Ans. One day last summer, on my private business, with an inmate of his house - not with him.

5 X. How long has it been, since Mr Kirby, the elder, was incapable of transacting business?

Ans. I have looked upon him for the last two or three years, as being mentally incapable to transact his business.

6 X. Did you see him about the 23rd March, 1878; was he capable then?

Ans. Do not know that I saw him then; have seen him two or three times a week for the last year or two - see him on the sidewalk - I do not think he was for the last two or three years.

7 X. Did you see him about 1870 and 1871?

Ans. Yes, sir, every year, except when I was away from the city.

8 X. I suppose he was; there was nothing to make me think the contrary.

9 X. State the facts and circumstances which induce you to believe him incapable of transacting business for the last two or three years?

Ans. I formed my opinion from his general appearance, manner and conversation.

10 X. Did he talk rationally about his affairs, when you last talked with him?

Ans. I thought not.

11 X. Did he speak about the house, 303 S. Pratt street, in your last conversation?

Ans. No, sir.

12 X. Did he speak about any of the mortgages in his last conversation with you?

Ans. No, sir.

13 X. Did he speak of his children?

Ans. I think not.

14 X. Did he speak of your wife?

Ans. No, sir, his conversation was in reference to himself alone.

15 X. Who has attended to your wife's step-father's business, the last two or three years?

Ans. Do not know.

16 X Who attended to his business from 1870 to 1877?

Ans. I am not positive, he generally consulted me; he had not a great deal to attend to; he was living privately; I told him who to get, when he wanted anything done.

17 X. When did he quit the shipping business?

Ans. I do not know the date, and could not approximate the time; I think it was before 1870.

18 X. Was he capable of transacting business in 1871?

Ans. I suppose he was.

19 X. Did you assign your contract, which you said you had with James Logue for leasing this property on Pratt street to any one; and if so, to whom?

Ans. I made no assignment, except as I have stated, by getting leases; we built a row of six houses, and got the purchaser's leases for them, we did not keep; Mr. Yiesly kept one, and we sold the others.

20 X. Did you and Yiesly divide the proceeds of those that were sold?

Ans. I think we did; we were mutually interested in them.

21 X. In what name, was the building of those houses?

Ans. carried on in the name of Yiesly & Smith.

22 X. Did you pass receipts to Mrs. Kirby for the sums of money paid you by her?

Ans. I think it is possible; I was in the habit of giving receipts for all money I received; I am not positive.

23 X. Look at respondent's commission, "Exhibits F. A. T., No's 4, 5, 6, 7 and 8", now shown you, and say in whose handwriting is the signature James Smith thereto? (Signatures