. Mayo taken at the office  
 of A. F. Whitman Nashville Tenn in the presence  
 of Complainant and defendant and their  
 Counsel on the 20th day of Oct 1877 to be read in  
 evidence in behalf of defendants in the above  
 cause all formalities being waived

Said J M Mayo being sworn, says

ques What is your age and residence

ans My Age is now 65 - residence this County

ques Are you one of the defendants to this suit

ans Yes Sir

ques You will please now go on in your own way and tell your connection with the mill in question what passed between you and the several parties connected therewith &c

ans To do this I would have to recapitulate what is already said in the answer of myself & Powell About Sept 1874 Mr Drake (A J) called to see me and told me that he had understood that I wished to sell my mill then located, running on White's Creek I told him after a little reflection - I would correct a little - I think I told him that I had thought of selling but could not then do it - He again called some time in Oct I think seemingly on the same business and seemed to be anxious to buy a mill and I after a few moments conversation with him told him that a certain Mr Powell had a mill that I expected he would sell and I think



I told him that it was a mill I had bought  
 for myself and my son and that my son had  
 run it some over a year when he died I think  
 I gave him Drake the history of the mill in  
 answer to some question as to what I thought of  
 it at this time I recollect of telling of him  
 that it was a mill of more power than mine  
 My Mill is  $7\frac{1}{2}$  by 14 inch Stroke and the mill  
 of Powell is 9 by 18 inch Stroke and the power  
 of Mills are in proportion to the size and Stroke of  
 the Cylinder if the engine is in order I don't  
 specially recollect that he questioned me in  
 regard to what I could do with my mill  
 but do know that I never told that I had  
 or could cut 5000 feet a day I have often been  
 asked what I could cut and unvariable I have  
 answer from three to four thous and always  
 up to that time say when I did say I cut as much  
 as 4000 my days work was mixed with thick plank  
 or joint I did not say or aim to say anything  
 to Mr Drake but what was the simple truth  
 I regarded my debt on Powell good and had no  
 motion or interest in the sale of the mill as well as I remember

Drake asked me how long could I wait for the money I told him as far as I was concerned I wanted money that a large portion was going to my sons estate which I considered I had the control of I suppose he had seen Powell I did not know that the trade was made between him and Powell until A J Drake & his brother and Powell came to see me - I was at the mill (My Mill) two miles from my house from them I understood the trade was made - The first thing was to find out what Powell owed me which proved to be \$628 - Drake was to pay me the sum and Powell was to get the balance I drew up the notes - 4 in number - A J Drake A M Drake and Mrs Hobbs were jointly on my notes of \$14<sup>00</sup> each due the 12<sup>th</sup> of Dec 1875 & 1876 is my recollection bearing interest from date and to make it further secure Mrs Lucy A Hobbs was to give & did give a deed of 150 acres of land according to my recollection Mr Drake was to take charge of the mill on the 12 of Dec 1874 when it was then located on



Little Marson Bone Creek I do not think that I saw Mr Drake after these papers were fixed up until some time in the last of March following when I met him in Washville I asked him how he was getting along with the mill he replied I think (at least that is my recollection) that he intended to move it to the Ridge for he said he could make no money there but said nothing in regard to any defects about the mill I don't think I saw him or had any intercourse with him after that time for several months in fact don't remember when I did see him The next time my recollection is I saw him in the fall of 1875 about the time that he rented the mill to W<sup>m</sup> Smith About this time Smith moved the mill to the ridge and I reckon got to sawing in the winter of 75 & 76 I do not recollect that I saw A J Drake until some time in the spring of 1876 when I saw him in town and he seemed to be inclined to get the Mill back from Smith and he did in a short time as I understood to be

void the said contract & took charge of the mill himself. But before this time about Feb'y 1876 both Mr Drake & Mr Powell urged me to exchange notes I had a note of Laeford and James Sumpkins given me in pay on the mill by Powell & Carney for about \$270 - \$75<sup>00</sup> had been paid upon this note and the remaining balance amounted to with interest to about \$220 which Drake & Powell desired me to take in exchange for the note Powell had on A J Drake & A M Drake promising me that Mrs Hobbs would give a deed of trust on 40 acres of land which she did

Ques Did you refuse to exchange notes unless the mortgage by my would be given

Ans Yes Sir I would not have done so if she had not given the mortgage

ques If you have the said notes of \$314<sup>00</sup> each signed by A J + A M Drake and Mrs Lucy A Hobbs please file them as Exhibits D & E

Ans I have them at home & will file them exhibit D & E



ques State any thing else you may know concerning the transaction of the mill?

