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EXTRACTS

OF

Grinnell College Library,
Grinnell, Iowa

EVIDENCE,

IN CASE OF

J. W. TRIPP, *Et al.*,

VS.

J. B. GRINNELL, *Et al.*

MARSHALLTOWN, IOWA:
"TIMES" STEAM BOOK AND JOB PRINT.
1879.

T. J. FLETCHER,

called and sworn, testified as follows :

Q. What is your occupation ?

A. Cashier of 1st Nat. Bank of this city ?

Q. Where did the C. R. R. of Iowa make their deposits on or about Feb. 14th, 1876.

A. They kept three accounts. Deposited part of their accounts in the 1st Nat--

(Objected to as immaterial. Obj. overruled and defendant excepts.

Deposited part of their funds in the 1st National of Grinnell, 1st Nat. Bank of Marshalltown and City Bank of Marshalltown.

Q. Where were you employed then ?

A. In the Auditor's office of the C. R. R. of Iowa, under the Receiver.

Q. Can you tell from the books of the 1st Nat. Bank the amount on deposit in Februrary belonging to the C. R. R. of Iowa—say on the 11th of February 1876 ?

A. Yes, sir. I could if I had the proper book.

Q. Haven't you got it ?

A. I haven't that book here.

Q. Could you with any book you have with you show the amount, checked or drawn out of the C. R. R. deposit from the 11th of Feb. '76, on and including the 18th of February '76 ?

A. Yes, sir.

Q. Will you do so ?

A. Do you want me to call the list of checks paid during that time ?

A. Yes, sir.

Objected to as immaterial and incompetent. Objection overruled and defendant excepts, and objects further that it isn't the best evidence. Checks are the best evidence.

Hubbard—This is the best evidence of the payment.

Q. Fouke—Were you cashier at the time these were made?

A. No, sir.

Q. Did you make those entries?

A. No, Sir.

Q. Hubbard—Who was?

A. Mr. Fracker.

Court—You can prove by this that the money was paid out but you can't show by this what it was paid out for. That must be shown by direct proof.

Plaintiff excepts.

Q. Was you at the time Auditor of the C. R. R. of Iowa?

A. Yes, sir.

Q. Do you know anything of two checks being drawn on the funds of the company by J. B. Grinnell for Lawrence, upon the 15th and 18th Feb'y 1876?

A. There were two checks drawn by Lawrence during the month of Feb.

Q. In the name of J. B. Grinnell, Receiver?

Objected to—the checks will show.

Q. State what checks you had reference to; who signed them?

Objected to as immaterial. Objection overruled and defendant excepts.

Q. How were the checks signed that you refer to?

Objected to as immaterial and incompetent.

Q. Who did the checks purport to be drawn by?

A. They purported to be drawn for the receiver of the C. R. R. of Iowa.

Q. Grinnell?

A. Yes, sir. By his—

Objected to.

Q. Did you have any conversation with Grinnell, as Receiver of the C. R. R. of Iowa on or about that time? If so state what that conversation was about those checks.

Objected to as immaterial and irrelevant. Obj. overruled and defendant excepts.

A. Do you want me to say what the conversation was and what brought it up?

A. Yes, sir. Tell the whole story.

A. Those checks came into the hands of the Cashier through the banks?

Q. Explain the checks. You spoke of those checks. Identify them.

A. The two checks drawn by Lawrence in favor of—
Objected to.

Grinnell, stated what they were for and amount, and names and everything of that kind.

Q. Go on and state all that was said.

A. I commenced to state what brought on the conversation. The Cashier found these two checks among his checks, drawn without his knowledge, and he come to me to know what disposition to make of them to make his cash straight.

Objected to.

Court—Go on.

I directed the Cashier to charge those two checks to Grinnell's account.

Objected to.

Court—Just as near as you recollect, state the conversation.

Defendant excepts.

A. Grinnell came to me and wanted to know why those two checks were charged to his account and I told him because we didn't know where else to charge them, drawn by Lawrence. The Cashier found them in his bank checks and he couldn't balance the account without charging them somewhere, and as he had drawn the money out we charged them to him, and he said that was all wrong; shouldn't have been charged to him at all, and I asked him who they should be charged to, and he said first, nobody; but I explained to him it was necessary to charge them to somebody to make the books balance, and he said I should charge them to Lawrence. He said he told Lawrence to take that money and take care of it, or words to that effect. That was about all the conversation.

Q. Did he say what this money was paid for?

A. No, sir, only that he told Lawrence to take the money and take care of it for him.

Q. What was the amount of the checks talked about?

A. I don't know that the amount was mentioned, that I recollect of.

Q. What checks was this conversation about?

A. Two checks drawn by Lawrence.

Q. Drawn in whose favor?

Objected to as incompetent.

Hubbard—We wish to identify the checks.

Objection sustained and plaintiff excepts.

Q. Do you know of more than two checks drawn by Lawrence in this way?

A. I do not.

Objected to as immaterial.

Q. What was the date of these checks that you refer to?

Objected to as not the best evidence.

Hubbard—we wish to show what this conversation was about the amounts and dates, and who drawn in favor of.

Objection withdrawn as to whether Lawrence drew any other checks at or about that time.

Q. What was that conversation about?

A. About a shortage in Mr. "Wells'" cash.

Q. How much?

A. Four thousand dollars.

Q. Four thousand dollars?

A. Yes, sir.

Q. How did that arise?

Objected to as immaterial and incompetent.

Court—If the checks were there present and Grinnell directed his conversation to them and they were a part and parcel of the conversation it will be competent to describe the checks.

Defendant excepts.

Q. Were the checks these?

A. Yes, sir.

Q. Describe the checks that were there that you talked about.

A. Two checks drawn by Grinnell, Receiver, signed J. B. Grinnell, Receiver, by Lawrence. Drawn in favor of H. E. J. Boardman and for \$2,000 each, at the First National Bank of Marshalltown.

Q. About what were the dates?

A. The dates were sometime in month of February.

Q. If they were delivered up to the cashier at the end of February by the bank had the checks been paid then?

A. Yes, sir.

Q. And been returned by the bank?

A. Yes, sir.

Q. Did you have any conversation with Grinnell at any other time in regard to this \$4,000?

A. I don't remember that I did, sir.

Q. Was Lawrence there at the time?

A. Lawrence was in the building.

Q. Was he there present when Grinnell ordered it charged to him?

A. No, sir.

Q. Was it charged to Lawrence?

A. Yes, sir.

Q. Why was it charged to Lawrence, or was it by Grinnell's direction to you?

A. Yes, sir, Grinnell objected to having it charged to his account, but said it belonged to Lawrence, and directed me to make cross entries in my books in the Auditor's office. We were talking about the thing and he said he saw no necessity of charging it to anyone. I explained and told him we charged it to him, not knowing who else to charge it to, and he then directed us to make the change and charge it to Lawrence.

Q. Did he say what Lawrence had received for this \$4,000.

A. No, sir.

Q. Did he say what it had been paid out for?

A. No, sir. He said he had turned that money over to Lawrence to take charge of.

Q. Did you learn from Grinnell at any time where this money went to?

A. No, sir.

Q. Did you have any knowledge of where it went to?

A. Yes, Sir.

Q. Any personal knowledge?

A. Only the knowledge that came from the City Bank and First National Bank. I didn't see the money paid on the check.

Q. Do you know where this money went to?

Objected to as immaterial.

Court—If he had any personal knowledge he can answer. Defendant excepts.

Q. Did you have any personal knowledge of where the money went to?

A. No personal knowledge except what the books show and that the check came from the City Bank books of the First National Bank?

Court—That is'nt competent. Plaintiff excepts.

CROSS EXAMINATION.

Q. Are these the only checks that came through the City Bank.

A. They are not the only checks that came though the City Bank.

C. W. FRACKER,

called and sworn, testified as follows:

Q. Reside here in Marshalltown?

A. I do.

Q. How long?

A. About fourteen years.

Q. What business were you engaged in during Feb. 1876?

A. Cashier of 1st National Bank.

Q. Please look at the book before you and say whether that is the book of the 1st Bank in use Feb. 1st, 1876, and showing

deposits and money paid out for the C. R. R. of Iowa among others?

A. It was such a book.

Q. Please turn to the account of the C. R. R. of Iowa, for February, 1876?

A. Any particular date in February?

Q. From the 11th to the 18th inclusive. Who made the entries in the book?

A. The book-keeper, Mr. Kilburn.

Q. Under whose direction were they made?

A. Under the general direction of myself.

Q. Were they made at the time they purport to have been made?

A. They were.

Q. Look at the account of the Iowa Central and state how much money they had on deposit, if any, on the 11th of February and up to the 18th?

Objected to as incompetent and irrelevant and immaterial. Objection overruled and defendant excepts.

A. This books show the balance was at any particular time. This simply credits the deposits of each particular day but doesn't show the balance of the account.

Q. State—looking at those books, what amounts were paid out between the 11th and 18th, of the Central R. R. of Iowa, Co., from those funds on deposit—

Same objection, same ruling and exception.

The number of checks and the amount of each check?

A. I can call it off separately. I find on the 18th a check charged to Grinnell, Receiver, of \$2000, and one on the 15th for \$2000. Seems to be all between those two dates.

Q. Was there any other \$2000, checks during the month of February; or from the 11th to the close of February, drawn by Grinnell?

A. I find no other checks for \$2000 from the 11th to the close of the month.

Q. Was there any from the 1st of February to the 11th.

A. I find no check between those dates for any \$2000.
No cross-examination.

H. C. HENDERSON.

called and sworn, testified as follows:

Q. You may state whether during the month of February '76, you were acquainted with H. E. J. Boardman and J. B. Grinnell?

A. I was.

Q. How long had you known them at that time?

A. Something like 20 years.

Q. Will you please state whether or not they were reputed to be men of wealth—either or both of them—and able to build this Farmers' U. R. R. if they took hold of it and desired to?

