No. 13754

Supreme Court of Illinois

Watt

vs.

Hopkins

Pleas held before the honorable David M Woodson judge of the first judicial circuit in the State of Illinois, at a term of the circuit court of Scott County Illinois sitting as a court of Chancery on the 27 day of September A.D. 1850

David B. Watt complainant.
vs
Benjamin G. Hopkins defendant

Be it remembered that on the 9th day of May 1850 the complainant in the above entitled cause filed in the clerks office of the circuit court of Scott county Illinois his bill of complaint in the words and figures following towit. —

"State of Illinois } In the circuit court of
Scott County } ss the May Term A.D. 1850.

David B. Watt
vs } Bill In Chancery.
Benjamin G. Hopkins

To the Hon. D. M. Woodson Judge of the first judicial circuit Sitting in chancery

Your complainant David B. Watt represents that previous and up to the 4th day of September 1849, he and one Benjamin G. Hopkins whom complainant prays may be made defendant to this Bill of complaint were partners in trade, under the style of "B. G. Hopkins & co." in Winchester county and State aforesaid, that on the said 4th day of

September A.D. 1849, Said firm was by mutual consent dissolved, on the following conditions.- Said defendant sold out to complainant his entire interest in the said firm, stock, goods books notes accounts demands and claims of every kind belonging to said firm, for which the said Watt, assumed to pay and discharge all the debts of the concern in St Louis or Elsewhere contracted in the course of their firm business, and execute his bond with good security for the payment of the firm debts by him so assumed, which he performed strictly. Said Watt also as further consideration for the interest of deft. in said concern agreed to relinquish all the claim the firm had against defendant on the books in his individual capacity, and against his son Samuel P. Hopkins, which he did and gave receipts against the same. - As a further consideration in the said sale complainant agreed to pay defendant in six months thereafter the sum of Nine hundred dollars, for which he then and there executed his note to said Hopkins with good security. Your complainant now says that the last named sum was agreed upon as the value of said Hopkins interest in the concern after taking an invoice of the stock, books, and firm debts and that the footing of that invoice was the basis on which the sum of Nine hundred dollars was arrived at, and the complainant induced to give that sum. That the Court may understand this point more fully, had the invoice of debts been five hundred dollars less complt would have given correspondingly more than the said nine hundred dollars for said

Hopkins interest. – on the other hand had the invoice of debts been five hundred dollars more complt. would have given corresponding credit for said Hopkins interest, the amount having been by agreement determined by the invoice and the invoice as footed up on the books being taken as the true invoice, the sum of nine hundred dollars was agreed to be paid by complt. and has been fully paid long since. Your complainant now represents that the invoice of debts stated upon the book of said concern and by which they settled, was not a true and fair invoice but that on the contrary (relying upon the supposed honesty & integrity of said Hopkins to make said invoice conform to the firm transactions) he found on calling for an exhibit of said accounts in St Louis, that he might pay them according to their contract that said Hopkins had either through fraud or mistake made the invoice to fall short of the true amount due in the sum of $156 $\frac{69}{100}$ which complainant was bound to pay and did pay

For a more specific account of the errors in said invoice, Complt. would state that on the 11th May A.D. 1849 Messrs Gruly & Gale of St Louis forwarded to B. G. Hopkins & Co. a letter in reply to their letter of May 7th 1849 covering remittances in which they advised B. G. Hopkins & Co. that they have paid among other things, B. G. Hopkins & Co's note to Oliver Bennet dated first March 1849 & amt. of $80.25. & charged the same to accounts & forwarded the said note, which sum of $80.25. said Hopkins wholly failed to transfer to

the books of P. G. Hopkins & Co, in making up the acct. upon which their contract of dissolution was founded although he transferred other items from the same letter & the books and pretended to post the Books correctly, and notwithstanding he had the Oliver Bennett note before him endorsed and its face charged to their acct. on the books of Gray & Gale, - copies of which letter and note herewith filed marked A. & B. as Exhibits.

