knew they had lost $8000, and yet doing a business that could not realize in any year a very large amount he considered their position perfectly safe and solvent, and had no reason to suspect the contrary.

He admits that he made a further purchase from these plaintiffs after he knew he was insolvent, but says at the time he contracted the debt he thought he would be able to pay it.

His explanation about giving his note to his father for the $7000 is of such a character that it is difficult to view it in the light he now represents it. He had refused to give the note when he first got the stock, and continued to do so until he was clearly and undoubtedly insolvent, then he gave his own note and got his brother to guarantee it, and he guaranteed his brother's notes, and yet all that time he did not think or believe his father was getting the same with any intent of suing it, and the next day when his father ordered him to give the note of the firm for the debt of his brother and himself, and the father's account against the firm, he then did not believe his father intended to sue the firm on the note. He did not deduct from his father's account the amount he owed the firm, but gave the note of the firm payable immediately for the full amount of his father's claim, and took the father's notes for their account against him at one and two years. When sued on this note he put in no defence, but did defend the actions brought by all the other creditors, except Leming, and his father obtained the first judgment, yet he says, in giving the note of the firm to his father, he had not the slightest intention of thereby giving his father a preference over the other creditors of the firm, and when his father gave this note to an attorney he stopped payment, but he did not defend the action nor inform his creditors how he had been induced to give the note to his father for $4000 at that particular juncture, when he had always refused to give that note before, nor why he had guaranteed the payment of his brother's note.

Then in giving the note for the demands which his father took up at the Ontario bank he "did not know," but "did suppose" at the time his father would put that note in suit, but it was not given to him with any intention on his, John Henry's part, directly or indirectly that his father should get a preference over the other creditors. He did not defend this suit or give his creditors any notice about it, and yet he takes great pains to state the particulars of his father's liabilities on account of the firm, and how he would be ruined on their account if pressed for his liabilities on their account.

It is difficult to come to any other conclusion than that the giving of all the notes was in fact to enable the father to obtain a large judgment against the firm, that through the means of that judgment the other creditors might be compelled to accept such compromise as they might offer, or in the event of the compromise not being accepted that his demand against the firm might be paid and secured as far as the assets of the firm would permit to the exclusion of the other creditors.

To show the peculiar views that John Henry has on the subject of insolvency and failing circumstances it is only necessary to refer to the foot of the seventh page of his examination before the County Judge when he says, "I did not consider myself then (on last of September or first of October) in failing circumstances, and I did not consider myself so until sued by Leming. I was hard up, but thought I would get through like others." This was when he gave his note to his father for the $4000, and this was after he was fully aware that the assets of the firm were at least $7000 less than their liabilities. If I am to place a meaning on the language used by him so as to gather what his ideas of insolvency are, I shall be compelled to hold that they are not those usually held by business men as seemingly intelligent as he is. One prominent reason urged for giving the note on which his father's second judgment was obtained was to save the costs of the suits on the several notes as they might from time to time mature, yet he was conscious that the judgment his father then had would sweep away all the stock in trade of the concern, and as far as the rest of the creditors were concerned it would matter but little. Nevertheless he was anxious to save the costs of the suits. His anxiety on this ground was commendable, but it would seem to be more on account of his father than of his other creditors.

In a matter of so much importance to the defendant I am surprised that some steps were not taken to procure an affidavit of the book-keeper, Mr Hilyard, verifying the supposed solvency of the firm in the spring of 1863, and when the purchases were made of goods in Montreal. The distance to Cleveland is not so great but communication might be had with him and an affidavit obtained. The defendant does not seem to have considered that necessary, nor does he give a satisfactory account of how or why he should have laboured under the hallucination that he was perfectly solvent when he contracted the debts now sued for.

I have carefully read and considered the answers of the defendant to the interrogatories, and the reasons and grounds on which he relies to sustain the conclusions put forth by him, and I am compelled to decide against him.

In looking at all the circumstances as they are presented before me, if I discharged the defendant out of custody I think I would be making that portion of the statute a nullity, which requires the Judge to recommit a defendant when he appears to have wilfully contracted a debt without having had a reasonable assurance of being able to pay the same.

Having arrived at the conclusion that he did wilfully contract the debt in this cause without having had a reasonable assurance of being able to pay the same I am compelled under the statute to direct his recommittal.

The defendant has been in prison since the 28th May as I understand, and this matter was discussed before me previous to last Michaelmas term. I think the ends of justice will be answered by my ordering the defendant, John Henry Holden, to be recommitted to the custody of the Sheriff of the United Counties of Leeds and Grenville, and that he be there detained in custody until the first day of June next.

If the plaintiffs should also desire to obtain an assignment of his interest in the assets and effects of the firm of J. H. Holden & Brother, I will