ans I would occasionally meet with Mr Drake along the road in the summer & fall of 1876 and he complained that he could not get along very well with the mill and asked me to go out & see if I could give him some assistance I was very busy and did not go so soon as I expected but did go with my foreman & Engineer that is the man who feeds & runs my engine for me Alex Carny who I know knew more about the mill I did when Carny first looked around it he expressed his unwillingness to get up steam as it was and made known the facts to Drake Carny found the grate bars burnt out Peter Rod bent and the fasking body out of the follow head and said some repairs must be done before he was willing to undertake to get up steam Drake brought to me the Peter Rod & head and I sent them to town to Sheward & Gager and had them repaired I also bought grate bars and had them sent out & put Carny & I did this ourselves and so

cost of \$20<sup>00</sup> which I paid & which has not been refunded to me After these repairs had been made Carny who had fired the mill 2 or 3 years undertook to get up steam which he failed to do after at least three hours close firing. my belief being and not doubting that it was owing to negligence by which the boiler had become so filled with mud & sediment that it was not possible to generate steam without cleaning of it out at least to some considerable extent Drake was present at the time that day I think On the day the men a couple of moons Davidson & Stranghan came to the mill and after I talked to them & found out that they knew something about Mills I suggested to them & Drake the property of their taking the mill & running it to sawing up what logs there was up on the yard They did take charge of it & run it as I am informed I was out there on one occasion after they took charge of it and the mill seemed to be sawing pretty well How not saw it saw at that time



- ques Did you hear Drake say that he did not know anything about such Mills when he came to see you
- ans I did not hear him say any thing about it
- ques Did you say to him that it was a very good mill
- ans I did regard it as a very good little mill when I bought & when I sold it. I had not seen it for 12 or 14 months - not since Powell owned it and made no representation as to the then present condition of it
- ques Did Drake ever "appeal to you to take back the mill of his hands and deliver up to him his notes & securities"
- ans Never did
- ques Did he ever go to you to <sup>re.</sup> ~~re-secure~~ secure the contract repeatedly or at any time
- ans Never did at any time - I know he never did for had he ever come to me & shown that he had been imposed upon by me it would have made such an impression on me that I could not have forgotten it
- ques Did you ever say to Drake that the Mill would cut 6 or 7000 feet a day as stated by Drake

Ans I am certain I never did  
ques Did you <sup>ever</sup> say to A M Drake that this mill  
was a good mill nearly a new one - that it  
would cut 2000 ft more a day than your mill  
& that your mill would cut 5000 feet

Ans I regarded it as a pretty good mill - and in  
the hands of good men would do good work  
- but as my saying that it was nearly new I  
knew I did not I don't recollect of being  
queren on it but I am certain that I did not  
say that it would cut 2000 feet more a day  
than my mill & that 2 new would cut 3000  
When A J Drake came to me the first & second  
time he came alone and the second time he  
came I refered him to this mill This is my  
recollection that A J Drake had been to see  
Powell before he his brother came to see me  
ques When did you first hear from Drake or any  
one else that the mill was misrepresented to  
him Drake  
My impression is (and I am sure I am not  
mistaken) that it was from the reading of his Bill  
filed in case



## Cross Examined

ques Was not Mr A M Drake to see you on two occasions about the mill with his brother A J Drake the complainant in this cause?

ans I reckon he was here in two occasions

ques Then was he not present when you referred A J Drake to Powell about a mill?

ans I am certain he was not I almost know he was not

ques Were to pay to you he was would you believe that?

ans I think I could not I am sure he was out there

ques What circumstance makes you remember that he was not there?

ans The first time and the second time A J Drake was the same he was alone. He afterwards came with his brother after as I understood A J Drake had been to see Powell

ques Did you understand that both A J or A M Drake had been to see Powell before they called together on you in regard to the mill the first time?

Ans No Sir I understood Dr Drake had not run the mill when he came with his brother to see me the first time

ques You say you regarded your debt against Powell for the Mill as good what security did you have besides Powell?

Ans I had a lien on the mill which I regarded made it good He had paid me about half the debt

ques Was Powell solvent or insolvent?

Ans I regarded it him as solvent

ques What property did he have?

Ans I do not know

ques Do you know that he had any subject to execution?

Ans I do not

ques Did not Mrs Hobbs execute to you a mortgage of some land to secure notes made to you by Drake & others?

Ans Yes Sir

ques Did not Drake object to this and say that the mill ought to be good for itself and that he was willing to mortgage it for the



the purchase money or allow the vendor to retain a lien?

Ans He did agree to me strong that way

ques Did you not say to him that you wanted other security in case of fire negligent destruction?

Ans I might have said that to him

ques Was Mrs Hobbs present when the trade was made

Ans No Sir

ques Did you have any conversation with her about requiring the notes or making the mortgage before before said notes and the mortgage of 12<sup>th</sup> Dec 1874 were executed?