Complainant also says that said Hopkins in making said invoice of indebted counted a certain debt of $38. due to said Oliver Bennett at $28. making a difference of $10. in that item which complaint will prove on the hearing, and other small errors to the amt. of the said sum of $156 $\frac{79}{100}$. He further says that in the settlement of said concern he finds that there is a large deficit in the estimated value so that he is bound inevitably without the aid of this court to lose about the sum of four hundred and fifty dollars on account of the false estimates and fraudulent representations of defendants - all of which complt. will fully demonstrate to the court by the production of the firm books & papers vouchers.

Complainant ~~reports~~ represents that the invoice of debts owing by said concern was mainly made from the entries and posting of said Hopkins and that all the errors of omission are of his own making, and that said invoice of debts is made from said defendants own estimates.

Complainant says said Estimates

by which they settled, showed the debts to amount to only the sum of dollars and the same # Dollars as complainant will also show

Complainant also represents that the books of said firm were mainly kept by defendant and being a practical merchant had every opportunity to understand the accounts.

Complainant now charges that defendant at the time of their settlement represented said invoice of debts to be correct. That defendant well knew that complainant supposed the debts therein set forth were all the debts owed by the firm, and that he complt. agreed to give the particular sum of nine hundred dollars for defendants interest only on that supposition. That defendant deliberately left said items out of said invoice for the purpose of defrauding complt. of that amt.

That defendant was well aware that defendant trusted to his entries and estimates as the basis of their said settlement under the supposition that he was acting in good faith.

That defendant was therefore very captious and particular in having the articles of their said settlement drawn in such manner as to exclude complaint from all remedy. And that he procured the execution of said articles by complainant, only by the strongest assurances that the invoice contained a list of all the debts owed by the firm.

Your complainant also says that he is remediless except in a court of Chancery.

He therefore, Prays

That said defendant be summoned to answer the statements and charges of this

was 10 feet on the brother, as complainant will show, if he be sworn the two amounts

*

State of Illinois } ss. Circuit Court of the May
Scott County } Term A.D. 1859.

The clerk will issue a summons out of chancery for deft. Benjamin G. Hopkins returnable to the term aforesaid, directed to the Sheriff of said county to serve

To E.B. Kirby clerk

David B. Watt
Complt.

Bill: not on oath but truly; that specially answer the following questions:-

Was not the agreement of complainant to pay $900.00 besides paying the debts made after the invoice was taken?

Was not the said invoice the basis on which your contract of dissolution was made?

If said invoice had been made according to the principles of fair dealing, and the intention of the parties, should not the said sum of $80- paid by Emly & Gale for your firm to Olivin Bennet & charged on their books against B. G. Hopkins & co have been included in said invoice of debts?

Should not also said $10 & other items above named have been included?

Did you not suppose that said invoice included all the debts owed by your said concern including the ones above named as left out?

Were you not the principal book keeper of your said concern - if not who was?

And now as it is impossible to detect the errors or frauds in the invoice so far as it relates to the goods in store, the same having been since sold, and the deficit not fully appearing till after the sale, and as a recision of the contract of dissolution cannot put the parties in the condition they before stood in: This Hon. Court is asked to decree that said defendant pay to complainants such sum as the court may deem just to make said contract of dissolution conform to the original intention of the parties: and for such damages costs - & for such further general relief as may be deemed equitable in the premises, &c.

David B. Watt

Complainant.)

Exhibits A. & B.

Saint Louis. May 11/49

Messrs B. G. Hopkins & Co.

Gents

Yours of 7th inst came to hand yesterday covering Dft on Woodruff & for 283.64
Certif dep Harrisburg Bank sold for currency " 600.00
which amt appears at yr credit $883,64
We chg you for pd Filley note 56.20
" " " " " Bennett " 80.25 *
" " " " " Stone & Stan Note 45771.
1/2 % & on do 229.60 00
Dis on 313.00 cy & specie 313 5.99 58
& enclose all the above notes also another note pd 7 Mar & chg your a/c at that time – The certif of dep on Harrisburg we sold for currency & chg you 1% discount on such a portion as made with the dft the amt. we paid out. the Bal. we credited as per funds as above &c (The balance of the letter relates to other transactions)
Hoping this will reach you safely & be found correct
We are &c Spaly & Gale per
M B Burnham.