Objected to as immaterial. Objection overruled and allowed to go in. Defendant. excepts.

A. Boardman was reported to be wealthy. I haven't known anything about Grinnell's reputation in that respect.

Q. I asked you whether Boardman wasn't at that time, and now, generally reputed to be a man of great wealth—the most wealthy man in Marshall?

A. I think perhaps he is, or has been the wealthiest man in the county. I have heard his wealth estimated all the way from \$80,000 to \$500,000. I don't know anything about it myself.

No cross-examination.

Plaintiff rests.

J. B. GRINNELL,

sworn, testified as follows:

Q. You are one of the defendants in this case?

A. I am here. I never received any papers that I know of.

Q. You were present during part of the time—at least of the trial, before the adjournment?

A. Yes, sir.

Q. Several weeks ago?

A. I wasn't examined as a witness, but I was here.

Q. You are acquainted, of course, with the plaintiffs, Tripp, Noyes & Hayden.

A. Yes, sir

Q. And Churchill?

A. Yes, sir. I know Churchill slightly.

Q. You are acquainted with the F. U. R. R.?

A. Yes, sir.

Q. With the railroad company during the time it had anything left in it?

A. I was acquainted with Tripp; the individual members of the corporation I have seen. I have no particular acquaintance with them.

Q. In February, 1876, you were receiver of the C. R. R. I.?

A. Yes, sir. In January I was appointed. I was in Feb.

Q. Did you know of any attempt that was made February '76 to purchase a claim that was owned, or purported to be owned by one Edwards, that was a mechanics' lien, or some kind of a lien on the F. U. R. R. Co.?

A. I knew of it in January.

Q. How did you first know of it?

A. From Tripp, the President, who invited me out to examine the property.

Q. Was there anything said by Tripp or any other of the plaintiffs in the case, about desiring to get rid of Edwards?

A. By Tripp; yes, sir.

Q. What, if anything, was said by him and when was the first that you knew anything about it?

A. I went over the road with Tripp and was conversing about the affairs, and he said he was a ruined man without he got rid of the scoundrel.

Q. Who was the scoundrel?

A. I knew, or supposed, that he referred to Edwards. I took the two things together.

Q. Did you as Receiver of the Central Railroad of Iowa have any business with or claims against this road?

A. Yes, sir. When I came in as Receiver I found on freight account there was two, three or four thousand dollars. I don't remember this minutely. I fail on dates and figures. I ain't so

reliable as I am on facts. Perhaps it was several thousand dollars more or less.

Q. Go on and state to the court what you know if anything about the purchase, or attempt to purchase, the claim of Edwards, or to get him out of the way of those men who claimed that he was in their way?

A. Tripp, President of the road, came to me and wished me not to press the matter for collection, and took me out to show me that the property was valuable and requested me further to aid them about the locomotive and the cars, and I told them I could not do it but that I would do all I could to get the railroad constructed, for I believed it would be a valuable feeder to the C. R. R. I. I would help to organize a company and that the C. R. R., as far as I could do anything, would help them if I was kept in as Receiver. I could help them about the freights and that I wouldn't sue on the claim for freight and transportation. I was talked to about persons which could be got into it by Tripp and Noyes and Hayden, and I saw several parties and I thought that there would be no trouble to get it organized so that the road could be built out to Beaman. I had a correspondence with several parties up at Grundy Center, stating what they would do and I thought best myself to first secure the claim so these parties couldn't suffer; and second that the road might be extended, and thirdly, as a matter of pride. I wished to see the country occupied and come up so the C. R. R. I. could get business. I did talk with parties about the organization of a company.

Q. Do you recollect the time, I believe about the 11th of February, when all of these plaintiffs except Churchill were here in Marshalltown?

A. I would not say, I never thought of dates at all.

Q. You was here on the 11th of February?

A. I don't know about that.

Q. The day of the night that the agreement that has been offered in evidence was signed at Boardman's house.

A. What date it was I don't know, but I was there.

Q. Were you at Boardman's house the day previous to the evening?

A. I was there almost every day. Boardman was counsel for the company and I was in the habit of seeing him about every day and these matters were talked up more or less.

Q. Do you recollect the day when an agreement was drawn up by Boardman and signed by these plaintiffs, Boardman and yourself, as Receiver of C. R. R. I., at Boardman's house?

A. I remember the fact but not the date.

Q. Do you remember any portion of the conversation that we had during the day that that agreement was signed?

A. I remember some of it if you state what you want to call my attention to.

Q. Do you remember any conversation that was had at Boardman's office in the day time?

A. Yes, Sir.

Q. Concerning these matters?

A. Yes, Sir, with Hayden on one occasion Noyes was there and one Hayden, and one Tripp was there but whether they were all there jointly I could not say.

Q. Was Mr. Boardman there?

A. Yes, Sir.

Q. What was the conversation about as far as related to the matters now in suit?

A. The question was how much Edwards could be got down to, Boardman says that this claim—with this claim here. There is not much use to talk about it and Hayden remarked that it could be got down. I think he suggested some one should go and see him at Chicago. I should think that was some days before, maybe a couple of weeks. This was a side issue and I did not have my mind on it at all.

Q. Did anybody go to Chicago to see Edwards that you know of?

A. Brown went.

Q. At whose instance?

A. Hayden's. I talked with him about Brown's going, but

whether he was employed by Hayden I don't know.

Q You knew of his going?

A. Remember of hearing that he had gone.

Q. On this day that we spoke about did Boardman engage in any talk or conversation when you and these parties were present in his office regarding these matters and say that there was no use to say anything until Edwards' claim was cut down.

Q. Was that on that day Edward's claim was cut down?

A. Boardman when I was there with Tripp, Hayden and Noyes at different times I said when I came up (that is the reason I am reminded of it.) He is not inclined to talk much and you must get him up to the scratch. Get him to agree to do what he could. I regarded him as having an important relation to the C. R. R. Co. to encourage the C. R. R. Co. and upon his part to assume the responsibility and assist about getting up a company.

Q. What company.

A. A construction company.

Q Did Boardman at his office to your recollection at any time during any of these conversations you had with him when these parties or any of them were present agree to go to work to get up a construction company?

A. He said like this when he was appealed to. "You know I am a lawyer not a R. R. man. If you go ahead and get the Grundy Center folks to stand up in writing to what they say verbally I will do the writing, I will do my share providing you gentlemen lead off. I won't assume any responsibility and won't agree myself to do anything because I am going off for my health rather than railroading or doing anybody's business.

Q. I will ask you if any of the time previous to the meeting at the house in the evening, Boardman ever in your presence while either of these Plaintiffs were present, agreed to organize a construction company to build the road?

A. He would'nt agree to do it.

Q. Were you present at any time or did he at any time when you or either of these Plaintiffs were present agree or promise

that he would go to work and organize a construction company and build the road?

Objected to as leading. Objection overruled and Plaintiffs excepts.

A. He did not with the qualification I have mentioned before in my presence.

Q. What qualification?

A. If the company was got up he would render all the assistance he could, but he wouldn't lead off or go to Grundy Center and make any agreement.

Q. You are aware as a matter of course that it is claimed here that Boardman and yourself made an agreement or at least the consideration for this written agreement is a promise of Boardman and yourself to form a construction company and to build the road and to finish the road that has been commenced. Now the question is, did he at any time previous to the meeting at the house when either of the Plffs. were present make any such agreement in your presence?

A. He did not, but on the other hand positively refused.

Objected to as leading and suggestive. Objections overruled and plaintiff excepts.

Q. Pass what may have occurred at the office for the present and ask you to state if you recollect who were present at Boardman's house in the evening at the time it is alleged this contract that has been adduced in evidence was made and written, drafted and signed?

A. Dr. Sears, to my recollection.

Q. At Boardman's house?

A. He was there several times before signing.

Q. At the house several times?

A. Yes, sir; at the house several times. Before signing, did I say? At the signing is my recollection.

Q. Who else?

A. Tripp, Noyes & Hayden I think were there, and I should say one or two of the directors. I shouldn't be so positive to their being there at the time of the signing but they were one

time when we were there.

Q. Look at that agreement and see if you can refresh your recollection by that as to who were there at that time?

Ans. I don't see the name of Dr. Sears here but I am satisfied that he was there, and Tripp, and as I said, Hayden.

Q. Mr. Noyes?

A. Noyes and Hayden.

Ans. Noyes or Hayden. There were one or both of them there. I am sure of that.

Q. Do you know what was the occasion of their going there that evening; how they came to go there?

A. Yes, sir. They asked me to come to see if anything could be done about the debt of the C. R. R.—see what I would do in regard to encouraging the road and relieving them of this suit for this \$3000.

Q. When you got down there, state as near as you can what transpired and the order in which it did transpire?

A. They requested Boardman to draw up something for me to sign. That was the main thing; seemed to be something that they could sign on the basis of cutting down Edward's claim and for me to do what it seems I did do here. I never saw this before.

Q. I wish you would read it. (Contract.)

A. I've read it. I never saw it or read it before that I know of?

Q. State what talk was had there by the parties when there as near as you can in the order in which it occurred?

A. There was considerable talk by Tripp.

Q. What did Tripp say?

A. Tripp says, I am a great loser anyway and I am willing to do anything to save my part—save what money I have got in, or part of it. He said to me before that he was ruined.

Q. State what he did say before?

A. That he had gone into it in good faith and so he had been anxious to get the road built, and he thought it would be done but he saw no way out now except to put somebody for-

ward—somebody like you and Boardman and Gov. Merrill, and somebody that has got something to buy something with. That is the only way out and I am willing to do anything.

Q. Did Tripp say that in general conversation here. Is that all you heard or was it directed to you particularly?

A. I am not positive. I know he said that to me.

Q. Down there?

A. Yes, sir.

Q. What, if anything, did you reply to them?

A. I replied that I could do nothing; that I was acting for the C. R. R. I. and if Boardman would advise it that I would wait and encourage. I said I would carry the freight on the same basis the freighting was done for before and this debt should be paid by rebate, but I couldn't do anything myself than encourage it. I said I would take some stock if he formed a construction company on the consideration that the Grundy Center folks stood up in writing to what they said verbally.

