There are three exceptions to the exclusion of evidence, which are found in the forty-first, forty-second, and forty-third assignments of error. The forty-first and forty-second assignments of error are the sustaining by the court of objections to the following questions asked a witness: "Was it not generally understood there in the community in the fall and winter of 1884 that he [Fennell] was selling goods at cost, and less than cost?" And "from your experience as a merchant, would you or not say an ordinarily prudent business man would form a partnership with another to go into his business without inquiring as to his mercantile business, and examining his books?"

The first question was objectionable because it sought to prove by notoriety or reputation an objective fact,—a particular fact,—in which the public had no interest, and which cannot be proved in that way, (1 Greenl. Ev. 138; Shutte v. Thompson, 15 Wall. 163;) and the second question called for the mere opinion of the witness,—an opinion involving a conclusion which, if material, was an inference to be drawn by the jury from circumstances which may be proven. Such evidence was inadmissible. The forty-third assignment of error is the exclusion of the evidence of the witness Shelton, which was "that he was engaged in the mercantile business at Larkinsville, Jackson county, Ala., in 1884, and the early part of 1885, and during the time knew of C. M. Fennell engaging in the mercantile business at Scottsboro, in the same county; that in the latter part of 1884 he heard from numerous parties that Fennell was selling out at less than cost, and that it was generally believed in the community that Fennell was in embarrassed circumstances, and would break or fail in his mercantile business." This testimony, if it was to any material fact, was hearsay and rumor, and the belief testified to was not shown affirmatively to have been the general belief in Scottsboro, the community in which Fennell did business, where Keith resided, and where the sales by Fennell to Keith were made. It was properly excluded.

The real issue in the case is whether Keith had notice, actual or constructive, that Fennell was insolvent or in embarrassed circumstances at the time of the sales by Fennell to him, and that he (Fennell) made the sales with intent to hinder, delay, or defraud his creditors. Keith paid Fennell in cash the fair, reasonable value of the goods. This fact being shown, it devolved on the plaintiffs in error, the defendants below, to show that Fennell by the transaction attempted to hinder, delay, or defraud his creditors, and that when Keith purchased from him he knew that such was his intention, or had information of suspicious circumstances, which ought to have led him to make inquiry, and that if he made such inquiry, and followed it up, it would have led to knowledge of Fennell's fraudulent intent. Stix v. Keith, 85 Ala. 465, 5 South. Rep. 184; Skipper v. Reeves, 93 Ala. 332, 8 South. Rep. 804.

There was much evidence tending to show that Fennell's intent in making the sales was fraudulent, and in this respect it may

be conceded that the plaintiffs in error discharged the burden of proof resting on them. But this fraudulent intent is immaterial unless they traced to Keith knowledge of it, or information of suspicious circumstances, which ought to have led him to make inquiry, and which, if followed up, would have led to knowledge of such fraudulent intent. The burden of showing such knowledge or information of such suspicious circumstances was, as we have said, on the plaintiffs in error, and, in our opinion, they have failed to discharge it. We have been unable to find in the evidence any fact or circumstance tracing to Keith knowledge of Fennell's insolvency or fraudulent intent, or information of any suspicious fact or circumstance, which ought to have put him on inquiry, and which, if followed up, would have led to such knowledge at or prior to the sales.

The bill of exceptions sets out all the evidence in the case and that which was excluded. If the whole evidence, with all inferences that the jury could justifiably draw from it, was insufficient to support a verdict for the defendants, now plaintiffs in error, the case will not be reversed, although there may have been errors committed by the court below in rulings on evidence, in charges given, and in the refusal to give certain charges requested by the defendants. Randall v. Railroad Co., 109 U. S. 478, 3 Sup. Ct. Rep. 322; Railroad Co. v. Moore, 121 U. S. 570, 7 Sup. Ct. Rep. 1334.

Our opinion is that the verdict was not only responsive to the evidence and the law applicable to the case, but that, in view of all the evidence, no other verdict could properly have been rendered by the jury. The judgment is affirmed.

On Petition for Rehearing.

(May 30, 1893.)

TOULMIN, District Judge. Rule 29 of this court provides that a petition for rehearing must be supported by certificate of counsel. The petition in this case is not supported by such certificate, and for that reason should be denied. We, however, will not rest our denial of the petition solely on this ground, but will consider the petition on its merits. The counsel for plaintiffs in error claim that the court erred in holding that evidence that it was "generally understood in the community that Fennell was selling goods at cost" was inadmissible, and that the court was wrong in considering that the objective fact sought to be thus proved was that Fennell was selling goods at cost. They claim that what they sought to prove by this evidence was notice to Keith of the fact that Fennell was thus selling goods by showing that it was a matter of notoriety in the community, and that this fact was a suspicious circumstance, which ought to have put Keith on inquiry. If Fennell's financial embarrassment or insolvency was proved by proper evidence, then proof of its notoriety in the com-