* The item referred to and not posted in said invoice
copy of note
$80 25/100 St Louis March 1st 1849
One day after date we the subscribers B.G. Hopkins & B. Watt of Winchester County of Scott and State of Illinois promise to pay to Oliver Bennett or order Eighty and dollars 25/100 negotiable and payable for value received without defalcation or discount with interest after maturity
No 596 due Mar 2d 11 Mar 49 B G Hopkins & Co
(on the back of said note) Rec the within amt. through
Spaly & Gale O Bennett
R Hooker

Thereupon the following subpoena in chancery issued returnable according to law.

"State of Illinois } ss. The people of the State of Illinois to
Scott County } the sheriff of said County — Greeting:

We command you to summon Benjamin G. Hopkins if he can be found in your county to be and appear before the Judge of our circuit Court to be holden at Winchester, within and for the county of Scott on the fourth Monday of May inst to answer unto a bill filed and exhibited against you upon the Chancery side of our said Court by David B. Watt, and of this writ make legal service and due return at the time & place aforesaid. Witness E B Kirby clerk of our said Court at Winchester this 9th day of May 1850 the seal of said Court being hereto affixed — E B Kirby clerk."

On the back of said summons is the following indorsement

"I have served the within summons by reading the same to the within named Benjamin G. Hopkins and by delivering to him a true copy of the same this 9th day of May A.D. 1850 J. H. Allyn Sheriff of Scott County Illinois"

Thereupon defendant Hopkins filed his answer herein in words & figures following to wit. —

"State of Illinois Scott County ss.

The answer of Benjamin G. Hopkins to a Bill of complaint exhibited against him on the chancery side of the Circuit Court of said County by David B. Watt Complainant

This respondent being and reserving to himself the benefit of exceptions to answer to so much of said bill as he is advised

it is material for him to answer unto answering says - That about the 1st day of September 1849 Complainants for the first time indicated dissatisfaction as to his partnership relations with Respondent & expressed a wish or purpose to sell out his interest in their late concern. Respondents expressed to him his (respondents) objections to his (complainants) selling out to any third person & insisted on the continuance of their partnership for some ten (10) months longer when by the articles of partnership it would expire. Complainant still indicating his dissatisfaction in the premises he and respondent agreed to take an invoice of the concern to show in a general way the results of the business & to ascertain whether anything had been made, Respondent states that he his son Samuel T Hopkins who was a clerk in the store & complainant participated in the making out of said invoice - before there was any specific arrangement or understanding between complainants and respondent about one's selling out to the other. Respondent states that so far as he participated in any way in the making out or footing up said invoice, he acted in the most perfect good faith - suggesting no falsehood - and concealing no truth that would tend to false or inaccurate results in making out of the same - although he never believes that it was not as full and accurate as it might have been, and there were errors and omissions in it that would have tended to the advantage & disadvantage of complainants & respondent, if that had been the basis or consideration of the contract of sale by him to said complainants. Respondent denies that the invoice that was made out subject to the correction of errors & omissions & that when so corrected, or to be afterwards so corrected it

was the basis or consideration of the contract of sale by him to said complainant of respondent to complainant, or that respondent did or said anything in the premises to induce the complainant to give him (Respondent) $900 for his interest in the premises in any mistaken reliance on said invoice - or his integrity & honesty. Respondent denies that he was guilty of any fraud or intentional mistake - from the first to the last in the transaction of any business referred to in complainants bill. & says that he never agreed or contracted with the complainant that the said invoice was to be the basis of the respondents interest in the sale he made to the complainant: On the contrary and to shew beyond all doubt the groundlessness of such a surmise or statement, Respondent herewith files an exact copy of a contract that he made with complainant on the 4th day of September 1849 (the original of which is in the custody of the complainants Solicitor A M Knapp Esqr for safe keeping & by mutual consent & which he is hereby notified and requested to produce in evidence on the hearing of this cause) marked Exhibit A. & prayed to be taken as a part of this answer, from the inspection of which it will be perceived that the words "according to the invoice taken at" though still legible were erased - That erasure was made by the said A M Knapp who drew the instrument in the process of drawing it - before it was finished & at the instance of respondent, who at the time expressly insisted on making the sale to prevent or forestall any future trouble or cavaling, without any exception or reservation of any mistake, error, or omission or anything other than fraud, Respondent