Q. What did Noyes say in this conversation.

A. I don't remember so much what he said, but I remember what Hayden said.

Q. During the evening.

A. I still am not so certain about which of them were there, but I remember of talking with Hayden more than with Noyes because we were down to the hotel—Bowler House. We walked up together and talked several times in regard to the matter and I should think he was the one I talked to up to Boardman's.

Q. Go on and state what he said and what you said to him?

A. He said, "I haven't any faith in the matter," was the only thing he said. Says I, "Why?" He says, "Well, you can't get Boardman to say anything." "Well," says I, "you think that is all I can get out of him." Noyes and I had been to see him before. I had written a request to see if I could get anything in writing, and I came to Boardman and he said not a word, and that was a week or ten days before. Soon after I was appointed Receiver I went to see him and told him I thought he ought to say something that would encourage these people

and let them out; and he says not a word. He says, "you have had something to do with the road and if you go on and they go on I will be on hand; but," says he, "before ten days I am more likely to be in Boston than here."

Q. That is the reason Hayden said up there, Boardman wouldn't say anything?

A. Yes, sir, Boardman. I am satisfied it was Hayden. I am not positive which one but I think it was Hayden.

Q. What is your recollection about their both being there? They both testified they were there.

A. I say my impression is, they were both there, but that I can't swear to it. Hayden said if he was there, "we assent to this with great reluctance."

Q. When you were talking with Hayden who made the remark that he didn't have any faith, because he couldn't get Boardman to say anything? Was that conversation in the presence of Boardman and loud enough for him to hear it, or was it out to one side?

A. My impression is that Boardman couldn't hear it. I don't think Boardman did. My recollection is that that occurred when Boardman was at the table writing, is my recollection, after the details were agreed upon.

Q. Then the details were talked over up there?

A. Yes, sir.

Q. Who engaged in the talk? Was it general, among all of you?

A. My recollection is, the details were agreed upon in Boardman's office, in the afternoon—afternoon of that day or the day previous, and I should say Tripp was there, and Noyes. I know Noyes was on one occasion at Boardman's office when we were talking.

Q. Who were present when these details were agreed upon?

A. The details as I recollect were agreed upon in Boardman's office, and Tripp was there, and Hayden and Noyes I think were there. It may not have been but Noyes.

Q. Was Dr. Sears there?

A. Dr. Sears was there on one occasion, in the office that the details were talked about, but whether the day previous I couldn't say.

Q. Tell us what those details were that were agreed upon at Boardman's office previous to going to the house?

A. That each party must cut down his claim so much and that we must agree for the C. R. R. to do so much and that Edwards must be bought out and got out of the way with such a reduction or such a sum of money. And Boardman asked, "Where's the money?" And Tripp says, "I have none—I am strapped. My last dollar in credit is in there." Noyes said, "I have got enough; if the thing goes on we can do the work up to Grundy Center. We can do something of that kind but I have got no money." Then how much each one should be cut down was the talk, and when they were disinclined Boardman made this argument. "We have got nothing now and the thing is dead, and gentlemen, you had better show your liberality if you want to do anything with Edwards or want to take that; or if you want me to write, or if you want me to advise Grinnell what to do." I was here acting under Boardman's advice, to sign for the C. R. R. of Iowa. He was the attorney of record at that time for the company.

Q. Anything else talked at that time?

A. I expressed hopefulness about the matter, that I believed the C. R. R. could encourage us, that I would go and ask the first time court met to do even more than I had proposed because I could recommend to the company that more could be done.

Q. Was there at that time any talk on the part of Boardman or on your part as to any agreement to go on and finish this road?

A. There was this talk, Hayden says it means nothing and Boardman remarked "I can't help it gentlemen, I can't help what it means, I am too old to be drawn into railroad building with my health, but in my business I will do in good faith all I can, I will co-operate with you in good faith and if you see those

Grundy people and do all the business and get up the company and things look all right I will do my part." that is the most I ever heard him say, that is the substance of his remark for I had been asked to go and see him by Hayden.

Q. Anything else that you remember, the detailes talked over in Boardman's office?

A. The directors were talking about the condition of piling on the Iowa river and about whether the grade could be widened. Tripp and I talked of the narrow gauge and that it was worth something.

Q. Get back to the house in the evening, what else occurred there by way of consideration in addition to what you have already related?

A. The question was raised about my standing in signing this document. They said that it amounted to nothing, and I said I didn't know either but I think it does. I regarded Boardman one of the first lawyers in Iowa, he stands at record as an attorney of this company and he advised me to sign it and I signed it.

Q. I am talking about the talk?

A. There was a good deal of talk about that.

Q. What else if anything you remember was talked and said previous to this agreement?

A. I took a hopeful view of things.

Q. The talk you had, what that hopeful view was, repeat it?

A. I am a great talker and say so many things that I can't remember what I say of course.

Q. Could you repeat in substance what you said then?

A. I don't know that I can.

Q. As near as you can?

A. I can't help that. That is my natural failing,

Q. Was there any person else who was there at that meeting that was spoken of in connection with the building of the road, and if so who was it and what was said about it?

A. I said at some time, I should say that evening, that I

had talked with Clarke. I said to him, "if they could get control of that road it would help in regard to the coal business." And he said, "if everything looks right let me know and if I have got any money I think perhaps I will put in." I spoke to Gov. Merrill—I won't say whether it was the Governor or his brother. The Governor perhaps was present. I think that I remarked to these gentlemen after it was signed.

Q. No. Previous to the signing is what I am after now?

A. I had said to this gentleman Tripp, I think, that I had talked with these men and if there was a company formed they would take an interest in it. I don't remember whether it was that evening before it was signed or not.

Q. Let me ask you what, if anything, was said at Boardman's house that evening about the formation of a company to build the road or finish the road and who said it?

A. There was something said.

Q. What was said?

A. The language was, that they could get at it better if they could get Edwards out of the way.

Q. Get at what?

A. Formation of a company.

Q. Who said that?

A. I should say it was Tripp. Somebody said it. I remember that remark that I can't swear to.

Q. What reply was made by any one in regard to that proposition.

A. Dr. Sears at one time, and I should think it was then, spoke about calling a meeting of the people down here. That was when the matter of the third rail was brought up in connection with this and the meeting was called.

Q. I don't care what was done subsequent. I want a detailed statement of all that was done at this time previous to the signing of this contract?

A. I am swearing as I understand it.

Q. What, if anything, did Boardman say in regard to the formation of a construction company?

A. Boardman didn't talk, according to my recollection.

Q. Didn't talk?

A. No, sir.

Q. Were you the principal talker?

A. I am apt to be. "Silence is golden," and I don't think any of them talked as much as I did.

Q. What did you understand to be the consideration upon which that contract was made and that moved the parties to sign it?

A. The consideration that I had.

Q. Explain what you mean by that?

A. The value received?

Q. Yes, sir.

A. The value received so far as I was concerned officially, was to get the road. I considered that it would be a great thing for the Central.

Q. What, if anything, was said about building that road, as a consideration?

A. It was, perhaps, based upon certain other things which were to be done by these gentlemen who had control of the road.

Q. Was that the consideration of this contract?

A. That was the consideration, they would go on and do what they could. That is the reason I signed it.

Q. I understand that the C. R. R. had a claim against this road. I understood further there were claims amounting to some \$27,000, and they held \$32,000 on it?

A. Yes, sir; \$60,000.

Q. I understand these parties agreed that if the claim of Edwards could be purchased for \$8,000, it might stand at \$12,000 and the other claim should be cut down. Whoever should buy his claim at \$8,000 should have a prior lien before the others who also had liens or claims for liens.

A. Yes, sir. That's the agreement.

Q. I want to know if there was any other consideration moving to these parties, to any of them that signed that agreement

—that entered into that contract?

A. None that I know of.

Objected to with this consideration as a conclusion.

Q. You say that the C. R. R. had a claim against this company, the F. U. R. R. I understand that the plaintiffs had claims amounting to \$27,000, or about that, and Edwards had a claim of about \$32,000, and I understand further that these parties agreed that their claims should be cut down to a certain amount and that Edward's claim should be cut down to \$12,000, or whoever should purchase the Edward's claim for \$8,000, or about that sum, should have the first lien upon the road for that claim ahead of other parties who also have liens. Now I ask you if there was any other consideration for that agreement than what you have already stated?

Objected to as don't show any consideration at all in the first place, and as to what is a consideration as a conclusion, incompetent and immaterial and asks him for a conclusion of law. Objection sustained and plaintiff excepts.

Q. Ask you if anything other than I have already stated entered into the agreement that these parties signed?

A. What entered into the contract on my part and what was the talk of us all that somebody should get Edwards out of the way. That was the first idea. Edwards had a \$32,000 claim on these. He wouldn't do anything or let any one else do anything. That was the reason of my signing. That was the talk, that he must be got out of the way by somebody putting in some money to clear him out of the way. These parties said they hadn't got it on hand and they appealed to Boardman to put in the money, in my presence.

Q. Do you mean to be understood that the consideration, or any portion of the consideration of the contract or writing there introduced in evidence, that anybody should go on and do what they could?

Objected to as directly leading and endeavoring to make the witness take back what he has stated, and calls for a conclusion. Objection overruled and plaintiff excepts.

Do you understand the question?

A. I think I do.

Q. Then answer it; what you meant by that answer?

A. For myself as Receiver of the C. R. R., and if the company was organized, I felt myself bound to do what I could. That was all that I implied or meant to imply by that because I had claimed that I couldn't do anything or wouldn't do anything personally. The consideration for signing that was that Edwards should be got out of the way by somebody furnishing some money so that there was possibility in the future.

Q. Was there any claim made, if so, to what extent, and by whom that the future prosperity of the road would be jeopardized by the Edwards claim remaining against the road?