Ans I did not but she wrote me a note that what ever A J Drake did with the land was all right I will file said note as an Exhibit O to this deposition

ques Were you present when said notes and mortgage were executed by her?

Ans No Sir I did not see her at all during the time

ques Did she sign said notes and mortgage herself

Ans I understood so

ques But you had no understanding or contract with her before she signed them in her own

proper person and have only the evidence of her signature to them?

Ans I had no contract with her had not seen her in ten years had no acquaintance with her and have only the evidence of her name to the papers

ques Is this so also of the trust deed to O W Hancock of February 10<sup>th</sup> 1876

Ans Yes Sir

ques Did she sign or is her name to the note of \$222 which said deed of Feb 10 1876 was made to secure

Ans Her name is not on it

ques Who wrote said two mortgage of Dec 12<sup>th</sup> 1876 and Feb 10<sup>th</sup> 1876 and the notes to you signed by the two Drakes and Mrs Hobbs?

Ans I wrote them all

ques Did Mrs write you the notes you speak of before or after the time the two Drakes and Powell called to gether to see you about the mill?

Ans Before or at the time

ques When was the trade made

Ans According to my recollection in the 25<sup>th</sup> of Nov 1874 the day that the two Drakes A J and A W and Powell called to gether to see me



Ques Were the notes that day executed?

Ans I do not expect they were I suspect Powells were but not mine because Mrs Hobbs had to sign mine

Ques Were the notes not written that day and signed by A J <sup>and</sup> A M Drake?

Ans I presume so but I am not certain about that they were sent to Mrs Hobbs to sign by Drake that day I think

Ques How long was it then before the mortgage dated 12<sup>th</sup> Dec 1874 was executed?

Ans It was executed the day of its date at least I know nothing to the contrary

Ques How much was said mill cutting when Drake got it

Ans I had not seen it for about 14 months before Drake did get it?

Ques Then you knew nothing about the mill when Drake traded for it?

Ans I did not know anything about it

Ques Had not Drake frequently told you that the mill would not do and was turned continually complaining that he was doing nothing with it

Ans I don't think he was until late in last year (1876)

Ques And did you not encourage him to try with other hands to run it?

Ans More especially he urged as not to interfere with him to just let him go along

Ques Did you not suggest charged in his manner of running it?

Ans I tried hard to get Smith when he took it to get a man who had run it but Smith did not pay any attention to me

Ques Why did you want Smith to get a man who had run it to run it for him?

Ans Well because I thought an man here could run it or any other mill with any reasonable prospect of success

Ques But could not any experience hand run it as well as one who had run it?

Ans Yes Sir that is after he was was experience with this mill

### Re examined

Ques Can a man if experience run any engine with success until he is thoroughly acquainted with it?

Ans I think not

Ques If you were to have additional security for the better security your two notes of \$9/14 each given by A J Drake for the balance Powell owed on the Mill what was it?

Ans I required personally security or a lien upon that land

Ques What land?

150. Acres of land that Mrs Hobbs had written me about that whatever her son in law A J Drake did would be all right with her!

Did you consider A M Drake complainant?



security at the time of making the contract

Ans I did not

ques Did you consider the terms of the contract so far as you were concerned complete until Mrs Lucy A Hobbs executed the deed or trust

Ans I did not

ques When was the execution of the deed of trust a part of the inducement which induced you to consent to the sale of the mill

Ans Certainly it was without that or good personal security there would have been no trade made

ques Do you hold her mortgage or trust deed for 40 acres of land to secure you in the note of \$220<sup>00</sup> if so file the same as Exhibit H to the answer

Ans I do & here file the same as Exhibit "H"

<sup>cross</sup> Re-examined by consent

ques Do you not hold a trust deed executed to the chance of the Mill in question to secure you in the payment of one note made to W H Powell for \$122 and two notes of \$314 each made to you by Drake and others and will you file the same as Exhibit I to your deposition

Ans I hold such a deed and here file as Exhibit "I" to this deposition I did not regard this as superseding the one to Powell or the one on the land but took at the request of A J Drake

Superseding

Subscribed & sworn  
to before me this  
20<sup>th</sup> day of Oct  
1877

J M Mayo

R. L. Young  
C. M.



Nov 11<sup>th</sup> 1874

Mr Mayo & Lucy Hobbs will give a lien  
on one hundred & fifty acres of land if  
necessary if the security are not satisfactorily given  
by A J Drake whatever A J Drake does a-  
bout the notes or land are all right with me  
Lucy A Hobbs

\$314.00

On or before the 12 of Dec 1875 we (either of us)  
promise to pay J M Mayo three hundred (and  
fourteen dollars for value received to bear inter-  
est at 10% per annum from the 12<sup>th</sup> of Dec  
next (1874) until paid Given under our hands  
this 25 of Nov 1874  
A J Drake  
A M Drake  
Lucy A Hobbs