at the time, saying and still staying that he would be answerable for any fraud on the complainant

Respondent does not know to what extent errors referred to in complainants bill bill were properly attributable to him respondent — The transaction with Messrs Gurly & Gale was had some four months before Respondents even thought of any dissolution of his partnership with complainant. who at all times had as unrestricted access to the books papers &c of the concern as this respondent. He would here be permitted to state the following items of omission to his prejudice in said invoice to wit — Some $60 worth of butter consigned to Messrs Gurly & Gale which was burnt up & which they advised they would collect insurance on the same or most of the same — a certain drawer of goods containing crapes, velvets, ~~bonnet~~ stuffs &c &c & last not least the interest in the Winchester landing warehouse. Respondent denies that he mainly kept the books, & says that they were kept by himself — complainants & respondents said son who was the principal book-keeper

Respondent denies that he made any representations to the complainant regarding said invoice that tended in any way to induce any false or mistaken opinions or suppositions of complainant or that he in any way relied upon respondents representations of the business or results He says that complainant had as good an opportunity of being fully advised into the state and prospects of the business as Respondents had & that if he (complainant) has been deceived or disappointed in the results of the business he has no right to reproach or call in question any and either than himself.

Respondent denies that he was very captious & particular in having articles of settlement drawn up between him & Complainant & says that the institution of this groundless and unjust suit against him, affords the fullest proof that he said respondent has not been more so than he ought to have been or enough so to prevent the complainant from harrassing him wrongfully in the premises. Respondent denies that he procured the execution of said articles by the strongest or any other assurances that the invoice contained a list of all the debts owed by the firm. He supposed at the time that he did not make no representation in the premises for the purpose of procuring the execution of said articles.

Respondent admits all and singular the allegations of complainants Bill not herein before responded to and prays to be hence dismissed with his costs by him wrongfully sustained in this behalf

David A Smith
Solicitor for Respondent

B. G. Hopkins
Respondent

Winchester May 30th 1850.

Exhibit A. Referred to in the above answer.

State of Illinois Scott County Illinois ss.
This instrument witnesses that Benjamin G. Hopkins & David B Watt heretofore partners in trade under the name and style of "B.G. Hopkins & co" have this day dissolved their said firm by mutual consent upon the terms following to wit: the said Hopkins sells out his entire interest in the said firm, stock goods books notes accounts demands & claims of every kind

belonging to said firm to the said David B. Watt for which the said Watt is to pay in six months from date the sum of nine hundred ($900) dollars without interest till due, the said Watt in taking said concern, cancels and relinquishes all claims which said firm has against said Benjamin G. Hopkins and Samuel J. Hopkins on their individual account and this is their receipt against the same in full and the said David B. Watt ~~assumes~~ on his part assumes and undertakes to pay and discharge all the debts of the concern in St Louis and Elsewhere according to the ~~manner taken~~ or contracted in the course of their firm business, And for the faithful performance of said assumption of debts of the said concern said D. B. Watt is to execute his obligation with good security & for the said sum of nine hundred dollars his note with good personal security. Signed and sealed this 4th day of Sept A.D. 1849

D. B. Watt (Seal)
B. G. Hopkins (Seal)

This is a true copy of the original instrument S. J. H. }

Thereupon the Complainant Watt filed the following replication —

State of Illinois
In the Circuit Court of Scott County ss.