A. I think Tripp first said to me that nothing could be done while he was there holding back with \$32,000 claim.

Q. Was that same thing talked over that night?

A. General talk about Edwards what he'd take, get him out of the way, who should go and see him and all about that. That was talked about I remember.

Q. Who drew this contract?

A. Boardman.

Q. How long did this interview last?

A. I should think that we were there at Boardman's house two hours.

Q. Did you in fact see this contract drawn?

A. Yes, Sir. The contract was drawn, I can't say that was the one that was drawn that he wrote right there or not, I am sure that was signed.

Q. That was signed there?

A. Yes, Sir, in the evening, I should say Boardman wrote it in the presence of those persons that were there.

Q. State what promise, if any, Boardman made in consideration that these parties Tripp, Noyes and Hayden should sign that contract as to building or finishing the F. U. R. R.?

A. He made no promise because that's what we were trying to get him to do. He made no promise there that night. He

said the first thing was to get Edwards out of the way.

Q. Did you make any promise that night or agreement to build or finish the road?

A. No, sir, for I was Receiver, but that I would encourage in the future, I made no promise.

Q. Did you at that time make statements in the presence and hearing of Boardman that you would in connection with Boardman, or that both of you would, go to work and get up a construction company and finish this road, if these parties would sign this contract or agree to it?

A. No, sir, after we signed it there was some talk about it.

Q. Was there anything of this kind said previous to the signing?

A. Not that I know, because I said I wouldn't do anything.

Q. Did you make any proposition on your part or in behalf of yourself and Boardman in the presence of these parties that Boardman acquiesced in, in regard to building or finishing this road?

A. Nothing further and if my signature is legal, if I would be authorized by the court and they formed a company I would give what encouragement I could as Receiver in regard to freights and leniency in regard to this debt.

Q. Did Tripp or Hayden or Noyes ask you to agree and promise to form a construction company and to build this road?

A. No, sir, because I had said distinctly that I would not.

Q. Did they ask Boardman?

A. Not in my hearing. There had been talk to Boardman previous to that night, I had heard them ask Boardman previous to that night I am sure.

Q. I understood you to say that you heard him refuse?

A. Yes, sir.

Q. In what capacity were you attending that conference at Boardman's? In what capacity did you have anything to do with the making or signing of that contract?

A. I should say first that I was acting as a friend of these parties; sincere friend as I thought to Tripp, who I had known

for a good many years, and Noyes and Hayden who had been employes on the railroad.

Q. I mean in what capacity were you acting there that night?

A. I was acting Receiver for the C. R. R. of Iowa.

Q. Did you pretend to act in any other relation?

A. No further than in a friendly way, because these gentlemen knew that I had stated that I couldn't as Receiver have any active part in building the road and would never do that favor over again.

Q. You heard some talk after the contract was signed, go on and state what that was?

A. I took a hopeful view of the matter.

Q. Let's get down on the ground again. I ask you to repeat the hopeful view that you took in order to carry you through the woods?

A. I can't.

Q. The substance?

A. I took a hopeful view of it. I forget what I said.

Q. If it was in the form of a prophesy, your hopes as a prophet, (profit) have since ceased?

A. Yes, sir. I am a failure as a prophet.

Q. Can you say what these parties said about building the road, after signing?

A. I said to one of the parties, "You wan't to go to Grundy Center and see those people in regard to their subscriptions and keep them up to their promise."

Q. Who was you talking to then?

A. Talking to the crew.

Q. The Tripp crew?

A. Tripp crew and the directors' crew.

Q. What else did you say in connection with taking a hopeful view of it?

A. That it would be a great advantage to the C. R. R., 20 miles built out there.

Q. What else?

A. If there was doubt about my authority, at the first meet-

ing of the court I would ask for full authority to help along. That I remember.

Q. What else?

A. I don't know that I remember anything else.

Q. That is your recollection of what you said. What did Boardman say? What hopeful view did he take?

A. If Edwards was out of the way the staff is in your own hands. Grinnell's done all he could for you. The staff is in your own hands. I am occupied with other business and you can't expect me to get outside of my own business, and my health won't admit of it. I remember of his stating words to that effect.

Q. Did Tripp say anything about this agreement after this agreement was signed?

A. He compeined to me a little.

Q. What was it on that subject?

Q. "I am glad you signed here, and if we only had you to help I should think we could get along."

A. I don't think he was telling the truth, but that was his opinion.

Q. You give him credit for sincerity?

A. Ignorance and sincerity.

Q. What did Noyes say after this contract was signed?

A. I don't remember anything that he said?

Q. What did Hayden say?

A. Hayden said, in the room and going out and after the signing, "I have no confidence in the thing."

Q. In what thing?

A. That anything would be done. "I have no confidence in it."

Q. Did he at that time, or any other time that you know of, say anything about whether Boardman had or had not agreed to build the road?

A. He said nothing could be got out of Boardman. "I want you to go and see him." And he said a number of times after this, "Is Boardman going to build the road?"

Q. Did you ever hear Hayden say anything to the fact that Boardman didn't agree in that contract to build the road?

A. He said there would be nothing done, twice that I saw him.

Q. When was that?

A. Two or three times.

Q. Did he say it that night?

A. T'was there that night and the next morning when we were down at the hotel.

Q. Stated it to you two or three times?

A. He said, "I have no confidence in Boardman, he didn't agree to do anything."

Q. Did you have any talk with Tripp and Noyes subsequent to the signing of this agreement in which they said substantially, or in which the matter of whether or not Boardman had agreed to build the road was mentioned, and if so, state what was said?

A. I was with Noyes several times. I went with him a good deal later than that over to Grundy Center. I don't remember the dates, as I said before, I can't remember dates.

Q. After this contract was signed?

A. Yes, sir.

Q. Go on and state what, if anything, was said regarding that matter, as far as Boardman's agreeing or promising to build the road is concerned.

A. He said that Boardman is a rich man, but says he don't show out, ain't willing to strike out as you are. I feel confident of what he will do as soon as someone goes ahead and he sees a chance of making some money.

Q. Anything else? Anything else was said about that time?

A. He did say, "It all rests with you, that is the fact about it."

Q. That was with you, Grinnell?

A. You, indicating our company.

Q. Talking to you?

A. Yes, sir.

Q. Did you disabuse his mind?

A. I told him I was a broken reed.

Q. Did you have any talk with him on this same subject?

A. I saw Hayden and Noyes several times after I came back from New York.

Q. Did you ever, subsequent to the time this agreement was signed, in any conversation at any time that Tripp, Noyes and Hayden, they, or either of them, claimed that Boardman had, by this agreement, promised to build the road?

A. They said that was the trouble, that he didn't promise anything, if I mentioned seeing Tripp several times with the others. I don't think I saw him. I don't remember of seeing him more than once.

Q. What do you say as to the understanding had there as to your acting, signing this contract in behalf of the C. R. R. of I. Undertaking on your part, or something to be done subsequent by the court with regard to this matter.

A. I acted on the supposition that I had authority to sign. I relied more upon Boardman's judgement in that than my own. He says, "You don't hurt anybody, don't hurt them, it is a legal question and you are acting on your judgment and it don't do anybody hurt."

Q. The question I asked you was this: whether there was anything said by you, or any understanding between the parties that your signature as Receiver of the C. R. R. of I. was subject to the approval of anybody, the court or anybody else, at this meeting, the time the signature was put there.

A. I regarded it subject to the approval of the court.

Q. That isn't the question. Was it the understanding there that you signed that agreement absolutely as Receiver of the C. R. R. of I., without any qualification, or was it subject or understood to be subject to the approval or disapproval of the court?

A. I don't think that I made a remark about that. Boardman says, "You incur no liability personally or officially." He said if it was a good thing the court would approve it. I should say that he used those words.

Q. The substance of it?

A. He says, "the question is raised, the matter to be determined whether that amounts to anything or not. You have just been elected as Receiver and you haven't looked into the matter, but you don't hurt yourself or hurt the company, and they ain't any worse off now than they were before." I judged by that these parties had been talking to him about the matter.

Q. This claim against the R. R. Co. still subsists.

A. Yes, sir.

Q. Never been paid?

A. No, sir.

Q. You are aware that this R. R. has been sold under Sheriff's sale, under judgment, in the name of Boardman?

A. Yes, sir.

Q. That he holds a Sheriff's certificate, which was enjoined by this court in this suit?

A. I heard so.

Q. I will ask you what, if anything, you had to do with the case, or the sale to Boardman and that execution?

A. Nothing that I know of. I have no interest in this matter.

Q. In this matter with Edwards, either with Boardman only, or with any other person, or did you have at the time Boardman purchased it?

A. No, sir.

Q. Do you mean the answer to apply to all?

A. I mean that I had no pecuniary interest then and I haven't now.

Q. Did you hear the testimony of the plaintiffs, or any of them when they testified here, when you was here before?

A. I heard some of them.

Q. Did you hear one of them—I forget which, probably Hayden—testify as to Boardman changing tactics during that evening, after the parties came back. They had started to the door and come back?

A. I think I heard some one say something of that kind. I

can't say who.

Q. I ask you if in fact there was any change in the proposition or proposals, status of Boardman towards this R. R. Co. any time from the time the interview commenced, to the time the contract was finally signed?

A. I saw no change in Boardman. Invariably no, when they asked him to do certain things?

Q. What?

A. To agree to go on and help to build the road, or to put in any money unconditionally.

Q. There has been considerable said about one remark you made after this contract was signed by you, that you said it was worth \$5000 to these parties, and would insure the building of the road. State if you recollect as to what you really did say in connection with placing your signature, or immediately after?

A. I don't remember what I said, if I said anything. I don't remember what I said. I should fall back on the hopeful view.

Q. You heard Tim Brown testify. He testified to a certain conversation he had with you, that he had previous to the time of his testifying. Do you recollect being at his office at that time?

