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-

munity would be admissible to bring home knowledge of the fact to Keith, who resides there. 1 Brick. Dig. p. 847, §§ 616–617. But the notoriety of a sale or purchase in a community is nothing more than hearsay, and is inadmissible as evidence, and it is, in our opinion, inadmissible to raise a presumption of knowledge in the community of such sale or purchase. Steele v. Worthington, 7 Port. (Ala.) 266; Yarborough v. Moss, 9 Ala. 382. If, then, the court misconceived the purpose of the inquiry as to the notoriety of Fennell's selling goods at cost, as is claimed, we are still of the opinion that there was no error in the ruling of the court in reference to it. There was evidence, admitted without objection, that Fennell sold an overcoat at a price below cost, and that he sold some other goods at very low prices, some of them, in the opinion of the witnesses, at cost; that no one else in the community had the reputation of selling as cheaply; and that it was generally understood that he was selling cheaply. But the evidence further was that he was selling for cash and others on credit, that he bought for cash generally, and most other merchants there bought on credit, and that discounts are given from 1 to 10 per cent. on cash purchases. It also appeared that while Fennell actually sold some goods of a particular class somewhat cheaper than merchants there generally did, there were some kinds of goods that could be bought cheaper elsewhere, and it appeared that some of the goods bought from Fennell by merchants, or by other persons for them, were sold by such merchants at the same prices. The fact that Fennell sold goods cheaper than other merchants generally in the same place did, and that he sold some particular article, whether as a leader or otherwise, at cost or below cost, is not of itself such a suspicious circumstance as, if known to Keith, ought to have put him on inquiry, and which, if followed up, would necessarily or naturally have led to knowledge of Fennell's fraudulent intent. Considering all the facts and circumstances as shown by the evidence, we are satisfied with the conclusions heretofore reached by us in the case.

There was evidence of Fennell's removing some goods from his store in Scottsboro to Woodville some time in the fall of 1884, and prior to Keith's purchase; but there was no evidence, direct or circumstantial, of Keith's knowledge of this. There was also evidence of Fennell's removing goods from a store in Woodville, 20 miles from Scottsboro, about the time of the seizure by the marshal. This was a very suspicious circumstance, but this occurred, even if known to Keith, after the purchase by him.

Rehearing denied.

McMULLEN v. NORTHERN PAC. R. CO.

(Circuit Court, E. D. Wisconsin. August 4, 1893.)

1. REMOVAL OF CAUSES—PRACTICE — REFUSAL OF PARTY TO RECOGNIZE JURISDICTION.

In a cause removed to a federal circuit court from a state court which had refused to order the removal, plaintiff, after refusing to recognize the