David B. Watt
vs } In Chancery
Benjamin G. Hopkins

And the complainant for replication to the answer filed herein says that the matters & things therein contained are untrue & insufficient & that his bill is true & sufficient

Wherefore &c.

Knapp & Brown for Complainant.

The following is a copy of the decree rendered at the Sept. Term of said court in said cause viz:-

D. B. Batt
vs. In Chancery
Benjamin G. Hopkins

Now come the parties by their solicitors and the cause now coming on to be heard upon the bill and exhibits therein referred to and the answer of defendant and replication thereto and the testimony of witnesses, and documentary evidence adduced, and the court being fully advised in the premises, finds that the parties contracted with reference to the correctness of the invoice of stock of debts and credits of the firm of B. G. Hopkins & Co. referred to in the testimony — and also that the account of Grely & Gale as posted on the books of said firm and as carried into said invoice as made out on dissolution and sale of Hopkins interest was erroneous in this that B. G. Hopkins was an indebted to said Grely & Gale in the sum of $136 45/100 more than appeared from said books & invoice, and also that there was an error of $10 00/100 in the account of Olive Bennett as stated in the Bill, — and the court being further satisfied that said Batt would not have purchased out the interest of Hopkins in the firm upon the terms he did, had he known of the existence of said liabilities to said Grely & Gale & to said Bennett doth now order and decree, that the complainant pay unto the defendant the sum of seventy three dollars and that he have execution therefor. It is ordered that each party pay his costs herein expended — And the court further finds that the following is all the testimony in the case and,

that it was offered by complainant. —

A M Knapp testified that before and at the time of entering into the written contract of dissolution of the partnership between complainant and defendant and of the sale by Hopkins of his interest to Watt, that there was dissatisfaction as partners — and that he understood from both parties that they were taking an invoice of stock debts & credits in view of a dissolution, — that after said invoice was taken by deft. and his son, aided by said Watt propositions were made between them of buying and selling out to each other. — Watt made a written proposition to Hopkins as follows to wit. —

"Q Watts proposition to give or take in the dissolution of the firm of Hopkins & Co. The interest of each partner, aside from the money loaned concern by Watt and the $132 00 doubtful and bad debts is $829.46

1 This amount the party retaining the stock shall pay the other at the end of six mos. without interest & bind himself to pay all the debts of the concern

2 Should Hopkins accept and buy the concern then he may retain the sum of $1048.24 for 18 months at 10 per cent on bond and security.

3 The person retaining concern shall have the bad and doubtful debts and the house thrown into the purchase as a difference in favor of the party retaining the stock.

Errors in invoice, reclamations & mistakes hitherto undiscovered, subject to correction and allowance mutually." Which was submitted to Hopkins and declined, as I understood from conversations with the parties. Witness here exhibited and proved the execution of the contract of said dissolution and sale

which contract is correctly copied as an exhibit in defendants answer, and is to be made part of the testimony. — Witness states that when he had prepared in writing said contract as far as and inclusive of the words "according to the invoice taken at" (which words immediately follow in said contract the words in St Louis or Elsewhere) — that said Hopkins (who together with said Watt was present at the drawing of said contract) objected to said words "according to the invoice taken at" and said that he would have no such provision in the contract, — because he did not intend to be bothered for every little 25 cent error which might be found in mens accounts around the country, and insisted that said words should be stricken out. Watt objected to this as he was not acquainted with the debts which the concern might owe — Hopkins having managed the business of the concern. Hopkins replied that there were no other liabilities that he knew of there those on the books of the firm and the invoice. Watt said that there might be other liabilities of the firm in New York or at St Louis and you (Hopkins) made all the debts and managed the business and must know if there are any other liabilities than those in the invoice. Hopkins then replied that there were no other debts than those on the invoice — that they were all. Witness then told Watt that with that statement on the part of Hopkins, that he might safely sign the contract with the words objected