A. I think I talked to Brown several times; if you will call my attention.

Q. Brown said, if I understood him, that you claimed to have an interest in this claim—this Edward's claim. State if he did say anything to Brown on that subject at the time?

A. He is certainly mistaken. I never told him I had any pecuniary interest in it; him or anybody else?

Q. Brown testified that the statement you made was substantially this with reference to this litigation: That you didn't see why these parties wouldn't be satisfied to pay us our money back that we paid for this claim, or something of that kind. Let me ask you if any such statement as that was made by you: "Grinnell stated if the money he put in was back, or out, it was all he wanted."

Q. I was speaking about Lawrence, then. I wasn't speaking about myself. That is what I said in regard to the R. R. If I said that if the money was out I was referring to the R. R., because I had been blamed indirectly by Brown. Brown was severe on these gentlemen and approached me without reason, I thought, because I was lenient towards these gentlemen, and said, if you get them to pay the money that's all I am about.

Q. Then the conversation you had with Brown, did you mean to be understood, or intend to say, that you had any interest in this Edward's claim?

A. Myself! No, sir. I never stated to him that I had; as I didn't.

Q. Was there anything claimed at this meeting at the house what was spoken about regarding the building of the road should be in the contract, or did you say that such wasn't necessary?

A. I don't remember of saying anything of the kind.

Q. Was anything of that kind talked at all, to your recollection?

A. It was asked that he should make a more positive agreement.

Q. Did you make as a suggestion when that was proposed that it wasn't necessary to put it in writing?

A. No, sir. I said nothing of that kind. I say I didn't because it wouldn't be according to my mental condition at that time, my thoughts about it, because I wouldn't say what was not in my mind.

Q. Did Noyes while riding over the prairies with you, at the time you and he have spoken of, claim that either you or Boardman ever agreed to build the road?

A. No, sir. He claimed that he was to do what he could and don't know but that he thought that I hadn't too. I don't know but that I reproached him in being dilatory in trying to start up the matter.

Q. Did you tell Noyes, or anybody else, that you ever contracted for the iron to build the line?

A. No, sir.

Q. Or words to that effect?

A. No, sir.

Q. Did you make any effort yourself after the contract was signed to get up a construction company, or to induce parties to enter into it?

A. I was at a meeting there at the bank when a company was organized, and I talked a little, I think. I said that I believed the money could be got. I mentioned Clarke. The conversation I had with him and I mentioned the conversation I had with Merrill, and I mentioned some parties in my own town, Flanders and Snyder, and several parties that had said that if we would take hold here, why they would put in money. I remember of saying that.

Q. Did you do anything towards soliciting anyone to become a member of the construction company?

A. Yes, sir. I spoke to Cutts and to Merrill and to Clarke. I stated the project was on hand, that is if Boardman got the prices of the old claim scaled down I believed it would be a good thing. I acted in good faith and done what I could until I found the B., C. R. R. had gone in, then I saw that the thing was gone up.

Q. What, if anything, was said about the effort to be made to get up a construction company, up there to the house and previous to the signing of the contract?

A. I don't remember that anybody said anything except what I said, that I would co-operate with these gentlemen and do what I could, and I would ask the court if they wasn't satisfied. I would at an early day get authority from the court to do more even than I had agreed. I did say that I was very confident.

CROSS-EXAMINATION.

Q. Did you ever report the contract of Feb. 11th to the United States Circuit Court and ask for its approval?

A. Not on paper. I stated verbally what I had signed and stated probably that I might ask for its approval and for further authority provided the matter was carried on. I never

presented anything on paper to my knowledge.

Q. Never was any approval by the United States Circuit Court after Feb. 11th?

A. Not that I know of; not that I remember of. I will repeat that the only understanding I had of it was that I stated verbally to the court that I had signed this paper.

Q. Verbal talk with the court I don't care anything about. You say you never had any interest in the Edwards claim?

A. No, Sir.

Q. Did you know that Lawrence drew 2 checks of \$2000 each on the C. R. R. of Ia. funds in the First National Bank here and sign your name as Receiver to the checks?

A. The Cashier is under bond.

Q. That ain't the question?

A. I believe he did.

Q. This was in part payment of the Edwards claim?

A. Don't know anything about that.

Q. Did you direct him to draw those checks?

A. He has a right to draw checks for any amount that he has a mind to, for me, or himself.

Q. Did you direct him to draw those checks?

A. I don't know anything about the checks; I have heard something about the checks; I never saw them.

Q. Did you direct him to draw those checks?

A. You have got to make explanation before I can answer.

Q. You understand the checks that I refer to; I mean the 2, \$2,000 checks given to Boardman in payment of part of the Edwards' claim, on this F. U. R. R. and signed J. B. Grinnell, Receiver, per Lawrence? Please state whether you directed him to draw 2 such checks?

A. Not that I know of.

Q. Do you know that you never did tell him to draw those checks?

A. I don't remember it now, I will think about it.

Q. Those checks that I refer to was dated about the 15th, or 18th, of February, 1876, and soon after making this contract at

Boardman's house?

A. I don't remember anything about it.

Q. Do you remember of having a talk with the Auditor of the C. R. R. Co. Fletcher about the last of Feb. when the Feb. accounts were closed up, in regard to 2 checks of \$2,000 each, drawn about the 15th, or 18th, in favor of Boardman, signed by J. B. Grineell, Rec'r. per Lawrence?

A. Yes, Sir. I remember of seeing such a thing on the book, and I told him to scratch it and replace it, I told him there was nothing against me there.

Q. It was at that time charged to the C. R. R. was it not?

A. It might have been.

Q. Did you make any direction what to do with it; with the amount, \$4,000?

A. I don't remember.

Q. Didn't you tell him that it oughtn't to be charged to any one?

A. I don't know. No, sir.

Q. Didn't you tell him finally to charge it to Lawrence?

A. I told him to charge it where it belonged. It didn't belong to me.

Q. Do you say that you never told Lawrence to make these checks and give them to Boardman?

A. Not that I know of. Not that I remember. Lawrence wasn't present at the time this contract was made at Boardman's house. I don't think he was. He was present at different times when these things were talked over to the bank.

Q. Did you tell Lawrence, after this meeting at Boardman's house, what contract had been made there. This written contract—tell him the substance of it?

A. I think I did.

Q. Did you then tell him that you were to pay \$4000 toward the Edward's claim?

A. No, sir. I should have told him a lie if I had?

Q. He drew the checks on the C. R. R. of Iowa fund for that amount?

A. No, sir; I think not. If he did draw those checks on the C. R. R. fund he drew them against his own bank account at Grinnell in exchange.

Q. He didn't do that?

A. He did afterwards.

Q. Had he the right to draw your draft without consulting you, for \$4,000, and to pay for one half the Edward's claim?

A. He was my cashier and private secretary. He knew about all the funds, and if he wanted to pay a check to Boardman he had the right to draw it here and pay it back, because he is the depository of all the money that come in the hands of the C. R. R.

Q. Did he have any authority to pay out the money of the C. R. R. except for the ordinary expenses of the road, to pay claims against the F. U. R. R. without permission from you?

A. He had orders to do just what he did, though.

Q. He took a hopeful view too, probably?

A. Yes, sir; an honest view.

Q. When did Lawrence give his own checks—pay back this money?

A. I don't know.

Q. Do you know that he ever did?

A. I presume he did. Yes, sir.

Q. Didn't you tell the Auditor, Fletcher, to charge these two \$2,000 to Lawrence?

A. If Fletcher says I did, I should think I did.

Q. He does say so.

A. Then I say I did, because I don't remember and he would.

Q. Do you say you didn't know until your attention was called to it by the auditor, that these checks had been drawn?

A. When I came back from New York, to close up the February account, I saw the books there charged with what I should not have been charged, and I reproached Fletcher for not having the books correct.

Q. Did you see Lawrence after this contract was made on the 11th of February, before you started to New York?

A. I don't remember, but presume I did.

Q. Was he here in the office?

A. Yes, sir.

Q. Do you remember whether you saw him that night after the contract was signed?

A. I don't remember.

Q. About what time of the night was it you left Boardman's that night?

A. I don't know. I staid there all night, myself. I am not certain about that. Two or three times I did stay all night.

Q. Did you start for New York the next day?

A. I don't remember,

Q. Is your memory failing you very much, now, about matters in general?

A. I think not; I think if you proceed you will find it is good.

Q. When did you first learn that Lawrence had drawn this check in favor of Boardman for the payment of the Edward's claim?

Q. When I looked over the cash book; I don't remember when that was. I suppose it was soon after I came back.

A. You had in fact authorized him to draw those checks?

A. I say I don't know anything about it. He was authorized to do what he pleased with my money, as far as I know, legally.

Q. Were you authorized by the U. S. Circuit Court to buy up claims against another R. R. with the money?

A. No, sir.

Q. Have you never authorized Lawrence to buy up claims against the F. U. R. R. with the C. R. R.'s money?

A. No, sir; nor he never did.

Q. He did, though.

A. I say he didn't.

Q. The checks show that, and Fletcher says so.

A. The C. R. R. of Iowa never bought up claims against anybody.

Q. I didn't say the C. R. R. Co. did.

A. Nor its money.

Q. About \$4,000 of the C. R. R. of Iowa funds were taken from the 1st National Bank and paid to Boardman to pay the Edward's claim; isn't that so?

A. No, sir. We deposited money at four different places.

Q. Didn't you know that \$4,000 of the C. R. R. deposit had been paid to Boardman from Fletcher about the last of February or first of March?