\$314.00

On or before the 12<sup>th</sup> of Dec 1876 we  
(either of us) promise to pay J M Mayo three  
hundred & fourteen dollars for value received  
to bear interest at 10% per annum from  
the 12<sup>th</sup> of Dec 1874 next until paid given  
under our hands this 25 of Nov 1874  
A J Drake  
A M Drake  
Lucy A Hobbs

\$220

On or before the first of June 1876 we <sup>either of us</sup> promise to pay W H  
Powell two hundred & twenty two dollars for value received  
to bear int from date Dec 17 next given under our hands this  
25 of Nov 1874

A J Drake  
A M Drake  
Lucy A Hobbs



148 Decree November 14<sup>th</sup> 1877 Book (7-182)

A J Drake et al

vs

J M Mayo et al

This cause came on to be finally heard before the Hon W<sup>m</sup> F Cooper Chancellor & this Nov 14<sup>th</sup> 1877 upon the Bill answer Exhibits depositions and proof and argument of counsel when it appeared to the satisfaction of the court that the charge of fraud and misrepresentation by the defendants Mayo & Powell in the sale of the steam saw & Grist Mill made by them to the complainant A J Drake upon the 25<sup>th</sup> of Nov 1874 is not sustained The court being of the opinion that the said sale was fair and just and without any fraud or misrepresentation on the part of the said Mayo and Powell or either of them It is therefore ordered adjudged & decreed by the court that the injunction heretofore granted in this cause be dissolved and for nothing held and the Bill of complainant be dismissed and the complainant A J Drake pay the cost of this cause for which execution may issue



Decree November 23<sup>rd</sup> 1877 Book (7-226)

A J Drake

vs

J W Mayo & als }

In this cause the complainant prays an appeal to the next term of the supreme court at Nashville from the decree of the court dismissing his Bill which is granted and the complainant is allowed thirty days after the rising of this court to execute an appeal bond or to take the oath provided for poor persons

Paupers Oath in lieu of Appeal Bond Taken <sup>of Dec</sup> Dec 14, 1877.

I, A J Drake, do solemnly swear that owing to my poverty I am unable to bear the expenses of the appeal prayed by me from a decree rendered by the chancery court at its October Term 1877 in the cause wherein A J Drake is Complainant and J W Mayo & others are Defendants and do further swear that I am justly entitled to the relief and redress prayed for my said appeal so help me God

Sworn to & Subscribed A J Drake

Before me Dec 14<sup>th</sup> 1877

J W Mendenhall



## Certificate and Seal

State of Tennessee  
Davidson County

I Robert Ewing  
Clerk & Master

of the county court for said county and  
State here certify that the foregoing  
transcript contains a full true and  
perfect copy of all the papers Records  
and proceeding had and filed in said  
Court in the cause wherein A J Drake  
et al are Complainants and J W  
Mayo et al are Defendants as the same  
appear of Record and on file in my  
Office

In testimony whereof  
I here set my hand  
and affix the official  
seal of said court  
at the Court house at  
Nashville this 8<sup>th</sup> day  
of January 1878  
and 102<sup>nd</sup> Year of  
American Independence

Robert Ewing  
Clerk & Master

Bill of Costs.

State Tax

5 00

County do.

2 50

Robert Ewing Clerk

Bill 25. afft 25. Pauper oath 25. Inj<sup>31<sup>00</sup></sup> 1 75

Involving Bill 4<sup>50</sup> sps 75. Copy bill 2<sup>50</sup> ass 7 75

of Mayo & P. 25. afft (2) 50. notes 25. alias sps 1 00

75. taking (9) defor 2<sup>25</sup> taking (7) defor 7<sup>25</sup> 10 00

Rules 1<sup>50</sup> ret 10. dthg 30. (5) sps ad litem 1<sup>50</sup> 3 40

Scenes (7-182) 25. (7-226) 25. Ods 1<sup>00</sup>. Pauper 1 50

Oath in lieu of appeal 73md 50. Transcript 36<sup>00</sup> 36 50

Ct. hour seas. 75. Smt cert<sup>25</sup>. Bill cert<sup>50</sup> 1 50 63 40

H. N. Wilkerson, D.S. (2) Dry<sup>2<sup>00</sup></sup> (2) sps (4) notes<sup>2<sup>00</sup></sup> 5 00

Sam Johnson, D.S. (1) notes 50

J. H. Maulore, D.S. (14) sps ad litem 3<sup>50</sup> (1) note<sup>1<sup>00</sup></sup> 3 60

Samuel, Raley, D.S. 9 for ad litem 2 25

Total 82 25