to stricken out;" and said words were accordingly erased. The book containing sd invoice, of stock, debts & credits together with the footing up of the same, was opened before me and the footing when said contract was written. Said Witness being cross-examined by defendant said that he thought that Hopkins stated that after the dissolution the books of the firm (styled B.G. Hopkins & Co) would pass into the hands of Watt, and if there should be errors in Watts favor he should never hear of them or words of that import. - that from what was said by Mr Hopkins he understood that errors were not to be corrected, - that Hopkins seemed not to be disposed to kind himself to correct errors. and refused so to contract. Witness told Watt that with the statements of Hopkins he might safely sign the contract and he thereupon did sign it. Immediately after the contract was signed Watt called me to the window and enquired of me further as to the contract and I told him that if there were any material errors in the debts as stated in the invoice that such errors coupled with the statements of Hopkins "that there were no other debts or liabilities than those invoiced," it would be sufficient to have them corrected. - Witness has no recollection of hearing Hopkins say any thing about fraud. - Witness may have stated that if other material liabilities were discovered besides those invoiced, that such discovery coupled with Hopkins statements, and the erasure in the contract as aforesaid would be evidence of fraud. Witness understood

Hopkins at the outset of his conversations with the parties to be in disposed to a dissolution, & cant say that he was anxious at any time to dissolve. There seemed to be a manifest determination, upon the part of Hopkins not to contract for conection of errors. I do not wish to be understood as stating that Hopkins was setting traps for Watt. I do not know that Hopkins objected to the dissolution, because he was unable to buy Watt out. It was known however, that he had a considerable family, & that his capital was invested in the firm of B.G. Hopkins & Co. It was in evidence, that the business of the firm was conducted by the deft. & his son, — they stayed in the store and kept the books. Complainant was carrying on a steam mill in the neighborhood of Winchester, to which he give personal attention. He was occassionally in the store and had access to the books & papers of the firm as pleasure.

The Goods, notes, and accounts of the concern according to the invoice amounted to $ V $6000. crosser & the liabilities thereof according to same invoice, amounted to

Complainant had in evidence the letter of Gately & Gale which is an exhibit in the bill; & the copy thereof, as filed with the Bill, is to be read as a part of the testimony.— The books of the firm are Exhibited in evidence, from which it appears that, after the reception of said letter, the deft. charged E. A. & O.R. Pilley to cash the amount paid them by Gately & Gale, as stated in said letter — to wit $56 $\frac{20}{100}$ — and also charged Orion Bennett with $80 $\frac{25}{100}$ cash paid him by Gately & Gale as stated in their said letter — and also that he gave Gately & Gale credit by $463 $\frac{13}{100}$ which they had paid out for them (B.G. Hopkins & Co. as stated in their said letter — but, that he deft. did

not give Gruely & Gale credit by said sums paid for them to E.A. & O.R. Filley, & to Oliver Bennett as stated in their said letter. It also appeared from said books, and said invoice, that the liability to Gruely & Gale, was ($136.45) one hundred and thirty six $\frac{45}{100}$ less than it really was — and as it was afterwards ascertained by said Watt to be. — The accounts of said Gruely & Gale and of said E. A. & O.R. Filley, and of Oliver Bennett, as they appear on said books, and as carried into said invoice, are as follows

"1849 Dr. Gruely & Gale Cr.

Jan 19	To pur of H. A Watt & co.		332.33.	Jan 1	Bal. due act 1848.5 1834		
Feb 26	" Rosin & bom		65.74	Feb 3.	Bill of goods		57.60
" "	" Cabarne Rosin & co.		123.43	Mar 1.	Bill	Goods	231.41
" "	" Cash Hopkins for Mg.	440.00		" 23.	Bill	Goods	80.30
" "	" Rec^d Cash		90.00	April 5.	by Bill	goods	241.58
" "	" Error in bill March/48		4.50	" "	by note S. & Stan		463.13
" "	" " " " Jan 31/48		1.01	" "	by " "	"	434.47
" "	" Bill Butter			May 11.	By	Goods	350.58
May 11	" Eggs as by bill		22.20	June 11.	"	"	157.36
" "	" 64 m Hubbugh		600.00				2534.77
" "	" order Woomff		283.64				
June 11	" Cash	174	49.50				
July 19	" "	246	150.00				
			2162.35				