A. I saw some money charged to me that didn't belong to me and I told him to rectify it.

Q. Did you understand what that money was for at the time?

A. I told him it didn't belong to me, and I told him to rectify it.

Q. Did you understand at the time what had been done with that money?

A. I don't know. I don't remember.

Q. Didn't you know that it had been paid to Boardman on Edwards' claim?

A. I presume some checks were.

Q. That money belonged to the C. R. R. of Iowa?

A. No, sir; it belonged to me. The money is all in my charge.

Q. Belonged to you as Receiver?

A. Yes, sir.

Q. Excuse me. Didn't belong to the C. R. R.?

A. Belonged to me in trust—the whole of it.

Q. Didn't it belong to the C. R. R. of Iowa?

A. No, sir. It belonged to me in charge.

Q. Did it belong to you as Receiver in your personal and private fund?

A. I haven't any personal and private fund when I am Re-

ceiver of the C. R. R. of Iowa. I have given bonds to take care of the money and you can find out about it down there. My books are squared up by the Master.

Q. I want to distinctly understand whether you say up to the time you had this talk with Fletcher, you had any knowledge that Lawrence had drawn these checks to pay for the Edwards claim?

A. I should say that Boardman said that Lawrence very kindly made the checks and the money sent on.

Q. Did you tell Lawrence to make the checks?

A. Don't know whether I did or not, don't care.

Q. Can you state positive that you did not?

A. I can't state anything positive about it, I have approved it and do whatever he does.

Q. Didn't you absolutely tell him to draw the money that

Q. It was expected that night that the road would be built, belonged to you as Receiver to pay that?

A. No, Sir, I don't think I did.

Objected to as incompetent, irrelevant and immaterial. Objection over ruled and the deft. excepts.

Q. Is that Lawrence now in the employ of the C. R. R.?

A. Yes, Sir.

Q. In what capacity?

A. Cashier.

Q. Same that he was in Feb. '76?

A. Yes, Sir.

Q. Resides now at Grinnell, City of Grinnell?

A. He resides while his family is sick at Grinnell, most of the time. He has a deputy but he is Cashier, he sees to the business.

Q. You have paid Lawrence this \$4,000—reimbursed him?

A. I paid him.

Q. Yes, Sir?

A. What do you mean. Mr. Lawrence matters and mine you can't get me to answer to.

Q. Do you say that this money was charged to Lawrence, that was paid out of the C. R. R. fund?

A. I didn't say.

Q. Was it charged to him.?

A. I don't know, I suppose it was.

Q. Who paid the C. R. R. of Ia back this \$4,000, and who paid it back to the Receiver, that was paid out in these two checks to Boardman to buy this claim?

A. We're paid out of the C. R. R. of Ia., the way the money is placed.

Q. Then out of the Rec'r. money?

A. I suppose if Lawrence drew from the funds in my hands as Receiver, that he placed it back in there because the accounts are adjusted.

Q. Do you know whether he did pay it back?

A. I think he did.

Q. He did, did he?

A. If the checks were drawn on the C. R. R. of Ia. by Lawrence for me he has paid it back; if that is so he has paid it back.

Q. Has Lawrence paid \$4,000, to you in any way to replace the checks that he drew on your fund as Receiver on or about the 18th of Feb. '76?

A. I suppose he has if they were drawn.

Q. Do you know that he has?

A. I know because the books are squared.

Q. Who furnished the money for Lawrence to make good that account for the money drawn out?

A. I refuse to answer that; it is impertinent.

Objected to as immaterial, incompetent and irrelevant. Objection sustained and plaintiff excepts.

Q. Have you had any conversation with Mr. Lawrence about that \$4,000 since the last of February or first of March, 1876?

A. I don't remember anything particular; any particular conversation.

Q. Have you any knowledge whether Lawrence has ever

paid \$4,000 in, to you as Receiver in lieu of these two checks that were drawn?

A. I know he has from the nature of the accounts.

Q. Who furnished him the money to put in?

A. I don't know.

Q. Didn't you?

A. No, sir.

Objected to.

Q. Didn't you cause it to be furnished?

A. No, sir.

Q. Did he furnish the money himself, or was it his own money?

A. Oh! no.

Q. Did he pay it in at your request?

Objected to, same as before. Objection sustained and plaintiffs except.

Q. Do you know, as a matter of fact, whether he did put it in, or do you only suppose so?

Objected to as immaterial and incompetent. Objection overruled and defendant excepts.

A. I know the account is squared up, but I don't know anything further.

Q. You don't know how they were squared, the way they were squared?

Objected to as immaterial and incompetent. Objection sustained and plaintiffs except.

Q. Is Lawrence a man of means himself?

A. Yes, sir.

Q. Coming down to this evening at Boardman's?

Court here adjourned until 1:30 P. M.

AFTERNOON SESSION.

Grinnell continued—

Q. How long after the contract of February 11th, 1876, before you started for New York?

A. Don't remember.

Q. About how long after that?

A. From one to six days I should think. I can tell by referring to the contract, the date.

Q. The date is the 11th of February.

A. I was in Brooklyn the 15th, so it must have been very soon.

Q. You must have started off the night of the 12th or 13th?

A. Perhaps so.

Q. After the contract was signed, before you started for New York, did you talk with Lawrence and tell him what contract you had made there at Boardman's house?

Objected to as immaterial. Objection overruled and defendant excepts.

A. I should think I did.

Q. You think you did?

A. Yes, sir.

Q. Did you also tell him to pay Boardman \$4,000?

A. I don't remember that I did.

Q. I will ask you; didn't you tell him to give Boardman checks for \$4,000 on funds of the C. R. R. of I., or funds of Receiver?

A. I don't remember.

Q. Did you tell Lawrence, at that conversation, after the contract of the 11th of February was signed, that you were to have a half interest in the Edwards' claim, if it was purchased for \$8,000.

A. No, sir.

Q. Did you tell him that you wanted him to take one half interest in the Edwards claim, if it was purchased for \$8,000?

A. No, sir.

Q. Then he gave the checks on the Central fund without any direction from you; without your knowledge?

A. I don't say that.

Q. Do you remember being up at Liscomb and going out over the F. U. R. R. with an engine with Hayden and others,

sometime in January, 1876, after you were appointed Receiver of the C. R. R.?

A. I went with Tripp.

Q. Was Hayden along?

A. I don't remember that he was.

Q. Do you remember he wasn't?

A. He may have come back over, but I don't think he went out. My recollection isn't distinct on that. I recollect distinctly of being with Tripp.

Q. Did you have some talk with Hayden on that trip in which you said to him in substance, this you said, "Hayden it is a good thing; we can build this road. I will put some money in myself, but of course that is to be kept quiet because I am Receiver of the C. R. R. of I., and I wouldn't have it known that I am personally interested in it." Didn't you say in substance that to him?

A. I don't know that he was there.

Q. Didn't you state in substance that to Hayden?

A. I could'nt if he wasn't there.

Q. Did you say that you didn't state to Hayden on that trip, in substance, as I have asked (reporter reading second question above)?

A. No, sir. I cant say what I said to Hayden other times.

Q. I don't ask about that. State whether or not, on that same trip that I have refered to, you didn't state in substance to Tripp, "The F. U. R. R. is a good thing; we can build it. I have had experience in the Montezuma road and know what I am talking about, and will put some money in the road myself, but I don't care to have that known, as I am Receiver of the C. R. R. of I. Either January or February, at one time, they went up over the road on the engine, (Objected to as immaterial and incompetent) and this was a month before the contract was made. (Objection overruled and defendandt excepts.

A. You want I should answer it, yes or no?

Q. Answer it as you think best?

A. I should say no. I wish to explain.

Q. Go on.

A. I said if I didn't continue Receiver, and Edwards was out of the way, I would take hold and help, provided other people went in, but while I was Receiver of the C. R. R. of Iowa I could do nothing—nothing more than the C. R. R. could give them in regard to their freight debt. That it wouldn't be proper for me.

Q. Did you tell Tripp at that time, or about the time, that if that road would be built it would be a great advantage to the C. R. R. of Iowa?

A. I think I did.

Q. Did you tell him it would be worth \$200,000 to them?

A. No, sir. I don't think I named any sum. The reason I think I said so, it would be my conviction.

Q. At the time you was down to Boardman's house that

Q. Was this after the article of incorporation were made by night, at the time the contract was made, did Boardman say during the evening that he would take \$10,000 stock of the construction company?

A. I didn't hear him say so.

Q. Did you hear him name Dr. Carpenter and Mr. Ware as willing to take some stock in it?

A. When you mentioned their names, Dr. Carpenter and a relative of his might be got to put in some money.

Q. Do you remember that Boardman said that night that he had a talk with Gov. Merrill; that he would put in \$5,000 or \$10,000?

A. I don't remember. I don't think he said it in my presence.

Q. Did you state that night, that you had seen Gov. Merrill; that he would put in \$5,000 or \$10,000?

A. No, sir. I said I had talked with Ezekial Clarke, and I think, perhaps, with Deacon Merrill, brother of the Governor.

Q. Did you say he would take any of the stock?

A. I stated, if I remember, what he said to me. He just wanted to know.

Q. I don't want to know what the talk between you and Clarke was ; just what you said that night at Boardman's. Did you say down there at Boardman's that night, in substance, that you had talked with Ezekial Clarke and that he would take \$10,000 stock?

A. I stated I had seen him.

Q. Did you say he would take \$10,000?

A. I didn't say any amount.

Q. Did you say you thought he would?

A. I said under certain conditions.

Q. Did you state what the conditions was?

A. Get a company organized and the road go ahead.

Q. Did you say that Lawrence would take any stock?

A. I said I thought he would.

Q. How much?

A. I don't know as I said how much, but he said he had means.

Q. Didn't you say he would take \$5,000 or \$10,000 in the construction company?

A. I don't know that I mentioned any sum.

Q. Did you say that Cooper would take stock?

A. I don't know that I mentioned his name.

Q. Did you say that Snyder would?

A. I said he might.

Q. Did you say that he would take?

A. No, sir.

Q. Didn't you say down there that night, that you had seen him and that he would take from \$5,000 to \$10,000?

A. No, sir.

Q. Did you say that you had a talk with Lawrence, in which he said that he would take from \$5,000 to \$10,000?

A. I said I had talked to him about it, and if it was a good thing he would go in.

Q. Did you say you had talked with Merrill?

A. Yes, sir. That he and his brother would take \$5,000 to \$10,000. I said they might.

Q. Did you tell them down there that night about your being successful in building the Montezuma road?

A. No, sir.

Q. Did you at any time tell Tripp and Noyes that?

A. I stated I had built it. I didn't know whether it was a success or not.

Q. What position did you start this claim upon which you based your hopeful view?

A. I supposed the aid over at Grundy Center and at Beaman would be secured, and Tripp, Noyes and Hayden and Churchill having money would start up their friends to put in more money.

Q. Tripp said he had no more money?

A. He said he had no more.

Q. Didn't the gentlemen, Noyes and Hayden, say that they had all they had in it.

A. They said they could induce other parties to take hold of it.

Q. It was expected that night that the road would be built, was it not?

A. I took a hopeful view of it.

Q. Nobody expressed any doubt about the railroad being built if this arrangement was carried out?

A. Yes, sir. Hayden did.

Q. Did anybody else except Hayden?

A. I don't remember that I heard any other one.

Q. Then the contract was made that was made that night?

A. That was before that, but Hayden spoke after that, too.

Q. That night at Boardman's when this contract was made, was there anybody expressed any doubt, but if that contract was made as it finally was made, that the road would go ahead and be built?

A. I didn't hear anybody express anything particular about it one way or the other, that I remember, only that each should do what they could.

Q. The general expectation was that the construction compa

ny would be formed?

A. I think so.

Q. These parties that you named over you expected at that time would take some stock and help build the road?

A. I had no positive knowledge.

Q. You expected they would?

A. Expectation is one thing and knowledge is another.

Q. I am asking for expectation?

A. I can't say that I expected, but what they might.

Q. Did you think that night that the road would be built?

A. I thought it would be built.

Q. Did Boardman think that night that it could and would be?

A. I didn't hear him say.

Q. You wouldn't have agreed to take \$3,500 in drawbacks unless you had supposed the road was going to be built?

A. I don't think it compromised the road.

Q. I want you to answer that question.

Objected to as incompetent, immaterial and irrelevant. Objection sustained and plaintiffs except.

Q. What induced you to agree in that writing that the \$3,500 freight money due the C. R. R. of Iowa, from the F. U. R. R. Co., should be taken in drawbacks?

A. A friendship for these people and a desire to help the C. R. R.

Q. How many contracts had you made for the C. R. R. where you paid money for the friendship you had for the people?

A. I am responsible to the U. S. Court for my acts, not to these gentlemen.

Objected to. Objection sustained and plaintiffs except.

Q. Was there anything else that induced you to sign this contract except your friendship for these people and a desire to benefit the C. R. R. of Iowa?

A. Not that I know of.

Q. How did you expect it to benefit the C. R. R. of Iowa?

Objected to as incompetent. Objection overruled and defendant excepts.

A. I thought if this lateral branch could be built it would bring business to the C. R. R.

Q. Your expectation of the benefits to the C. R. R. depended upon the building of the road?

A. Yes, sir.

Q. Then when you said you expected it to benefit the C. R. R. you expected the F. U. R. R. would be built?

A. I thought it might be.

Q. Did you figure up, down there that night, how much you could raise to start in with a construction company?

A. No, sir.

Q. Didn't you figure it and state that you had pledged about \$60,000.

A. NO, SIR.

Q. Wasn't it figured up that night how much it would cost to build that road?

A. Something had been said about it before. I don't know that there was that night.

Q. How much was it talked about that it would be?

A. From \$80,000 to \$120,000, I think.

Q. Was it stated that night how much local aid there was raised?

A. Not anything that I remember.

Q. Nothing said about it?

A. May have been.

Q. Did anyone that night at Boardman's figure up about \$60,000—\$50,000 or \$60,000—that you could rely upon?

A. Not that I know of.

Q. Didn't hear that from anybody?

A. No, sir.

Q. Nor you didn't say it?

A. No, sir, I did not.

Q. Do you remember that night of reading a piece that you had written for a newspaper about stud horse crew there. You

said you had written it Sunday and your wife had taken you to task about it.

A. My wife never takes me to task for anything.

Q. Do you have any recollection of it?

A. No, sir.

Q. No recollection of reading an article clipped from a newspaper that you had written on stallions?

A. Written Sunday night.

Q. Yes, sir.

A. No, sir, by the Gods no sir, not by the great God, but your kind.

Q. I take the big Gods in mine, mine is much the same as your's and Beecher's. (Grinnell's sorry for the Gods.) Did you go out over the road with Noyes at any time?

A. Yes, sir.

Q. When was it?

A. It was a good while after the transaction. I can't remember just the time. I should think it may have been April. I don't recollect the date, but I know it was cold weather.

Q. It was after February?

A. Yes, sir; must have been.

Q. Rode over the line in a buggy?

A. Rode out from Steamboat Rock to Grundy Center. I took the narrow guage road and he went home. We road out over contemplated line from Beaman to Grundy Center.

Q. Had you been over there prior to the 11th of February, when this contract was made?

A. No.

Q. Hadn't you been over the line from Beaman to Liscomb?

A. Yes, sir, I did, with Tripp, over the completed line. I had been over that.

Q. Did these plaintiffs, there that night, state how much local aid could be obtained?

A. They did state sometime. I don't know that they did that night. I had an idea at that time, but I don't remember now what it was.

Q. Did you get any understanding that night from Boardman that he would put in any money?

A. No, sir.

Q. Into the construction company?

A. I may have thought that under certain conditions he would. I believe that under certain conditions he would.

Q. Didn't you hold out to all of these parties that night that there would be no trouble to build this road; go right forward and organize a construction company, and it would and could be built?

A. No, sir. For I refused to have anything to do with the construction company.

Q. Wasn't you to back it with your?

A. I gave them what encouragement I could. I said that before and after and say it now.

Q. Did you carry out this contract as Receiver in regard to the \$3,500 freight, or did you finally put that to judgment and seek to collect?

A. We gave the rebate so long as the road was according to the contract made by my predecessor.

Q. Are you in the attitude of demanding of these plaintiffs, as bondsman, that \$3,500 that is the balance of it unpaid.

Objected to as immaterial.

A. It is a legal question, you will have to refer it to Brown.

Q. You can state the fact of your seeking to collect it.

A. There is a record about and that is the reason I declined.

Q. I submit to the Court whether I may have the question answered?

Court—He may answer whether he understands he is demanding payment, or whether he is not.

Defendant excepts.

A. I will say very frankly that we think the C. R. R. has an equitable claim on these parties.

Q. Seeking to collect it?

A. Judgment has been rendered, I understand.

Q. According to this contract you entered into February 11th

that wasn't to be paid only in rebate?

A. If the road was built; if the road had been built.

Q. Nothing about the road being built in the contract?

A. Yes, sir; there is I think.

Q. What is it?

A. I may be mistaken about that, but I think there is.

Q. Was that your understanding that that was conditional?

A. No, sir; but there is a reference to the formation of a construction company here.

Q. Yes, I know.

A. And if that construction company had been formed and the road been built, I should have considered that we were bound to take pay according to that?

Q. Was there any other plan provided for the paying of this \$3,500 except in state?

A. Not by me?

Q. You say you didn't have anything to do with this construction company that night, and you never did?

A. I never did.

Q. Didn't you attend a meeting of the construction company up here to the bank?

A. I went there by invitation to hear the conversation.

Q. Did you attend a meeting?

A. I did.

Q. Did you make a speech there?

A. I never make speeches. I may have made a few feeble suggestions.

Q. What were your feeble suggestions on that occasion, so feeble they have blown out of sight?

Q. Were they about building the road?

A. About taking stock.

Objected to as immaterial.

I was talking for the C. R. R. of Iowa. I talked there—was there to secure our money—C. R. R. money.

Q. How long was this after the 11th of February, that you attended this meeting?

A. I should think it was thirty days, may be. I can tell exactly—thirty to sixty.

Q. How many were there there?

A. I have forgotten.

Q. Good many or only a few?

A. A good roomful, I should think.

Q. Who else suggested beside yourself.

A. Worley, and I don't know who all.

Q. Was this after the article of incorporation were made by Boardman.

A. I think so.

Q. Did they have those articles there that night?

A. I don't remember.

Q. Did you ever look over those articles?

A. I never saw them until I saw them here to-day that I know of.

Q. Did you have knowledge at the time the articles were formed or drafted?

A. I should think there were some formed.

Q. Did you know about it at the time?

A. I can't say whether there was any at the time or not. My impression is, there was.

Q. You say you attended there by invitation?

A. Yes, sir.

Q. Who invited you?

A. I should think Dr. Sears or Worley.

Q. You went there, I believe you said, to get your \$3,500 of the R. R.?

A. I went by invitation. That was my aim when I went there.

Q. Did those gentlemen who invited you, tell you they would have your money?

A. I don't think they did.

Q. They wasn't conscious that you was there to collect your money?

A. No, sir.

Q. Didn't you go for the purpose of forming a construction company?

A. There may have been a combined idea. My first idea was the C. R. R. of Iowa.

Q. If you went there for the purpose of forming a construction company, wasn't it because you had agreed to do it, on the 11th of February, down at Boardman's house?

A. No, sir.

Q. When did you give up your hopeful view of the R. R.?

A. When the Grundy Center people turned their affections from these people and gave their allegiance to the B. & C. R. R.?