1849 Dr. Oliver Bennett Cr.

May 11	To Cash	80.25.	March 1.	By Bill goods 61. 80.25
August 28	" Cash by Watt	138. 00	May 11	By Bill Thum 138.25

1849 Dr. E. A. & S. R. Filley Cr

May 13	To cash	56.20.	1849 Feby 28.	By bill goods 61.	56.20

Complainant also read in evidence the notes of E.A. & O.R. Filley, & of Oliver Bennett endorsed by Gruely & Gale to B.G. Hopkins & co. with the

names of payees erased, together with the endorsements thereon, & writing across the faces thereof as follows. —

"$5620 St Louis Feby 28th 1849

Two months after date we the subscribers residing in Hamilton County State of Illinois promise to pay to the order of E. A. S. R. Filley Fifty Six 20/100 Dollars negotiable and payable without defalcation or discount and for value Received. No. 1 B G Hopkins

$80 25/100 St Louis March 1st 1849

One day after date we the subscribers B.G. Hopkins & D.B. Watt of Pleasant County of Scott and State of Illinois promise to pay to Olion Bennett or order Eighty and eighty 25/100 negotiable and payable for value Received without defalcation or discount with interest after maturity

No 596 due Mar 2d. B.G. Hopkins & Co"

Complainant called James Watt who testified that at the request of deft. he carried money to St Louis to be paid Olion Bennett on account of B.G. Hopkins & Co. which was the style of the firm of complainant and defendant. — that he paid said Money to said Bennett, and took a receipt for the amount sent. — Witness then produced and proved the receipt which he had taken from said Bennett for said money as follows. —

"Recd of B.G. Hopkins & Co by the hands of James Watt one hundred and twenty eight dollars $128.

Olion Bennett
per C.G. Hooker"

Complainant then produced the books of the firm & showed that the ~~de~~ deft had charged Olion Bennett with $138 00/100 as sent by said Watt

instead of the true amount of $128 00/100. It appeared from an inspection of said books, that in making said entry the figure 2 seemed to have been commenced that it was then rubbed out, the figure 3 made over it.

Thomas Markillie testified.- that sometime before the dissolution of the firm, he was in the store and asked Hopkins if he & his son did not have more for tending the store than Watt as he was so much away — Hopkins seemed daughter came in at the time & called for some thread and tape; Hopkins gave it to her and laughingly remarked, that he could make up the difference in that way: Hopkins did not charge the articles while I remained in the store.

Martin Masters testified that, a few days before the dissolution Hopkins came into his store (a family Grocery) and took him in the back room and stated that Watt wanted to dissolve, but that he would hold him on.- That he believed that Watt wanted to play the hog with him, but that he (Watt) would find that he Hopkins was as good at hogging as any other man.- Witness understood the phrase to mean 'as taking advantage'. Before Hopkins & Watt talked of dissolving, Hopkins made overtures to me to furnish capital and go into partnership with me, and to place his son in the concern so proposed to be formed:- I declined his offer. An evening or two after Hopkins & Watt had dissolved, I was in at Berrys store, - Hopkins & others were present.- Berry remarked that Watt being now alone would make money, as the house had a good custom — Hopkins replied that he guessed that Watt would

not make as much as he thought he would — ~~that~~ when he had paid all the debts of the concern, or that would come against the concern, ~~or that would~~ and get rid of the old goods.

Jonathan Lewis testified that, he was in the saddler shop in Winchester and heard Hopkins say that Watt need not blow over town. that he had got him pretty bad, and, that before he got through paying up the debts, he would get find that he would get him (Watt) pretty bad. This conversation took place a few days after the dissolution, and, I think the parties were not very friendly.

It appeared that there were sundry errors in said invoice besides those referred to in the evidence above, against the complainant, to the amount of and errors in favor of deft. to the amount of which errors the parties agreed should stand off the one against the (other) error, and should not be taken into the account, in making up the decree in this cause, — Should the complainant be entitled to one. —"

Bill of small errors discovered on examination of firm books and account balanced for the purpose of answering defts. allegation in his answer, towit, — That the errors complained of in complts bill was ballanced by errors that should have been set down to defts. credit, showing that a balance on such errors exclusive of the principal errors complained of in the bill. date complt. of ~~$~~ 13.86.

Knapp Solr

B. G. Hopkins & co.

Dr	Errors		Cr.	
Paid	Santhwell	50	John R King	400
"	Coons	450	John August	425
"	Swett printing a/c	400	Ferguson	30
"	Hart act	450	1 School	750
"	M Masters	5.11	H. A. Watt	38
"	Beals	135	A W Riggs	19
"	Sostons	450	Milu Haynie	20
"	Robt Grosus	233	Jo Stout	60
"	Hornback (J.)	40	J. A. Coy	300
"	E. J. Miller	184	Silas Butler	4800
"	C B Dawson	200	Bill to show	68.52
"	John Mason	70		
"	A. G. Wells	65		
"	J Pond	60		
"	J Claywell	95		
"	Jas Mallory	450		
"	Wm C Grimm	68		
"	J B Edmonson	30		
"	G H Brottingham	62		
"	Jacob Miller	200		
"	D M Laughlin	50		
"	Wm Maskillie	50		
"	H Groons	90		
"	J Davis	1.30		
"	Taxes for 1849.	35.00		
"	Jas Hamilton	290		
"	Moses Langley	1.25		
		$82.38		
		68.52		
		$13.86		

The whole of the testimony in the cause was introduced by complainants

Whereupon the deft. filed the following bond. —

"Know all men by these presents that Benjamin G. Hopkins and Leai Haulan are held and firmly bound unto David B. Watt in the penal sum of Two hundred and ninety two dollars for the payment of which well and truly to be made, we bind ourselves our heirs, executors and administrators jointly, severally and firmly by these presents. Witness our hands and seals, this 26th day of September Anno Domini one thousand Eight hundred and fifty.

The condition of the above obligation is such; that whereas David B. Watt did on the 26th day of September 1850 in the Circuit Court within and for the County of Scott and State of Illinois, recover a judgement a judgements against the above bounden Benjamin G. Hopkins for the sum of Seventy three dollars and costs of suit, from which judgements of said Circuit Court the said Benjamin G. Hopkins has prayed for and obtained an appeal to the Supreme Court of said State, Now if the said Benjamin G. Hopkins shall duly prosecute his said appeal with effect, and shall moreover pay the amount of the judgements costs, interest and damages, rendered and to be rendered against him in case the said judgements shall be affirmed in the said Supreme Court, then the above obligation to be null and void, otherwise to remain in full force and virtue.

B. G. Hopkins (Seal)
L Haulan (Seal)

7000 words

State of Illinois }
Scott County } ss I Eliot B. Kirby clerk of said the Circuit Court within for said county do hereby certify that the foregoing pages contain a true & perfect copy of the pleadings in the cause of David B. Watt vs. B. G. Hopkins in chancery as the same appear of record in my office

Witness my hand and seal of office this 26th Nov. A.D. 1850

E. B. Kirby Clerk

Fees

copying 700 words	$7.00
certificate seal	35
	$7.35

In the Supreme court of the state of Illinois for the second division December Term A.D. 1850.

And now comes the said Benjamin G. Hopkins Appellant by his solicitor Smith & says that in the record & proceedings there is the following manifest error to wit -

That the Court below erred in not dismissing the Appellees bill for not making a claim in favor of the Appellant

Alexd A. Smith Solicitor for Appellant.

And the appellee by Brown & Yates his attorneys comes & says - That in the record & proceedings in the Court below there is no such error as the Appellant hath assigned

Brown & Yates
for Appellee

Watt
vs
Hopkins

Transcript

(5154)

Filed Mar 11th 1850
W D Murray