Q. When was that?

A. I should think the change was along in the spring.

Q. The R. R. was not agitated until this last spring?

A. Yes, it was.

Q. No subscription taken up?

A. There were subscriptions made.

Q. What time do you think the Grundy people concluded not to help you, but the other company?

A. That time, April or May.

Q. At that time the Burlington company's old road hadn't been sold under the foreclosure?

A. They had their Cedar Rapids emissaries over there.

Q. Did you ever subscribe any stock to this construction company?

A. No, sir.

Q. Did you ever ask anybody to, after this meeting of the 11th of February?

A. No, sir.

Q. Never saw Ezekial Clarke?

A. I might have seen him.

Q. Never asked him to sign?

A. No, sir.

Q. Never talked subscription stock to any of these parties that you named down there?

A. No, sir.

Q. Never asked Lawrence to subscribe any stock?

A. I might have.

Q. Did you?

A. I don't remember.

Q. Did you ask Cooper or Snyder?

A. I might have mentioned the fact of an attempt to organize a construction company.

Q. You never took any active part in getting up the construction company?

A. No, sir.

Q. Never subscribed any yourself?

A. No, sir.

Q. Didn't you say there that night, in the presence of these gentlemen, that you would put in \$10,000 for yourself?

A. No, sir. I haven't got it; didn't know where it was.

Q. It seems that you found \$4,000 of it afterwards?

A. If I wasn't on the witness stand I should say that was a libel.

Q. Did you see Dr. Sears down there that night that this contract was made?

A. I think he was.

Q. Are you positive of it?

A. I think he was.

A. You are as positive of that as you are of the balance of the testimony you have given here?

A. I think I am.

Q. Did he mix in the conversation?

A. I should think he did.

Q. Did he go down with you?

A. I don't remember.

Q. Was he there when you got there?

A. I don't remember.

Q. Did he go away before or after you did?

A. I don't remember.

Q. Suppose Boardman, Tripp and Noyes and Hayden say he wasn't there at all.

A. I should think he wasn't if they all say so.

Q. They do.

A. Then I think he was not.

Q. Then you didn't state it as a positive fact?

A. I will swear he was there and stand the consequences.

Q. Swear positive?

A. Yes, sir, and take the consequences.

Q. What did Dr. Sears say that night?

A. I can't say what he said.

Q. Did he say anything?

A. I can't remember any particular thing Dr. Sears said.

Q. Can you remember the substance of anything he said?

A. I can't. I think he was there; that is all I can remember.

Q. Can you remember the substance of anything Boardman said that evening?

A. Boardman talked very little.

Q. Could you give the substance of what he said?

A. He said that law was his profession and poor health was his condition, and that he had enough to attend to without railroads, but he believed this might be a good thing, and if it was got up and the Grundy Center folks done their duty, and others, he would do his part. I think that is the substance of it.

Q. You think that is the substance of it?

A. Only that he wouldn't agree beforehand to put any money in a construction company. He had refused repeatedly to say to the Grundy Center people he would build the road, or put any money in it, under any conditions, and I won't depart from it.

Q. Can you give the substance of what you said in regard to building the road that night at Boardman's?

A. I said if the Grundy people stood by their terms, with what assistance the C. R. R. might give, if they took hold, I thought the road might be built.

Q. Did you state what assistance the C. R. R. might give?

A. I think what I proposed, expense and carrying iron. We

were to take pay in draw-backs, and if it was completed I would make application to that.

Q Did you make application to the court to do that?

A. There was no occasion to do that.

Q Did you say anything else there that night?

A. I am inclined to think that I did; that I looked favorably and hopefully on the plan of building.

Q. Will you state the reason why?

A. You have some fresh blood in here.

Q. What was the fresh blood?

A. Boardman.

Q. Was there any talk between you and Boardman that night or previous to that about buying the Edwards' claim?

A. The Edwards' matter had been talked up by Boardman and me.

Q. In that talk between you and Boardman that night, was you to furnish anybody to assist in buying it, or to assist yourself?

A. No, sir.

Q. Was it understood between you and Boardman that Boardman would put in all the money to buy it, if it was bought?

A. Not unqualifiedly.

Q. Who was to help or take a share with Boardman, if any body?

A. Boardman said he didn't feel as though he could shoulder more than one-half of it for he didn't want to lay out the money to help these people out, and Lawrence was proposed, and some other parties. I don't remember.

Q. Who proposed Lawrence?

A. Brown was expected to go in, and Boardman's brother-in-law here, I think.

Q. Who proposed Lawrence to go in; you didn't do that?

A. I didn't say that.

Q. Did you?

A. Perhaps I did.

Q. Tell us certain whether you did or not?

A. I don't remember then how Lawrence came in. I am inclined to think it was some of the others—Boardman, if nobody else.

Q. Was you present at any conversation between Lawrence and Boardman about buying the claim?

A. No, sir; I think not.

Q. You understood Boardman, he would only put in money to buy the Edwards' claim out, but would not put in money in the construction company?

A. I don't say that; if the construction company was got up on fair terms and the Grundy Center folks come to terms, he would then put in.

Q. Did he say how much he could do?

A. No, sir, not in my presence.

Q. Didn't say how much he would do?

A. No, sir; he did not.

Q. Nothing definite talked as to what his part would be?

A. I think other folks talked about that. He was to put in \$10,000.

A. Didn't you say that for him—that he would put in \$10,000, and he heard it and didn't object to it before signing?

A. No, sir.

Q. Did he after it was signed?

A. The main talk was after it was signed, about Clarke, Merrill, *et al.*

Q. Didn't you start home as soon as it was signed?

A. I said I didn't know whether I stayed all night or not.

Q. The rest of them; did they go right away or stay?

A. Stayed, I think.

Q. Do you remember of saying, when you got through and after you had signed as Receiver for the C. R. R. of Iowa, you said, "Gentlemen, that is worth \$5,000, to you; that insures the building of the road?"

A. If you all work together and get the road built, the drawbacks you get will be worth \$5,000 to the road.

Q. Did you say it the way I put it?

A. No, sir; unqualifiedly I did not.

Q. You expected the road would be built, at that time?

A. I thought it might be.

Q. Didn't you expect it would be?

A. I can't say how much I expected. (I know it is the expectation that the wicked will be cut off.)

Q. Was there any talk that night down at Boardman's house as to which of the mechanics' lien claims was ahead--whether Edwards' was behind Noyes, Hayden and Churchill?

A. It was known where they stood, I believe.

Q. That is, Tripps, Noyes and Hayden's was all ahead of Edwards'.

A. There was nobody ahead. All dated together. It was a corpse with nobody to bury it. Nobody ahead and nobody behind.

Q. That ain't the question?

A. That is the way I understand it.

Q. Didn't you know that night that Noyes and Hayden and Tripp's claim had been filed, claiming mechanics' liens before Edwards'.

A. I may have known it.

Q. Didn't you know that Noyes and Hayden and Tripp's claims filed for mechanics' lien first?

A. I don't know.

Q. Wasn't that talked over that night?

A. I think not.

Q. Wasn't that the sticking point with Noyes and Hayden and Tripp to yield their property of mechanics' lien?

A. I may have had some conversation with Hayden and got my impressions that his claim was first, but I don't remember any conversation about that there that night.

Q. If Edwards' claim had been first, would there have been any necessity of stating that it should be first in this contract?

A. I should presume not. It was more of a question of cutting down the Edwards' claim. That was what Boardman was employed for, to cut down the Edwards' claim; to get Edwards'

out of the way.

Q. I will come back to the question and ask you again whether you understand that Noyes and Hayden a Tripp's claims for mechanics' liens had been filed prior to the filing of the Edwards' claim?

A. I should say that I must have had knowledge that they were, but I can't remember that anything was said about it that night.

Q. Was it talked of that night that there was a debt for rolling stock and locomotive that they had up there on the F. U. R. R.

A. There was something said about it.

Q. Do you remember of any talk to the effect that when you went to New York, or coming back, you would go by the way of Cincinnati and make arrangements for extension of time?

A. I was asked to do that.

Q. Did you undertake to do that?

A. I didn't undertake, because I didn't do it.

Q. Did you say that you would try to do that?

A. I think I said if I had certain representations from the company; if what they could do or give security for it so I could go and see them, I would go and see them, either going or coming. But they didn't make out those representations. Therefore I didn't go. Didn't call.

Q. Did you say anything about stopping at Pittsburgh and making inquiry about getting iron for the road, that night down there at Boardman's?

A. I said if you write to me at New York and want me to stop and see anything, I will stop over a day or so at Pittsburg and Cincinnati for you. I think I said that.

A. Did you stop to see anything about any iron?

No, sir; I didn't go anywhere.

Q. Who was to write to you?

A. I suppose the president of the company.

Q. What was he to do as a condition for you to stop?

A. The details of it I can't say. They owed a certain

amount upon the locomotive and cars.

Q. Wasn't it talked over that night that the construction company that was to be formed would pay off that debt and keep the rolling stock?

A. I don't remember of that being said.

Q. Don't you remember that that was talked about.

A. I do not.

Q. Did you know about how much there was due on that rolling stock?

A. No, sir.

Q. Did you learn that night?

A. No, sir, and don't know now—never knew. May have heard, but it didn't concern me and I never paid any attention to it.

Q. Was his construction company to pay any of the debt of the concern except those secured liens and provided for in your agreement. The new company that was to be formed?

A. I didn't hear anything about that.

Q. Do you remember that day at the office of Boardman of having a talk with Noyes wherein you told him not to say anything to Dr. Sears about this meeting at Boardman's that night; that you didn't have confidence in him and didn't want him there?

A. No, sir.

Q. There was no such talk?

A. I don't remember.

Q. You didn't say that to Noyes?

A. I don't remember anything of the kind.

Q. Do you say that you didn't say it to him?

A. To the best of my recollection I didn't say anything about Dr. Sears—(witness.) I wish to explain in regard to my relation to the road; that I never varied from that position; that I could have no pecuniary interest in the building of the road while I was Receiver, but the encouragement I gave or tried to give was founded upon this: the C. R. R. could in this way get back their money without embarrassment to these gentlemen and

if the road was carried out according to the original plan it would be a benefit to the road, and I thought as custodian I was elect about that and thought if I was out of the road I would do something toward the building of the road if I had the means; and that has been my relation, and is now. And that I did encourage these people to believe that if there was a company formed that the road would be built and that they could get this money back, and I tried to get Boardman in; for which I am very much ashamed of myself and mortified on Boardman's account, at least. I have great regrets that I ever said anything to him about it.